

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between Plaintiff A. Reed, individually and on behalf of all others similarly situated, and Defendant Balfour Beatty Infrastructure, Inc. (“Balfour”) (together with Plaintiff, the “Parties”).

RECITALS AND BACKGROUND

WHEREAS, on May 20, 2021, Plaintiff’s counsel sent Balfour a letter in which they asserted that Balfour violated Plaintiff’s and similarly situated applicants’ rights under federal and state laws governing the use of criminal history records for applicants for employment;

WHEREAS, on August 13, 2021, Plaintiff filed a Complaint in Orange County Superior Court alleging claims under the Fair Credit Reporting Act and the California Investigative Consumer Reporting Agencies Act against Defendant and related entities, on behalf of himself and others similarly situated, which Defendant subsequently removed to the U.S. District Court for the Central District of California;

WHEREAS, the parties subsequently agreed to discuss resolution of the claims in Plaintiff’s Complaint;

WHEREAS, on February 7, 2022, the Parties participated in a full-day mediation session with the assistance of experienced employment class action mediator Hunter R. Hughes III. The Parties continued negotiating for approximately two additional months, resulting in a term sheet fully executed on April 1, 2022, with continued negotiations thereafter resulting in this executed Agreement;

WHEREAS, Defendant denies any and all liability or damages with respect to the alleged facts and causes of action asserted by Plaintiff, and Defendant further denies that Plaintiff or any individuals they seek to represent were prospective employees or applicants for employment;

WHEREAS, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to a settlement of Plaintiff’s claims on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty in litigating these claims;

WHEREAS, Plaintiff’s counsel has analyzed and evaluated the merits of the claims made against Balfour, and the impact of this Agreement on Plaintiff and members of the proposed Class (as defined below), and based upon Plaintiff’s counsel’s analysis and evaluation of a number of factors, and recognizing the substantial risks of class litigation, including the possibility that if not settled now, future litigation might not result in any recovery, or might result in a recovery that is less favorable and that would not occur for several years, Plaintiff’s counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and

adequate, and that this Agreement is in the best interests of Plaintiff and the members of the Class;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of Plaintiff's claims on the following terms and conditions:

1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- A. **Agreement.** "Agreement" or "Settlement" means this Settlement Agreement and Release.
- B. **Bar Date.** "Bar Date" means the date that is sixty (60) days from the initial mailing of the Notice, except for Settlement Class Members to whom Notice is re-mailed, for whom the Bar Date shall be the later of sixty (60) days from the initial mailing or thirty (30) days from the date of re-mailing, whichever is later. Notwithstanding the foregoing, any re-mailing must be made within the original sixty (60) day period. The Bar Date is the deadline for Settlement Class Member Objections or Opt-out Statements, if any.
- C. **California Settlement Class Member(s) or California Settlement Class.** "California Settlement Class Member(s)" or the "California Settlement Class" are the subset of Settlement Class Members who in California were subject to a consumer report prepared for employment with Balfour Beatty Infrastructure, Inc. between August 13, 2019, and February 28, 2022.
- D. **Claim Form.** "Claim Form" means the Court-approved Claim Form, as authorized in the Preliminary Approval Order, substantially in the form set forth as Exhibit A hereto.
- E. **Claiming Settlement Class Member.** "Claiming Settlement Class Member" means any individual who submits a timely claim form, who is to be paid an amount to be determined by calculating as the net settlement fund divided by the number of Claiming Settlement Class Members' shares of the settlement fund. Every Claiming Settlement Class Member will be entitled to one share of the settlement fund. Claiming Settlement Class Members with residential addresses in

California on file with Defendant shall be entitled to an additional 9 shares each of the settlement fund.

