

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 Department of the Navy (Navy) (collectively the “United States”), and Colas Djibouti SARL (Colas Djibouti) (hereafter collectively referred to as the “Parties”), through their authorized representatives.

RECITALS

A. Colas Djibouti is a limited liability company specializing in a mix of commercial and government construction projects in Djibouti. Colas Djibouti is a wholly-owned subsidiary of Colas SA, a limited liability company based in France.

B. On July 1, 2014, Colas Djibouti disclosed to the United States Departments of Defense and State (hereafter “DoD Disclosure 2014-1139”), instances in which it knowingly provided contractually non-compliant concrete for use on construction projects in the Republic of Djibouti associated with U.S. Navy Facilities Engineering (NAVFAC) contracts at Camp Lemonier and Chabelley Air Field, and a State Department contract for the U.S. Embassy, and falsified documents to conceal the non-compliances. More specifically, for each of contracts identified in Appendix A, Colas Djibouti knowingly provided and submitted, or caused to be submitted, claims for payment for concrete that did not comply with the relevant contractual specifications, containing, in whole or in part: (1) aggregate that did not meet gradation requirements; (2) excessive potentially-alkali-silica reactive material; and (3) elevated chloride content. These conditions had the potential to promote early-age cracking, surface defects, and the corrosion of embedded steel, and thus, could significantly impair the long-term durability

of the concrete utilized on a United States military base. The conduct described in this paragraph, and Appendix A, shall be referred to hereafter as the “Covered Conduct”.

C. As part of a separate Deferred Prosecution Agreement (DPA) between the U.S. Attorney's Office for the Southern District of California (the "USAO") and Colas Djibouti, Colas Djibouti has agreed to plead to a one-count information of Conspiracy to Commit Wire Fraud under 18 U.S.C. § 1349, pay \$10,042,002 in restitution, a fine of \$2,500,000 and forfeit \$8,000,000 (which as noted in the DPA shall be credited to the restitution amount).

D. This Settlement Agreement is neither an admission of liability by Colas Djibouti, except to the extent admitted in Colas Djibouti's February 17, 2021 DPA, nor a concession by the United States that its claims are not well-founded.

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. Colas Djibouti shall pay to the United States Three Million Nine Hundred Fifteen Thousand Nine Hundred Ninety-six Dollars (\$3,915,996.00) (the “Civil Settlement Amount”), of which One Million Nine Hundred Fifty-seven Thousand Ninety-eight Dollars (\$1,957,998.00) is restitution (the “Restitution Amount”). The Civil Settlement Amount shall be paid as follows: (a) One Million Nine Hundred Fifty-seven Thousand Ninety-eight Dollars (\$1,957,998) of the amount paid by Colas Djibouti toward restitution under its deferred prosecution agreement, *United States v. Colas Djibouti, et al.*, ---- (S.D.Cal.), shall be credited to the Settlement Amount as restitution;

and (b) Colas Djibouti shall make an additional payment of One Million Nine Hundred Fifty-seven Thousand Ninety-eight Dollars (\$1,957,998.00) to the United States by electronic funds transfer no later than 10 business days after the Effective Date of this Agreement, pursuant to written instructions to be provided by the Civil Division of the Department of Justice.

2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and conditioned upon Colas Djibouti's full payment of the Civil Settlement Amount, the United States releases Colas Djibouti, together with its divisions, subsidiaries, parent companies, affiliates, and corporate successors and assigns 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 unjust enrichment and fraud.

3. Notwithstanding the releases given in Paragraph 2 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 the 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 previously defined 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 or for other consequential damages arising from the previously defined Covered Conduct.

4. Colas Djibouti waives and shall not assert any defenses it 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. Colas Djibouti 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 Colas Djibouti 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 Colas Djibouti, 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 and criminal investigation(s) of the matters covered by this Agreement;
- (3) Colas Djibouti's 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 and any plea agreement;
- (5) the payment Colas Djibouti 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: These Unallowable Costs will be separately determined and accounted for by Colas Djibouti and it 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, Colas Djibouti shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Colas Djibouti or any of its subsidiaries or affiliates from the United States. Colas Djibouti agrees that the United States, at a minimum, shall be entitled to recoup from Colas Djibouti 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 Colas Djibouti's books and records and to disagree with any calculations submitted by Colas Djibouti or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Colas Djibouti, or the effect of any such Unallowable Costs on the amount of such payments.

7. Colas Djibouti agrees to cooperate fully and truthfully with the United States' investigation, relating to the Covered Conduct, of individuals and entities not released in this Agreement. Upon reasonable notice, Colas Djibouti 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. Colas Djibouti 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 in to this Agreement without any degree of duress or compulsion.

11. 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 California. 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 Colas Djibouti'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.

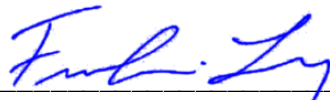
THE UNITED STATES OF AMERICA

DATED: 17 Feb 2021

BY: *Art J. Coulter*
Art J. Coulter
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

COLAS DJIBOUTI

DATED: February 17, 2021

BY: 
Frederic M. Levy
Covington and Burling LLP
Counsel for Colas Djibouti

Appendix A

Contract Number	Project Name
N62470-13-C-3001	Task Force Compound
N33191-09-D-0120	Aircraft Apron/Taxiway and Maintenance Shelter
N33191-09-D-0119	Fuel Farm
N33191-13-D-0843	Aircraft Maintenance Hangar/Telecom Facility
N33191-12-D-0616	Taxiway Ramp
N33191-12-C-0614	Deployed Billeting and Expeditionary Lodging
N62470-06-D-6009	SOCCE Expansion
N62470-12-C-2008	Combat Aircraft Loading Area
N62470-12-C-2008	Taxiway Extension and Ammunition Supply Point
N62470-15-C-5000	Unaccompanied Housing
N62470-13-C-3016	Galley Addition
N33191-10-C-0226	SOCCE CLUs
N62470-13-C-3001 ("Project 688")	Forward Operating Site