

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Attorney’s Office for the Eastern District of Washington and on behalf of the United States Department of Energy (collectively the “United States”); Bechtel Corporation, Bechtel National, Inc. (“BNI,” and together with Bechtel Corporation, collectively “Bechtel”), AECOM Energy & Construction, Inc. (“AECI”), and Waste Treatment Completion Company, LLC (“WTCC,” and together with Bechtel and AECI, collectively “Defendants”); and Kip Daly, Julee Leavitt, Gene Turner, and Justin Rohrer (collectively “Relators”), all through their authorized representatives and collectively referred to herein as the “Parties.”

### RECITALS

A. Defendant Bechtel Corporation is a Nevada corporation with its principal place of business in Reston, Virginia. Defendant BNI is a Nevada corporation with its principal place of business in Reston, Virginia. Defendant AECI is an Ohio corporation with its principal place of business in Greenwood Village, Colorado. Defendant WTCC is a Delaware limited liability company with its principal place of business in Richland, Washington.

B. The United States Department of Energy (“DOE”) oversees environmental remediation efforts at the Hanford Site in southeastern Washington State. As part of its cleanup efforts, in 2000, DOE awarded contract DE-AC27-01RV14136 (as amended from time to time, the “WTP Contract”) to BNI for the design, construction, and commissioning of the Hanford Tank Waste Treatment and Immobilization Plant (“WTP” or “WTP Project”). AECI and WTCC are subcontractors of BNI on the WTP Project.

Bechtel Corporation and AECOM, Inc. are not parties to the WTP Contract or any subcontract thereunder but rather are a parent company of BNI and a former corporate affiliate of AECl, respectively.

C. On May 31, 2017, Relators filed a *qui tam* action in the United States District Court for the Eastern District of Washington, captioned *United States ex rel. Relator #1, et al. v. Bechtel National, Inc., et al.*, 4:17-CV-5074-SMJ, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). On September 27, 2018, Relators filed their First Amended Complaint. On June 28, 2019, Relators filed a Second Amended Complaint. On December 26, 2019, Relators filed a Third Amended Complaint. On February 28, 2020, the United States intervened in part in the Civil Action.

D. The United States contends that it has certain civil claims against Defendants arising from the Covered Conduct, as defined below in Paragraph 3. Defendants admit that the facts set forth in Attachment A hereto are true and correct; however, this Agreement is made in compromise of disputed claims and 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 Agreement and to Relators’ 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 Agreement, the Parties agree and covenant as follows:

## TERMS AND CONDITIONS

1. Defendants shall pay to the United States \$57,750,000 (“Settlement Amount”), of which \$25,789,039 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 Washington no later than 14 calendar days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount from Defendants and as soon as feasible after receipt, the United States shall pay \$13,750,000 to Relators by electronic funds transfer. Defendants will have no obligation or liability with respect to the payment of (or failure to pay) any share of the Settlement Amount to Relators, or any allocation of the Settlement Amount as between or among the United States and Relators, and the rights, benefits, and releases conferred on Defendants by this Agreement and the obligations owed to Defendants under this Agreement, are not contingent upon the Relators receiving any share or any particular share of the Settlement Amount.

3. “Covered Conduct” means, for the time period between January 1, 2009 and July 31, 2019:

- a. The admitted conduct set forth in the Statement of Facts attached hereto as Exhibit A;
- b. The allegations set forth in Paragraph 4 of Exhibit A hereto;
- c. The conduct alleged in the following paragraphs of the Relators’ Third Amended Complaint: 81–142 and 184–189; and

d. The conduct alleged in the following paragraphs of the Relators' Third Amended Complaint, to the extent that the alleged conduct relates to time-charging: 5, 172–179, 195, 251, 252, 320, 325, and 326.

4. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Defendants' full payment of the Settlement Amount, the United States releases Defendants, together with their current and former direct and indirect parent corporations, subsidiaries, brother or sister corporations, divisions, affiliates (including, but not limited to, AECOM, Inc., which has been renamed AECOM C & E, Inc.), and corporate owners or members, and the corporate successors and assigns of any of them (collectively the "Corporate Released Parties") from any civil or administrative monetary claim, including any monetary contractual penalties or remedies under the terms of the WTP Contract, that 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; the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud; or any other claim that the Civil Division of the United States Department of Justice or the Civil Division of the United States Attorney's Office for the Eastern District of Washington has actual and present authority to compromise pursuant to 28 C.F.R. § 0.45(d).