- F. Class Counsel.** “Class Counsel” or “Plaintiff’s Counsel” means Outten & Golden LLP.
- G. Class List.** “Class List” means a list of all Settlement Class Members including their names, last known addresses, last known personal email addresses, social security numbers, and date associated with the Settlement Class Member’s background screening process at Balfour, each to the extent reasonably available in Balfour’s data.
- H. Complaint.** “Complaint” means the Class Action Complaint that Class Counsel filed in Orange County Superior Court on August 13, 2021.
- I. Court.** “Court” means the United States District Court for the Central District of California.
- J. Cy Pres.** “Cy Pres” means Legal Aid at Work.
- K. Days.** “Days” means calendar days, unless otherwise noted.
- L. Defendant.** “Defendant” means Balfour Beatty Infrastructure, Inc.
- M. Defendant’s Counsel.** “Defendant’s Counsel” means Littler Mendelson P.C.
- N. Effective Date.** The “Effective Date” of the Settlement shall mean the latest of the following dates: (1) the expiration of time for appeal of the Final Approval Order; or (2) if there is an appeal of the Final Approval Order, the date after all appeals are finally resolved in favor of final approval. For avoidance of doubt, the Parties agree that if there is no appeal, the Effective Date shall be the next Court day that is 33 days after the date of the Final Approval Order.
- O. Fairness Hearing.** “Fairness Hearing” means the hearing before the Court relating to the Motion for Final Approval.
- P. Final Approval Order.** “Final Approval Order” means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement.

- Q. Individual Settlement Amount.** “Individual Settlement Amount” means the payment to be distributed to each Claiming Settlement Class Member in accordance with the allocation formula set forth in Section 9.3 herein, and to be distributed by the Settlement Administrator from the Net Settlement Fund.
- R. Litigation.** “Litigation” means the civil action that Named Plaintiff commenced in the Orange County Superior Court on August 13, 2021, and that was removed to the United States District Court for the Central District of California on November 5, 2021.
- S. Named Plaintiff.** “Named Plaintiff” means Plaintiff A. Reed.
- T. Net Settlement Fund.** “Net Settlement Fund” means the Total Settlement Amount less: (1) Court-approved Service Awards for the Named Plaintiff; (2) Court-approved attorneys’ fees and costs; and (3) Settlement Administration Costs to the extent in excess of \$20,000.
- U. Notice.** “Notice” means the Court-approved Notice of Proposed Settlement of Class Action Lawsuit, as authorized in the Preliminary Approval Order, substantially in the form set forth as Exhibit A hereto.
- V. Objector.** “Objector” means an individual who properly files an objection to this Agreement, but does not include any individual who opts out of this Agreement.
- W. Opt-out Statement.** “Opt-out Statement” is a written, signed statement that an individual Settlement Class Member has decided to opt out and not be included in this Agreement.
- X. Parties.** “Parties” are the Named Plaintiff and Defendant.
- Y. Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court (1) preliminarily certifying the Class solely for purposes of effectuating the Agreement; (2) preliminarily approving the terms and conditions of this Agreement; (3) appointing Class Counsel as defined above; (4) directing the manner and timing of providing Notice to the Settlement Class Members; and (5) setting dates to effectuate the terms of this Agreement, including the date of the Fairness Hearing.

- Z. Released Named Plaintiff Claims.** “Released Named Plaintiff Claims” means all claims, known and unknown, of any kind arising out of or relating to the “Released Parties.”
- AA. Released Parties.** “Released Parties” means Defendant, all of Defendant’s current and future parents, affiliates, including predecessors, successors, assigns, current and former employees, officers, directors, members, managers, agents, subcontractors, attorneys, insurers, subsidiaries, divisions, parent companies, holding companies or affiliated corporations, partnerships, limited liability companies or other organizations, and their insurers, specifically to include all of the named Defendants listed in the lawsuit (Balfour Beatty Rail, Inc.; Balfour Beatty Infrastructure, Inc.; Balfour Beatty Construction Company, Inc.; Balfour Beatty Construction LLC; and Balfour Beatty Construction Group, Inc.).
- BB. Released Settlement Class Claims.** “Released Settlement Class Claims” means all claims of any kind including all damages, injunctive relief, and any possible attorney’s fees or costs under the under FCRA or similar state and local laws that could have been brought based on the allegations in Plaintiff’s Complaint, including but not limited to the ability to bring class action, mass action, representative or other similar joint or collective claims against the Released Parties. All California Settlement Class Members also release claims arising out of or relating to any alleged conduct of the Released Parties arising out of or relating to a failure to hire based on their background screening, including but not limited to the ability to bring class action, mass action, representative or other similar joint or collective claims against the Released Parties.
- CC. Service Award.** “Service Award” means Court-approved compensation awarded to Named Plaintiff for his role in the case.
- DD. Settlement Administration Costs.** “Settlement Administration Costs” means all notice and administration-related costs, and all costs related to preparing and sending Class Action Fairness Act (“CAFA”) notices. These costs, up to a cap of \$20,000, shall be paid by Defendant in addition to the Settlement Fund. Any such costs above \$20,000 shall be paid out of the Settlement Fund.
- EE. Settlement Administrator.** “Settlement Administrator” means the company selected by the Parties through competitive bidding, and unaffiliated with either party or any involved law firms, retained by the Parties to administer Notice and distribution of settlement monies.

