

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 Navy and the United States Special Operations Command (“USSOCOM”) (collectively the “United States”); Insitu, Inc. (“Insitu”); and Relator D R O’Hara (“O’Hara” or “Relator”) (hereafter the United States, Insitu, and O’Hara are sometimes referred to individually as a “Party” and collectively referred to as the “Parties”), through their authorized representatives.

RECITALS

A. Insitu is a wholly owned subsidiary of The Boeing Company and is headquartered in Bingen, Washington. Insitu designs, develops, produces, and operates unmanned aircraft systems (“UAS”). Between January 1, 2009 and December 31, 2017, as relevant for the purposes of this Agreement, Insitu entered into the following contracts/subcontracts with the United States Naval Air Systems Command (“NAVAIR”) and the USSOCOM for the operation of UAS at various sites identified in the following contracts: H92222-13-D-0005 (“MEUAS 1.5”); H92222-16-D-0031 (“MEUAS 1.5B”); N00019-11-C-0061 (“LD3 and Badger Surge”); N00019-12-D-0011 DO-0002 (“Trenton”); N00019-12-D-0011 DO-0004 (“LD3 Firefly”); N00019-12-D-0011 DO-0005 (“USAF1”); and N00019-09-C-0050 (“LD3 Prime”) (collectively the “Subject Contracts”).

B. On September 25, 2015, O’Hara filed a *qui tam* action in the United States District Court for the Western District of Washington captioned *United States ex rel. O’Hara v. The Boeing Company and Insitu, Inc.* (Civil Action No. 15-01527), pursuant to

the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). O’Hara alleged that Insitu improperly (1) used recycled, refurbished, reconditioned, and reconfigured parts on government contracts, and improperly proposed inflated costs of recycled, refurbished, reconditioned, and reconfigured parts on government contracts, leading to inflated prices on those contracts (Compl. ¶¶ 46-54); (2) resold excess parts (*id.* ¶¶ 55-65); (3) converted models to alleviate inventory issues (*id.* ¶¶ 66-74); (4) and failed to disclose the existence of “bulk discounts” on its cost of parts on government contracts (*id.* ¶¶ 75-81). O’Hara further alleged he was discriminated against and terminated in violation of the anti-retaliation provisions of the False Claims Act, 31 U.S.C. § 3730(h).

C. The United States intends to partially intervene in the Civil Action subsequent to the execution of this Agreement.

D. The United States contends that it has certain civil claims against Insitu for knowingly inducing, through false statements and omissions concerning cost and pricing data for the Subject Contracts, award of the Subject Contracts at inflated prices, by (1) proposing to supply new parts and materials while planning to and/or in fact using recycled, refurbished, reconditioned, and/or reconfigured parts to perform the Subject Contracts; (2) inaccurately describing its methodology for estimating and pricing recycled, reconditioned, and/or reconfigured parts to perform the Subject Contracts; (3) failing to disclose all cost and pricing data related to the use of recycled, refurbished, reconditioned, and/or reconfigured parts to perform the Subject Contracts between submitting proposals for those contracts and submitting the respective certifications required under the Truth in Negotiations Act, 10 U.S.C. § 2306a; and (4) using estimating

methodologies that inflated or otherwise misstated part count estimates for the Subject Contracts. As a result of this conduct, the United States contends further that Insitu submitted falsely inflated claims under the Subject Contracts from January 2009 through December 31, 2017. The conduct set forth in in this paragraph is referred to below as the “Covered Conduct.”

E. Insitu denies the United States’ allegations in Paragraph D and O’Hara’s allegations in the Civil Action.

F. This Agreement is neither an admission of liability by Insitu nor a concession by the United States or O’Hara that their claims are not well-founded.

G. O’Hara claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to O’Hara’s reasonable expenses, attorneys’ 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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Insitu shall pay to the United States \$25,000,000.00 (Settlement Amount), of which \$12,800,000.00 is restitution, by electronic funds transfer pursuant to written instructions to be provided by **THE OFFICE OF THE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF WASHINGTON** no later than January 8, 2021.

2. Conditioned upon the United States receiving the Settlement Amount from Insitu and as soon as feasible after receipt, the United States shall pay \$4,625,000.00 to

O'Hara by electronic funds transfer ("Relator's Share") pursuant to written instructions to be provided by O'Hara's counsel.

3. Insitu and O'Hara agree that O'Hara is entitled to payment, by Insitu, of O'Hara's reasonable expenses, plus reasonable attorneys' fees and costs, pursuant to this Agreement and 31 U.S.C. § 3730(d)(1) and caselaw interpreting same. These expenses, fees and costs shall be in addition to the Relator's Share set forth in Paragraph 2. O'Hara and Insitu hereby agree to negotiate in good faith the resolution of these fees and costs and, if they are unable to reach agreement after no longer than thirty (30) days after the Effective Date of this Agreement, to request that the Court determine the amount.

Without admitting that any such rights do or do not exist, O'Hara and Insitu reserve any and all rights they may have regarding the following, as well as the right to oppose the following: (1) the right to request limited and reasonable discovery regarding the claimed fees and costs; (2) the right to seek attorneys' fees and costs incurred in connection with the negotiation of expenses, attorneys' fees and costs; (3) the right to seek attorneys' fees and costs in connection with any motion or request to the Court related to the entitlement to or determination of expenses, attorneys' fees or costs; and (4) the right of O'Hara to recover reasonable expenses, attorneys' fees and costs under 31 U.S.C. § 3730(h).

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and conditioned upon Insitu's full payment of the Settlement Amount, the United States releases Insitu, 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 (collectively "Related

Entities”), 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 Truth in Negotiations Act, 10 U.S.C. § 2306a; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraphs 3 and 5 regarding the payment of O’Hara’s reasonable expenses, attorneys’ fees, and costs, and conditioned upon Insitu’s full payment of the Settlement Amount, O’Hara, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Insitu and Related Entities from each and every claim, demand, liability, debt, or cause of action that O’Hara, his heirs, successors, attorneys, agents, and assigns have asserted, could have asserted, or may in the future assert against Insitu or Related Entities. Notwithstanding the foregoing, O’Hara only releases Insitu from any obligation Insitu may have to pay O’Hara’s reasonable expenses, attorneys’ fees, and costs, as set forth in Paragraph 3, when the amount either agreed between O’Hara and Insitu or ordered by the Court under Paragraph 3 has been paid by Insitu. O’Hara expressly intends this Agreement to bar any civil monetary claim O’Hara has individually or on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733. The Settlement Amount does not include any payment for the alleged violation of the anti-retaliation provisions of the False Claims Act, 31 U.S.C. § 3730(h); however, O’Hara does not admit that his claim for violation of the anti-retaliation provision lacks merit. O’Hara expressly waives any and all rights and benefits conferred upon O’Hara by any law, statute, or judicial decision that provides that a general release

does not extend to claims which a plaintiff does not know or suspect to exist in his favor at the time of executing a release.

6. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims and rights 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 or enforcement right, 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; and
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. O'Hara 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 O'Hara's receipt of the payment of Relator's Share described in Paragraph 2, O'Hara 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.

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

9. Insitu 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 Insitu 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 or the United States' investigation or prosecution thereof.

10. Upon the Effective Date, Insitu and the Related Entities, and each of them, as well as their respective heirs, successors, assigns, officers, directors, managing members, employees, attorneys, shareholders, and agents release, remiss, discharge, and acquit O'Hara, and his heirs, successors, assigns, attorneys and agents from and against any and all liabilities, claims, suits, actions, causes of action, debts, accounts, bonds, damages, expenses, fees, losses, royalties, or demands in law, equity or otherwise, that arose prior to this Agreement, whether known or unknown, accrued or unaccrued, legal, equitable or of any other sort. The releasing parties hereby knowingly and voluntarily

waive and relinquish any and all rights and benefits conferred by any law of the United States or any state or territory of the United States, or any principle of common law that governs or limits a person's release of unknown claims.

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 Insitu and Related Entities, and their 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) Insitu's and Related Entities' 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 Insitu makes to the United States pursuant to this Agreement and any payments that Insitu may make to O'Hara, including costs and attorneys' 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 Insitu and Related Entities, and they 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, Insitu shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Insitu or any of their subsidiaries or affiliates from the United States. Insitu agrees that the United States, at a minimum, shall be entitled to recoup from Insitu 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 Insitu's books and records and to disagree with any calculations submitted by Insitu or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Insitu, or the effect of any such Unallowable Costs on the amount of such payments.

12. Insitu agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Insitu 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. Insitu 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 Paragraphs 1 and 3 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). The Stipulation shall be with prejudice to O'Hara with respect to any claims against Insitu or Related Entities, and with prejudice to the United States to the extent of the Covered Conduct, but otherwise without prejudice to the United States.

15. Except as set forth in Paragraph 3 above, 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 into 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 Western District of Washington. 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.

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 Insitu's successors, transferees, heirs, and assigns.
22. This Agreement is binding on O'Hara'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 ("Effective Date" of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

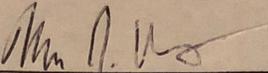
DATED: 12.23.2020 BY: DONALD WILLIAMSON Digitally signed by DONALD WILLIAMSON
Date: 2020.12.23 19:08:35 -05'00'

DON WILLIAMSON
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

and
CATHARINA STAHMAN Digitally signed by CATHARINA STAHMAN
Date: 2020.12.23 16:16:52 -08'00'

KAYLA C. STAHMAN
Assistant United States Attorney
United States Attorney's Office
Assistant United States Attorney

INSITU, INC.

DATED: 12/23/20 BY: 
THOMAS J. ROBERTS
Chief Counsel, Boeing Defense, Space & Security
On behalf of Insitu, Inc.

DATED: _____ BY: _____
STEVE Y. KOH
MICHAEL E. SCOVILLE
LEIGH E. SYLVAN
Perkins Coie LLP
Counsel for Insitu, Inc.

RELATOR

DATED: _____ BY: _____
D R O'Hara

DATED: _____ BY: _____
Robert Rhodes
Counsel for Relator

INSITU, INC.

DATED: _____ BY: _____

THOMAS J. ROBERTS
Chief Counsel, Boeing Defense, Space & Security
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RELATOR

DATED: _____ BY: _____

D R O'Hara

DATED: _____ BY: _____

Robert Rhodes
Counsel for Relator

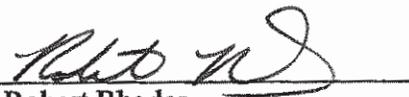
INSITU, INC.

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Chief Counsel, Boeing Defense, Space & Security
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DATED: _____ BY: _____
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Perkins Coie LLP
Counsel for Insitu, Inc.

RELATOR

DATED: 12/23/2020 BY: 
D R O'Hara

DATED: 12/23/2020 BY: 
Robert Rhodes
Counsel for Relator