5. Notwithstanding the releases given in Paragraph 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;
- f. Any liability of individuals;
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. Conditioned upon Defendants' full payment of the Settlement Amount, each of the Relators, for themselves and their heirs, successors, attorneys, agents, and assigns, releases the Corporate Released Parties, as well as any current or former owners, officers, directors, trustees, shareholders, employees, executives, agents, attorneys, or affiliates of the Corporate Released Parties, from (a) any civil monetary claim Relators have or may have for the claims set forth in the Civil Action and the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729–3733, up until the Effective Date of this Agreement; and (b) all liability, claims, demands, actions, or causes of action whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal or state statute or regulation or doctrine, that Relators, their heirs, successors, attorneys, agents, and assigns otherwise have brought or would have standing

to bring as of the Effective Date of this Agreement, including any liability to Relators arising from or relating to the claims Relators asserted or could have asserted in the Civil Action, up until the Effective Date of this Agreement. Notwithstanding the foregoing, the release in this Paragraph does not cover (i) claims that cannot lawfully be waived or released, including claims for workers' compensation benefits (including under the Energy Employees Occupational Illness Compensation Program) and claims for unemployment compensation; or (ii) future claims for physical injury, not yet known or reasonably knowable, caused by exposure to radiation or toxic chemicals, to the extent not barred by worker's compensation statutes. Relators each further represent that they have informed the United States of all known conduct by the Corporate Released Parties or any current or former owners, officers, directors, trustees, shareholders, employees, executives, agents, attorneys, or affiliates of the Corporate Released Parties that they reasonably believe could constitute a violation of the civil False Claims Act. Relators each acknowledge and agree that their representations are a material inducement to Defendants' willingness to enter into this Agreement.

7. 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 payment 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.

8. 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.

9. 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. However, for avoidance of doubt, nothing in this paragraph is intended to release the United States Department of Energy from any entitlement or claim for allowable, reasonable, and allocable costs incurred by Defendants, or fees earned by Defendants under the WTP Contract, including payment of any milestone fees earned by Defendants and any allowable costs decremented from any invoices or vouchers submitted to DOE during 2018 or 2019 as a result of the United States' investigation.

10. Defendants agree to the following:

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 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 and criminal investigation(s) 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 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'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 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.

11. This Agreement is intended to be for the benefit of the Parties and the individuals and entities released in this Agreement only.

12. Within 14 days of receipt of the payment described in Paragraph 1, above, the United States and Relators will sign and file in the Civil Action a Dismissal of the Civil Action pursuant to Federal Rule of Civil Procedure 41. The Dismissal will be with prejudice to the entire Civil Action as to Relators. The Dismissal will be with prejudice as to the United States to the extent of the Covered Conduct, and otherwise without prejudice as to the United States.

13. Except as provided in 31 U.S.C. § 3730(d) concerning Relators' reasonable attorney's fees, expenses, and costs, each Party will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

14. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

15. 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 Eastern District of Washington. For purposes of construing this Agreement, this Agreement will be deemed to have been drafted by all Parties to this Agreement and will not, therefore, be construed against any Party for that reason in any subsequent dispute. If any provisions of this Agreement are held to be illegal, invalid, or unenforceable by a court or agency of competent jurisdiction under present or future laws that apply to this Agreement, those provisions will be fully severable. In place of any severed provision, the Parties agree to substitute a legal, valid, and enforceable provision which is as similar as possible to the severed provision.

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

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

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

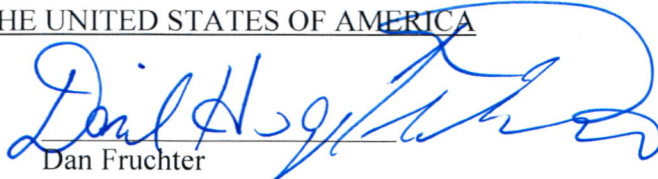
19. This Agreement is binding on the Parties and their successors, transferees, heirs, and assigns.

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

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

THE UNITED STATES OF AMERICA

DATED: 8/31/2020



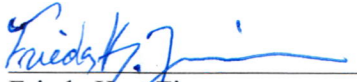
Dan Fruchter  
Assistant United States Attorney  
Eastern District of Washington

DATED: 8-31-2020



Tyler H.L. Tornabene  
Assistant United States Attorney  
Eastern District of Washington

DATED: 8/31/2020



Frieda Kay Zimmerman  
Special Assistant United States Attorney  
Eastern District of Washington

BECHTEL NATIONAL, INC.