- FF. Settlement Check.** “Settlement Check” means the check issued to each Claiming Settlement Class Member for their share of the Net Settlement Fund, calculated in accordance with this Agreement.
- GG. Settlement Class Member(s) or Settlement Class.** “Settlement Class Member(s)” or the “Settlement Class” means all U.S. resident individuals who were subject to a consumer report prepared for employment with Balfour Beatty Infrastructure, Inc. between August 13, 2019, and February 28, 2022.
- HH. Settlement Fund.** “Settlement Fund” means the account established by the Settlement Administrator for the Total Settlement Amount paid by Defendant, . This amount does not include the initial \$20,000 in administration costs paid by Defendant in addition to the Settlement Fund. The Settlement Fund will be controlled by the Settlement Administrator subject to the terms of this Agreement and the Court’s Orders for Preliminary and Final Approval.
- II. Total Settlement Amount.** “Total Settlement Amount” means the total maximum amount paid by Defendant to Named Plaintiff and Settlement Class Members to resolve their claims, inclusive of the Service Award to Named Plaintiff, attorneys’ fees and costs, and the Settlement Administration Costs, which shall not exceed Three Hundred and Fifty Thousand Dollars (\$350,000).

2. APPLICATION FOR PRELIMINARY APPROVAL

- A. Timing.** Pursuant to the Court’s order, Class Counsel shall file a motion for preliminary settlement approval by May 9, 2022, unless the parties jointly seek additional time (“Preliminary Approval Motion”).
- B. Preliminary Approval Motion.** The Preliminary Approval Motion shall include (1) the proposed Notice and Claim Form, attached hereto as Exhibit A; (2) a proposed Preliminary Approval Order; (3) an executed version of this Agreement; and (4) the necessary documents, memorandum, affidavits, and other exhibits for purposes of certifying the Class for settlement purposes only and preliminarily approving the Agreement. The Preliminary Approval Motion will seek the setting of a Fairness Hearing for final approval of the Settlement before the Court at the earliest practicable date.
- C. Review.** Class Counsel shall provide Defendant’s Counsel with drafts of the Memorandum of Law in Support of Preliminary Approval Motion and proposed Preliminary Approval Order within thirty (30) days of the execution of this

Agreement, and Defendant shall provide any proposed edits within twenty-one (21) thereafter, with the parties striving in good faith to file Plaintiff's motion for preliminary approval with all documents within twenty-one (21) days thereafter, subject to such schedule being approved by the Court. The Parties agree to meet and confer in good faith in the event there are disputes over any of Defendant's edits to the Preliminary Approval papers.

3. SETTLEMENT ADMINISTRATOR

- A. **Retention.** The Settlement Administrator will be selected by Defendant through competitive bidding, subject to reasonable approval by Plaintiff, and unaffiliated with either party or any involved law firms.
- B. **Settlement Administration Costs.** Settlement Administration costs, including all notice and administration related costs and all costs related to preparing and sending CAFA notices which shall be handled by the Settlement Administrator, up to a cap of \$20,000, shall be paid by Defendant in addition to the Settlement Fund. Defendant shall exercise best efforts to obtain a flat fee settlement administration proposal that does not exceed Twenty Thousand Dollars (\$20,000.00), after a competitive bidding process. Any additional Settlement Administration costs above \$20,000 shall be deducted from the Settlement Fund before any payments to the Settlement Class Members. Uncashed checks to Settlement Class Members not cashed within 90 days of check date shall be first used to reimburse Defendant for Settlement Administration costs, and, if in excess of Settlement Administration costs, shall be distributed to a *cy pres* unless in such a substantial sum so as to make an additional distribution to the Settlement Class Members who have cashed their checks administratively feasible and beneficial to the Settlement Class Members when weighed against the additional costs of such potential distribution (which are to be paid from the Settlement Fund), and in that case will be distributed to the Settlement Class Members before any *cy pres* distribution.
- C. **Responsibilities of the Settlement Administrator.** The Settlement Administrator shall be responsible for: preparing and disseminating any legally required CAFA notice(s) if expressly directed to do so by Defendant's counsel and only with Defendant's counsel's express written consent; preparing, printing, and disseminating to Settlement Class Members the Notice and Claim Form, as provided herein; performing skip traces and resending, within one day of receipt, any Notice returned without a forwarding address or resending to those with a new forwarding address; responding to requests or communications made by the

