

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 Tennessee Valley Authority (“TVA”) (collectively the “United States”), and Day & Zimmermann NPS, Inc. (“D&Z”) (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. D&Z is a privately owned company specializing in construction and maintenance services.

B. The United States contends that it has certain civil claims against D&Z in connection with the Fukushima capital improvement projects at the Watts Bar Nuclear Power Plant under TVA Contract No. 2801 dated November 20, 2009. Specifically, the United States alleges that D&Z improperly shifted costs from various outage-related project codes and improperly charged costs to Cost Work Authorization 14723002001 (“CWA”) and/or failed to correct outage-related charges D&Z knew or should have known were incorrectly applied to the CWA resulting in false claims for payment, as well as overpayments, which were not returned to TVA, during the period from January 1, 2014 through May 5, 2014. That conduct is referred to below as the “Covered Conduct.”

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. D&Z shall pay to the United States **Two-Hundred Thousand Dollars (\$200,000)** (Settlement Amount), of which One-Hundred Thousand (\$100,000) is restitution, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Tennessee no later than fifteen (15) 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 D&Z 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 Contract Disputes Act, 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 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;
- 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. D&Z waives and shall not assert any defenses D&Z 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. D&Z 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 D&Z 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 D&Z, 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) D&Z's investigation, defense, and corrective actions undertaken in response to the United States' audit and investigation in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment D&Z 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 D&Z, and D&Z 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, D&Z shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by D&Z or any of its subsidiaries or

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

7. D&Z agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, D&Z 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. D&Z 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. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

11. 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 Eastern District of Tennessee. 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.

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

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

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

15. This Agreement is binding on D&Z's successors, transferees, heirs, and assigns.


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

17. 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.

SIGNATURES ON THE FOLLOWING PAGE

THE UNITED STATES OF AMERICA

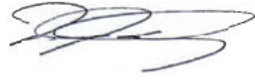
DATED: 4/15/2021

BY: 

Jeremy S. Dykes
Assistant United States Attorney
Eastern District of Tennessee


DAY & ZIMMERMANN NPS, INC.

DATED: 4/8/2021

BY: 

Jason Dunaway
President

DATED: 4/9/2021

BY: 

Hal J. Perloff
Husch Blackwell LLP
Counsel for Day & Zimmermann NPS, Inc.