DATED: August 31, 2020



James N. Taylor  
Principal Vice President  
Bechtel National, Inc.

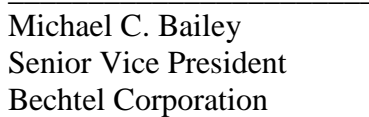
DATED: August 31, 2020



Brad D. Brian  
Munger, Tolles & Olson LLP  
Counsel for Bechtel National, Inc.

BECHTEL CORPORATION

DATED: August 31, 2020



Michael C. Bailey  
Senior Vice President  
Bechtel Corporation

DATED: August 31, 2020




Brad D. Brian  
Munger, Tolles & Olson LLP  
Counsel for Bechtel Corporation

BECHTEL NATIONAL, INC.

DATED: August 31, 2020


\_\_\_\_\_  
James N. Taylor  
Principal Vice President  
Bechtel National, Inc.

DATED: August 31, 2020


  
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Brad D. Brian  
Munger, Tolles & Olson LLP  
Counsel for Bechtel National, Inc.

BECHTEL CORPORATION

DATED: August 31, 2020

  
\_\_\_\_\_  
Michael C. Bailey  
Senior Vice President  
Bechtel Corporation

DATED: August 31, 2020

  
\_\_\_\_\_  
Brad D. Brian  
Munger, Tolles & Olson LLP  
Counsel for Bechtel Corporation

AECOM ENERGY & CONSTRUCTION, INC.

DATED: 8/31/2020



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John Kennedy  
Chief Financial Officer  
AECOM Energy & Construction, Inc.

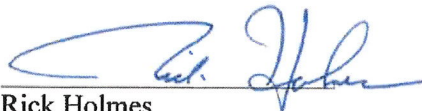
DATED: 8/31/2020



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Roderick L. Thomas  
Craig Smith  
Wiley Rein LLP  
Counsel for AECOM Energy & Construction, Inc.

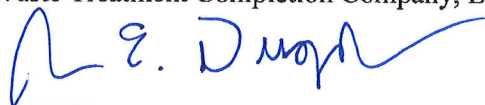
WASTE TREATMENT COMPLETION COMPANY, LLC

DATED: 31 Aug 2020



Rick Holmes  
President and General Manager  
Waste Treatment Completion Company, LLC

DATED: 31/3/2020

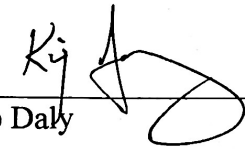


Robert E. Dugdale  
Kendall Brill & Kelly  
Counsel for Waste Treatment Completion Company, LLC




RELATOR - KIP DALY

DATED: 8/31/2020

  
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Kip Daly

DATED: 8/31/20


  
\_\_\_\_\_  
Richard E. Condit  
Cleveland Lawrence III  
Ezra Bronstein  
Mehri & Skalet, PLLC  
Counsel for Kip Daly

RELATOR - JULEE LEAVITT

DATED: \_\_\_\_\_

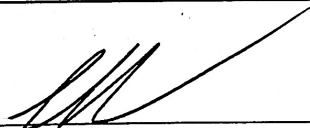
\_\_\_\_\_  
Julee Leavitt

DATED: 8/31/20


  
\_\_\_\_\_  
Richard E. Condit  
Cleveland Lawrence III  
Ezra Bronstein  
Mehri & Skalet, PLLC  
Counsel for Julee Leavitt

RELATOR - GENE TURNER

DATED: 8/31/2020

  
\_\_\_\_\_  
Gene Turner

DATED: 8/31/20

  
\_\_\_\_\_  
Richard E. Condit  
Cleveland Lawrence III  
Ezra Bronstein  
Mehri & Skalet, PLLC  
Counsel for Eugene Turner

RELATOR - KIP DALY

DATED: \_\_\_\_\_

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Kip Daly

DATED: \_\_\_\_\_

\_\_\_\_\_  
Richard E. Condit  
Cleveland Lawrence III  
Ezra Bronstein  
Mehri & Skalet, PLLC  
Counsel for Kip Daly

RELATOR - JULEE LEAVITT

DATED: 8/31/00

Julie Leavitt  
Julie Leavitt

DATED: \_\_\_\_\_

\_\_\_\_\_  
Richard E. Condit  
Cleveland Lawrence III  
Ezra Bronstein  
Mehri & Skalet, PLLC  
Counsel for Julee Leavitt

RELATOR - EUGENE TURNER

DATED: \_\_\_\_\_

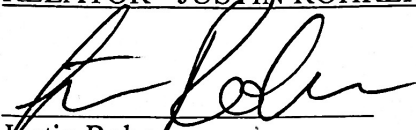
\_\_\_\_\_  
Eugene Turner

DATED: \_\_\_\_\_

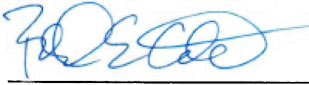
\_\_\_\_\_  
Richard E. Condit  
Cleveland Lawrence III  
Ezra Bronstein  
Mehri & Skalet, PLLC  
Counsel for Eugene Turner

RELATOR - JUSTIN ROHRER

DATED: 8/31/2020

  
Justin Rohrer

DATED: 8/31/20

  
Richard E. Condit  
Cleveland Lawrence III  
Ezra Bronstein  
Mehri & Skalet, PLLC  
Counsel for Justin Rohrer

## **Attachment A – Statement of Facts**

### **STATEMENT OF FACTS**

The following Statement of Facts is incorporated by reference as part of the settlement agreement (the “Agreement”) between the United States of America, acting through the United States Attorney’s Office for the Eastern District of Washington (the “United States”); Bechtel National, Inc. (“BNI”); AECOM Energy & Construction, Inc. (“AECI”); and Waste Treatment Completion Company, LLC (“WTCC,” and collectively with AECI and BNI, the “Contractors”). The United States and the Contractors agree that the following facts are true and correct. Nothing in this Statement of Facts, however, is or will be construed to be an admission of liability by the Contractors. The Contractors do not concede this is an acknowledgement of fault for purposes of Federal Acquisition Regulation (FAR) 52.209-7. The Contractors expressly deny any liability under the False Claims Act or any other cause of action arising from any of the following conduct. The Contractors reserve the right to contest the admissibility, use, or application of this document or to supplement the facts contained herein in any future litigation, claims, or disputes, including the right to argue that this Statement of Facts is not admissible to prove liability pursuant to Federal Rule of Evidence 408.

#### **Background: General**

1. During the relevant time period (January 1, 2009 through July 31, 2019), the Contractors were engaged in performing services at the Waste Treatment and Immobilization Plant (“WTP” or “WTP Project”) at the Department of Energy’s (“DOE”) Hanford Site. Since December 2000, BNI has been the prime contractor on DOE Prime Contract No. DE-AC27-01RV14136, to design, construct, and commission the WTP (the “WTP Contract”). Since that time, AECI has been BNI’s primary subcontractor on the WTP. BNI and AECI created WTCC in order to complete construction and lead the startup and commissioning of the WTP. In early

## Attachment A – Statement of Facts

2017, WTCC began operating as a subcontractor to BNI. After the creation of WTCC, BNI continued to provide overall project oversight and supervision as the prime contractor, and AECI continued to manage the work performed by WTCC employees within AECI's scope of work. Certain BNI and AECI employees were loaned to WTCC to serve as managers and supervisors, pursuant to loaned personnel agreements.

2. The WTP Contract is a type of cost-reimbursement contract known as a “cost plus award fee” contract. Under the cost-reimbursement WTP Contract, BNI is reimbursed for all costs incurred in performing the contract, including the fully-burdened costs of all employees performing on the contract, so long as those costs are allowable under the contract and its terms, allocable to the contract, and reasonable.<sup>1</sup> Under the WTP Contract, in addition to reimbursement of its allowable costs, BNI is also able to earn profit in the form of fees specified in the Contract, including fees for reaching certain performance milestones. AECI shares in the fees/profits earned by BNI. BNI and AECI receive overhead costs and indirect costs expressed as a percentage for each labor hour for which they are reimbursed, but BNI and AECI do not earn fee/profit on the individual labor-hour costs that are reimbursed.

3. As described herein, during the relevant time period, the Contractors claimed reimbursement for costs associated with time that was not productively worked, including downtime, idle time, standby time, or other non-productive time (collectively referred to herein as “downtime”), some of which was unallowable under the circumstances that existed at the times those costs were incurred. As described herein, some of these unallowable costs occurred after the Contractors were advised by the United States of its concerns that such conduct was occurring.

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<sup>1</sup> Federal Acquisition Regulation (FAR) Part 52.216-7; FAR Part 31.2.

## Attachment A – Statement of Facts

To resolve claims based on the allegations contained herein, the Contractors and the United States entered into the Agreement in which the Contractors have agreed to pay \$57,750,000, \$25,789,039 of which has been designated as restitution to DOE.

4. Since 2016, the United States Attorney’s Office for the Eastern District of Washington (“USAO”) and the DOE Office of Inspector General (“OIG”) have been investigating the Contractors in response to allegations which, except as expressly admitted below, are denied. Those allegations are that, during the time period from January 1, 2009, to the Effective Date of the Settlement Agreement and in connection with the WTP Project and/or the WTP Contract, the Contractors submitted or caused to be submitted to the United States statements, records, or claims for payment or approval that were false or unreasonable as a result of downtime by manual and non-manual workers at WTP; management practices that resulted in such downtime at WTP, *viz.*, inadequate or improper direction or supervision of manual and non-manual workers that caused or contributed to unreasonable idle time, inadequate or improper labor planning, scheduling, or utilization practices, inadequate or improper preparation of procedures, work packages, test packages, or similar documents, and false or fraudulent timekeeping, time-tracking, time-reporting, or time-estimating data relating to manual or non-manual labor hours; improper or unnecessary reworking of completed work activities at WTP; underreporting of work progress at WTP to facilitate false time charging; unnecessary or unreasonable overtime at WTP; recording of time to improper cost codes and/or charge codes by manual or non-manual workers at WTP, and inadequate or improper direction or supervision of manual and non-manual workers resulting in such improper recording; inflated or unreasonable staffing levels or decisions with respect to manual or non-manual workers at WTP; false or fraudulent estimates, projections, or budgets of manual or non-manual labor hours for the WTP Project, to the extent such estimates, projections, or budgets resulted in

## **Attachment A – Statement of Facts**

or contributed to unreasonable downtime, overtime, or staffing levels; failure to perform preservation maintenance to the extent that this arose from unreasonable downtime; and inadequate or improper time-charging or billing practices related to the foregoing. The Contractors acknowledge that these allegations were under investigation and admit only the facts set forth below. The facts set forth below constitute the factual basis for the resolution between the United States and the Contractors of those allegations and for the conduct described herein.

### **Background: Craft Personnel on the WTP**

5. During the relevant time period, as part of the WTP Project, the Contractors employed a number of hourly skilled workers through the Central Washington Building and Construction Trades Council, a regional coordinating body of labor union locals headquartered in Pasco, Washington (“craft personnel” or “craft”). Prior to March 2017, craft personnel were employed by BNI or AECI, depending on the work that they were performing. After March 2017, craft personnel were employed by WTCC, which subcontracted with BNI. At all relevant times, craft personnel were paid weekly on an hourly basis, based on the number of labor hours entered into the Contractors’ timekeeping system. The Contractors then claimed reimbursement from DOE for the fully-burdened labor costs of the craft personnel.

6. During the relevant time period, some craft personnel were responsible for the construction and installation of the WTP and its components, systems, and facilities (“Construction”). Prior to March 2017, Construction craft personnel were employed by BNI, while after March 2017, they were employed by WTCC under the management and supervision of superintendents loaned to WTCC by BNI pursuant to loaned personnel agreements.

7. Beginning in or about March 2016, some craft personnel supported testing of completed components, systems, and facilities to ensure they were working properly (“Startup”). Once a component, system, or facility’s construction was substantially

## **Attachment A – Statement of Facts**

completed, care, custody, oversight, and control of the component, system, or facility was “turned over” from Construction to Startup for testing. Startup testing was conducted by BNI Startup engineers, who were supported in the field by Startup craft personnel. From March 2016 to March 2017, Startup craft personnel were employed by BNI, while after March 2017, they were employed by WTCC under the supervision and direction of superintendents and Startup engineers loaned to WTCC by BNI pursuant to loaned personnel agreements.

8. During the relevant time period, some craft personnel were responsible for maintaining components, systems, and facilities (“Maintenance”). Because of the duration and scope of the WTP Project, Maintenance craft personnel were tasked with ensuring that components, systems, and facilities stayed in good and working condition and did not degrade or deteriorate over time while construction and installation of other components, systems, and facilities was ongoing. Prior to May 2013, Maintenance craft personnel were employed by BNI. From May 2013 to March 2017, Maintenance craft personnel were employed by AECI. After March 2017, Maintenance craft were employed by WTCC under the management and supervision of superintendents and managers loaned to WTCC from AECI pursuant to a loaned personnel agreement.

9. Each craft personnel on the WTP was supervised by a craft foreperson who reported up to a superintendent, in some cases with a general foreperson in between.

- a. For Startup and Construction craft personnel, their foreperson was responsible for entering into the eTrack timekeeping system the hours worked for the week, using codes that correspond to the area in the Project where the work was performed and the general type of work performed. These cost accounting codes corresponded to various aspects of the WTP’s budget, as allocated by Congress to DOE.



## Attachment A – Statement of Facts

- b. For Maintenance craft personnel, the same procedure applied during the periods in which BNI and WTCC directly hired the Maintenance craft. When the Maintenance craft were employed by AECI, from May 2013 to December 2014, the craft recorded their time, using similar codes as described above, on paper timesheets that were then compiled by administrators and entered into an Oracle timekeeping system; from January 2015 until the transfer to WTCC in March 2017, the Maintenance craft directly entered their time, using cost codes, into the Deltek timekeeping system.
  - c. In all three areas, superintendents typically were responsible for instructing forepersons and, as applicable, general forepersons regarding which cost codes to use.
  - d. BNI management was responsible for setting the overall project schedule. BNI and AECI Managers within the different work organizations were responsible for scheduling, planning, work execution, and cost code usage for that organization's scope of work.
  - e. Craft personnel generally worked a 4-day workweek, with 10-hour shifts each day, and Friday, Saturday, and Sunday constituting overtime, which was payable at premium pay rates.
10. With some limited exceptions, due to the complexity and nature of the WTP Project, journeymen craft personnel, whether in Maintenance, Startup, or Construction, typically perform the majority of their work according to particular work packages or test procedures as determined by BNI and AECI WTP managers. Journeymen craft were generally assigned to particular work packages or field testing by forepersons or field superintendents.

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- a. In Maintenance, schedulers are responsible for scheduling the work the craft personnel perform, and planners are responsible for creating the work packages that the craft personnel execute.
- b. In Startup, Startup engineers are responsible for creating test procedures and, in conjunction with superintendents and forepersons, scheduling field tests. Superintendents and forepersons assign craft to assist Startup engineers in conducting the field tests pursuant to the test procedures.
- c. In Construction, the Project Field Engineering group develops work packages based on their interface with the Design team. Work packages are assigned by Construction superintendents, and executed by Construction craft.

11. While some downtime was inevitable, normal, and reasonable, given the nature of the work, it was BNI, AECI, and WTCC's obligation to charge DOE only for reasonable, allowable, and allocable costs under the contract. Under the Hanford Site Stabilization Agreement ("HSSA"), WTP craft employees are not guaranteed a full day's work. If there is no work available for the day for one or more craft personnel, or only a few hours of work available, and no reasonably foreseeable need to keep the craft available on standby beyond any minimum required under the HSSA, then BNI, AECI, and WTCC (as applicable) could send those craft personnel home. In the event craft are sent home, the HSSA requires that the craft be paid for at least two hours regardless of whether any productive work was performed during those two hours (unless the craft were notified in advance not to report to the WTP site that day).

12. Prior to 2018, craft personnel at the WTP did not have a way to separately record downtime, such as a cost code associated with downtime; pursuant to instruction from their supervisors and managers, they generally recorded their

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downtime to the cost code associated with the most recent work they performed, or the balance of facilities maintenance code. In January 2018, WTP implemented a craft daily timekeeping log pilot program for the Maintenance craft. In October 2018, WTP extended the log to all craft and instructed craft personnel to use the log to record downtime.

### Craft Time Mischarging at the WTP

13. During the relevant time period, BNI, AECI, and WTCC at times failed to schedule, plan, or carry out sufficient work packages or test procedures to ensure that all craft personnel had a full day of productive work. This lack of sufficient work resulted in unreasonable downtime for Maintenance, Startup, and Construction craft personnel on the WTP. In Maintenance, AECI Maintenance management sometimes did not schedule, plan, or carry out sufficient maintenance work to keep AECI and WTCC Maintenance craft employees productively engaged in maintenance work. In Startup, BNI and WTCC Startup craft personnel experienced downtime due to test engineers failing to adequately schedule, plan, or prepare for field testing or failing to be present in the field for testing. Work packages in some instances were issued to the field but were not ready to execute because required parts had not been received prior to the scheduled performance of the given work packages. The need for changes to established systems, processes, and controls related to work planning and time management to address certain changed conditions during the transition from construction to operations at WTP in some cases was not recognized.

14. Personnel above the craft level at BNI, AECI, and WTCC knew that at times craft personnel were not productively engaged for a full day of work, that there was not sufficient ready-to-go work being planned, scheduled, or carried out to keep craft personnel occupied throughout the day, and that craft generally recorded their downtime to cost codes associated with the most recent work they performed, or the

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balance of facilities maintenance code. At certain times, such downtime lasted for several hours.

15. The Contractors also scheduled overtime for craft personnel on Fridays and weekends when craft personnel had experienced downtime during the preceding regular work week. Overtime is billed at premium pay rates, but at times is necessary for scheduling and operational reasons.

### The United States' Investigation and Subsequent Events

16. In June 2017, DOE OIG executed a search warrant pursuant to Fed. R. Crim. P. 41 at Building T-06 of the WTP for documentary information relative to the above conduct. The day after the execution of the warrant, several forepersons were interviewed by OIG. In August 2017, the USAO served BNI, AECI, and WTCC with Civil Investigative Demands pursuant to 31 U.S.C. § 3733 for documentary and other information relative to the above conduct. The Contractors complied with their legal obligations and produced the requested documents. During the initial stages of its investigation in 2017, the focus of the USAO's investigation was the Maintenance organization at the WTP, but the USAO indicated to the Contractors that the investigation was not limited to Maintenance and included all craft. Effective August 7, 2017, WTCC determined it would segregate and withhold from its invoices a portion of Maintenance craft payroll costs incurred pending the outcome of the Contractors' investigation into the United States' allegations. Over the next year, the Contractors provided other documents and information to the USAO.

17. In June, July, and August 2018, the USAO and OIG met separately with each Contractor in Spokane, Washington. During those meetings, the United States presented (a) instances from 2017 and 2018 of craft personnel either not meaningfully engaged in hands-on, productive work or engaged in conversations about work on the WTP; and (b) emails regarding timekeeping instructions, including instructions on how to record downtime. The United States also stated

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that, while most of the first-hand evidence presented by the United States related to Maintenance craft personnel, the United States also believed that similar conduct was occurring with respect to other craft personnel, especially Startup craft personnel. The Contractors represented that they took the issues very seriously, that immediate corrective action would be taken with respect to Maintenance personnel, and that their investigation into the United States' allegations was ongoing.

18. Effective June 18, 2018, WTCC determined it would segregate and withhold from its invoices 100% of all Maintenance craft payroll costs incurred.

19. In October 2018, at a meeting in Richland, Washington, BNI presented information regarding corrective actions that had been taken in the Maintenance area in response to the information previously presented by the United States. These actions included reinforcing the importance of accurate time recording and requiring individual craft personnel to complete daily logs regarding their daily activities. The USAO indicated and explained that it did not believe the corrective actions taken would be sufficient to address the problem. The USAO further reiterated its belief that time charging issues had occurred and were likely continuing to occur in Startup and Construction.

20. Notwithstanding the June 2017 execution of the search warrant, the June 15, 2018 warnings by the USAO, and the actions implemented by the Contractors to address the United States' concerns, the investigation revealed evidence of unreasonable downtime in the Startup area between June 2017 and July 2019. For example, in or around early 2019: a third-party consultant conducting a field observational productivity study at WTP observed potentially avoidable downtime among Startup craft; craft stewards reported challenges in getting Startup craft field testing started timely; and a review of craft daily logs from November 2018 to January 2019 indicated productivity issues for some Startup craft. On February 8, 2019, counsel for BNI informed the USAO of the third-party consultant's Startup-

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related observations and WTCC's report to DOE's Office of River Protection of the Startup downtime issue.

21. In July 2019, the USAO, OIG, and the Contractors met again in Spokane, Washington. At that meeting, the United States showed the Contractors instances from late February and early March 2019, of Startup craft discussing downtime and their issues with using the daily craft logs, such as failure to accurately record downtime.

22. Following the July 2019 meeting, WTCC determined it would segregate and withhold a portion of Startup craft labor costs from its invoices for the weeks ending January 6, 2019, through September 15, 2019.