Parties; preparing, monitoring, and maintaining a telephone number with phone answerers; promptly furnishing to counsel for the Parties copies of any Objections and requests for exclusion that the Settlement Administrator receives; keeping track of claim forms, requests for exclusion, Objections, or otherwise, including maintaining the original mailing envelope in which the request was mailed; distributing the Settlement Checks to Claiming Settlement Class Members; preparing, sending, and/or wire transferring Class Counsel's Court-approved attorneys' fees and costs; mailing Service Awards in accordance with this Agreement and the Final Approval Order; referring to Class Counsel all inquiries by Settlement Class Members regarding matters not within the Settlement Administrator's duties specified herein; responding to the inquiries of Class and Defendant's Counsel consistent with the Settlement Administrator's duties specified herein; promptly apprising counsel for the Parties of the activities of the Settlement Administrator; maintaining adequate records of its activities, including the dates of the mailing of Notices, returned mail and other communications and attempted written or electronic communications with Settlement Class Members, confirming in writing to Class Counsel and Defendant's Counsel its completion of the administration of the Agreement; timely responding to communications from the Parties and their counsel; calculating the Individual Settlement Amounts; reporting on the status of the Settlement to the Parties on a weekly basis (including, but not limited to, the number of Notices mailed, returned as undeliverable, and re-mailed; the number of requests for exclusion received; and any other pertinent information); notifying counsel for all Parties of all timely and untimely submissions; providing a compliance affidavit in connection with the Application for Final Approval; locating Settlement Class Members, including calling Settlement Class Members, if necessary; establishing and administering the Settlement Fund; calculating and paying, as provided herein, all appropriate taxes and complying with all applicable tax reporting obligations, including preparing and filing all applicable tax forms; providing Claim Forms to Counsel for the Parties; and such other tasks as set forth herein, or as the Parties mutually agree. The Settlement Administrator shall pay the upfront costs of notice and administration subject to later reimbursement from the Total Settlement Amount as provided herein. However, the Parties shall split any reimbursement of actual out of pocket costs of the Settlement Administrator if the Settlement is not finally approved.

- A. Access to the Settlement Administrator.** The Parties will have equal access to the Settlement Administrator and information provided to the Settlement Administrator, except as set forth herein. Defendant agrees to cooperate with the Settlement Administrator to facilitate Defendant's obligations in this Agreement.

4. NOTICE

- A. Class List.** Within thirty (30) days of the Preliminary Approval Order, Defendant's Counsel shall provide the Settlement Administrator with the Class List. The Class List shall not be shared directly with Plaintiff's Counsel but rather shall be kept confidential by the Settlement Administrator. However, to the extent that Plaintiff's Counsel needs certain information from the Class List in order to verify that a Settlement Class Member who has contacted Plaintiff's Counsel is in fact a member of the Class, the Settlement Administrator may provide the relevant Class List information to Plaintiff's Counsel as to Settlement Class Members for that purpose, so long as (1) the notice period has closed; and (2) the Settlement Class Member did not opt out of the Settlement. Plaintiff's Counsel shall not use the disclosed information for any purpose other than to satisfy its ethical obligations to Settlement Class Members in connection with this action and the Settlement. Additionally, the Settlement Administrator shall provide counsel for the Parties with the total number of Settlement Class Members included on the Class List promptly after receipt of the Class List.
- B. Notice Content.** The Notice will include a description of the claims and this Agreement, an estimate of each Settlement Class Member's Individual Settlement Amount, and details regarding the opportunity to receive a Settlement Check and the opportunity to object or opt out, and/or appear at the Fairness Hearing.
- C. Notice Distribution.** Within fourteen (14) days after receiving the Class List from Defendant, the Settlement Administrator shall send the Court-approved Notice and Claim Form to all Settlement Class Members via First Class United States Mail and email. Notice will be provided by mail, with a QR code on each notice. While the parties anticipate that Settlement Class Member e-mail addresses will generally not be available in Balfour's records, where Defendant is able to locate Settlement Class Members' e-mail addresses, notice will be given by email.
- D. Skip Trace and Re-mailing.** The Settlement Administrator will use all commercially reasonable means to confirm Settlement Class Members' addresses and obtain new addresses as necessary. In the event that a Notice mailed to a Settlement Class Member is returned as undeliverable, the Settlement Administrator shall attempt to obtain the correct address of such person, including

up to two (2) skip traces, and shall attempt a re-mailing provided it obtains a more recent address; provided, however, that skip traces shall be performed no later than sixty (60) days after the initial dissemination of the Notice. The Settlement Administrator shall also mail and/or email a Notice to any Settlement Class Member from the Class List who contacts the Settlement Administrator or Class Counsel during the time period between the initial mailing of the Notice and the Bar Date and requests a Notice and Claim Form. If an individual who was not identified on the Class List contacts the Settlement Administrator or Class Counsel during this time period and claims that he or she qualifies as a Settlement Class Member, the Parties will meet and confer over the individual's potential inclusion.

- E. Deadline to Submit a Claim Form.** Class members have sixty (60) days from notice date to submit a Claim Form. Settlement Class Members will have the ability to submit Claim Form via mail, email, fax, or a website.
- F. Reminder Notice.** Halfway through the notice period, the Settlement Administrator will send a reminder notice by mail and email, with a QR code on the notice to Settlement Class Members who have not submitted a Claim Form.

5. SETTLEMENT CLASS MEMBER OPT-OUTS

- A.** Class members have sixty (60) days from the notice date to opt out.
- B.** Settlement Class Members who choose to opt out of the Settlement as set forth in this Agreement must mail via First-Class United States Mail a written, signed statement to the Settlement Administrator that states that he or she is opting out of the Settlement, and include his or her name, address, telephone number, and signature, and a statement indicating his or her intention to opt-out, such as: "I opt out of the Balfour background check settlement." ("Opt-out Statement"). To be effective, an Opt-out Statement must be post-marked or otherwise received by the Bar Date.
- C.** The Settlement Administrator will stamp the received date on the original of each Opt-out Statement that it receives and shall send copies of each Opt-out Statement to Class Counsel and Defendant's Counsel by email no later than three (3) days after receipt. The Settlement Administrator shall provide all Opt-out Statements in its compliance affidavit to be filed with the Application for Final Approval. The Settlement Administrator will retain the stamped originals of all Opt-out Statements and the originals of all envelopes accompanying Opt-out Statements in

its file until such time as the Settlement Administrator is relieved of its duties under this Agreement.

6. OBJECTIONS TO THE SETTLEMENT

- A.** Class members have sixty (60) days from the notice date to object to the settlement.
- B.** Settlement Class Members who wish to present objections to the Settlement or the Agreement at the Fairness Hearing must first do so in writing (“Objection”). To be considered, such Objection must be mailed to the Settlement Administrator by First-Class United States Mail and post-marked or otherwise received by the Bar Date. The Objection must include all reasons for objecting to the Settlement or the Agreement, and any supporting documentation. The Objection must also include the name, address, telephone number, and signature of the Settlement Class Member making the objection (the “Objector”). The Settlement Administrator will stamp the date received on the original and send copies of each Objection and any supporting documentation, as well as a copy of the Notice mailed to the Objector to Class Counsel and Defendant’s Counsel by email no later than three (3) days after receipt of the Objection. A Settlement Class Member who opts out may not object.
- C.** An Objector has the right to appear at the Fairness Hearing either on his or her own behalf or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing on his or her Objection at the time he or she submits her written Objection. An Objector may withdraw his or her Objection at any time.
- D.** The Parties may file with the Court written responses to any filed Objections no later than three (3) days before the Fairness Hearing.

7. FAIRNESS HEARING AND APPLICATION FOR FINAL APPROVAL

- A. Content.** After the Bar Date, in accordance with the schedule set by the Court in the Preliminary Approval Order and in advance of the Fairness Hearing, Class Counsel shall file supporting documents and materials for Final Approval of the Settlement (“Final Approval Motion”). The Final Approval Motion will include a compliance affidavit from the Settlement Administrator; an application for attorneys’ fees, costs, and Service Awards; supporting affidavits and documentation from Class Counsel regarding the fairness, adequacy, and

reasonableness of the Settlement or any aspect related to this Agreement, and a proposed Final Approval Order. At the Fairness Hearing and through the Final Approval Motion, Named Plaintiff shall request that the Court, among other things: (1) finally certify the Class for purposes of settlement only; (2) approve the Settlement and this Agreement as fair, reasonable, adequate, and binding on all Claiming Settlement Class Members; (3) order the Settlement Administrator to disburse Settlement Checks to Claiming Settlement Class Members in accordance with this Agreement; (4) order Service Awards, attorneys' fees and costs, and the Settlement Administrator's fees and expenses to be paid from the Settlement Fund in accordance with this Agreement; (5) order dismissal with prejudice of the Released Settlement Class Claims, in accordance with this Agreement; (6) order entry of the Final Approval Order, in accordance with this Agreement; and (7) retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated hereby.

8. TERMINATION

A. Grounds for Settlement Termination.

i. Failure to Obtain Approval. In the event that the Court declines to enter the Preliminary Approval Order or the Final Approval Order, except if the Court declines to enter the Preliminary Approval Order or Final Approval Order due solely to the amount of attorneys' fees sought by Class Counsel, the Parties agree to work together in an effort to resolve any issues identified by the Court in an attempt to reach a modified agreement to resubmit to the Court for approval. If the Parties are unable to reach an agreement, then either Party has the right to terminate the Agreement. This Agreement is not contingent upon approval by the Court of Class Counsel's application for attorneys' fees, and if the Court approves the settlement payments allocated to Claiming Settlement Class Members as set forth in this Agreement, but not the application for attorneys' fees, the Agreement may not be terminated.

ii. Settlement Class Member Opt-Outs. Defendant may elect to void the Agreement if more than fifteen (15) California Settlement Class Members and/or 10% of all Settlement Class Members timely and validly opt out of the Settlement. If Defendant elects to void the Agreement on this basis, Defendant shall notify Class Counsel of its decision to void the Agreement promptly and no later than seven calendar days before the Fairness Hearing pursuant to the procedures set forth in Section 8(B) herein.

- B. Procedures for Termination.** To terminate this Agreement, the terminating Party shall give written notice to the other Party via email and overnight mail.
- C. Effect of Termination.** Termination shall have the following effects:
- i.** The Agreement shall be terminated as to the affected Parties and shall have no force or effect.
 - ii.** Defendant shall have no obligation to make any payments to any Party, Settlement Class Member, or Class Counsel, except that the Parties shall be jointly responsible for the fees and expenses of the Settlement Administrator for work performed subsequent to the signing of this Agreement.
 - iii.** If the Court grants Preliminary Approval, but not Final Approval, the Settlement Administrator will issue a Court-approved notice to Settlement Class Members that the Agreement did not receive Final Approval and that, as a result, no payments will be made to Claiming Settlement Class Members under the Agreement. Such notice shall be sent by the Settlement Administrator via email or, if the Claiming Settlement Class Member lacks an email address, First-Class United States Mail.
 - iv.** The Parties may jointly or independently seek reconsideration of a ruling by the Court declining to enter the Preliminary Approval Order or Final Approval Order in the form submitted by the Parties or seek approval of a renegotiated settlement.
 - v.** The Litigation will resume as if no settlement had been attempted and the Agreement and all negotiations, statements, and proceedings relating thereto shall be without prejudice to the right of any of the Parties, all of whom shall be restored to their respective positions prior to the entering of this Agreement, including the Parties' previous tolling agreement. Defendant retains the right to contest, among other things, whether the claims should be maintained as a class action, and whether the claims can be maintained in court, and to contest the merits of the claims being asserted. The Preliminary Approval Order approving the Settlement and certifying the Class for settlement purposes only shall be null and void and the case may be certified only if Plaintiff is granted class certification after full briefing on a motion for such certification, or if the Parties otherwise agree.

9. SETTLEMENT TERMS

- A. **Total Settlement Amount.** Defendant agrees to pay up to a maximum Total Settlement Amount of no more than Three Hundred and Fifty Thousand Dollars (\$350,000) in accordance with this Agreement, contingent on the accuracy of Defendant's Settlement Class size estimate. This includes both the Net Settlement Fund and, separately, Settlement Administration Costs up to \$20,000. In no event shall Defendant be required to pay more than the \$330,000 Settlement Fund and actual Settlement Administration Costs, even if the Settlement Administration Costs are less than \$20,000.
- B. **Defendant's Settlement Class Size Estimate.** Defendant presently estimates in good faith that there are less than 500 Settlement Class Members, of which approximately 120 are located in California. