

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 Defense (collectively the "United States") and Blue Water Shipping U.S., Inc. ("Blue Water Shipping") (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Blue Water Shipping is a New Jersey based company that specializes in cargo shipments by air and sea, as well as government and defense logistics needs, including project cargo, specialized customs handling, security, and warehousing.

B. The United States contends that it has certain civil claims against Blue Water Shipping arising from Blue Water Shipment's submission of false claims for payment to the United States for services allegedly provided under Contract FA8730-18-C-0009 (the "Contract"). Specifically, the United States alleges that during the performance of the Contract, a Blue Water Shipping employee, who has since been terminated, created a fake company, Summit Transportation, which was used to ultimately bill the United States for shipping services that were never actually performed. The United States also alleges that Blue Water Shipping improperly charged unallowable markups on the Contract for inland transportation, importing ocean and/or air freight, and exporting ocean and/or air freight. That conduct is referred to below as the "Covered Conduct."

C. Blue Water Shipping disclosed the facts to the United States and cooperated with its investigation and prosecution of the former employee.

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D. Blue Water Shipping admits that its former employee created a fake company that was used to bill the United States for shipping services under the Contract that were never actually performed. With respect to the remainder of the allegations, this Settlement Agreement is neither an admission of liability by Blue Water Shipping nor a concession by the United States that its claims are not well founded. Blue Water Shipping, however, agrees not to make or permit to be made any public statement denying, directly or indirectly, any of the Covered Conduct or creating the impression that the Covered Conduct is without factual basis.

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. Blue Water Shipping shall pay to the United States One Million Eight Hundred Eighty Seven Thousand, Six Hundred and Sixty Four dollars (\$1,887,664.00) (the "Settlement Amount"), of which One Million Two Hundred Fifty Eight Thousand, Four Hundred and Forty Three dollars (\$1,258,443.00) is restitution, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey, no later than 30 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases Blue Water Shipping 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; 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 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, or any administrative remedy, 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; and
- f. Any liability of individuals.

4. Blue Water Shipping waives and shall not assert any defenses Blue Water Shipping 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.

5. Blue Water Shipping fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Blue Water Shipping 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.

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 Blue Water Shipping, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and any related plea agreement;
- (2) the United States' audit(s) and civil and criminal investigations of the matters covered by this Agreement;
- (3) Blue Water Shipping's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal investigations in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement and any plea agreement;

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

7. This Agreement is intended to be for the benefit of the Parties in this matter only.
8. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
9. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.
10. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. 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.
11. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.
12. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.
13. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
14. This Agreement is binding on Blue Water Shipping's successors, transferees, heirs, and assigns.
15. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

A handwritten mark, possibly a signature or initials, consisting of a large, stylized letter 'A' or a similar symbol.

16. 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.

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A handwritten signature, possibly reading "J", is located in the bottom right corner of the page.

SIGNATURE PAGE

For the United States of America:



By: MARK C. ORLOWSKI
Assistant U.S. Attorney
United States Attorney's Office
District of New Jersey
970 Broad Street, Suite 700
Newark, New Jersey 07102

Dated: 12/13/2022

For Blue Water Shipping U.S., Inc.



By: JOHN MOON, ESQ.
Olshan, Frome, Wolosky, LLP
1325 Avenue of the Americas
New York, New York 10019

Dated: December 13, 2022



DAN NISSEN
President
Blue Water Shipping U.S., Inc.

Dated: 13 DECEMBER 2022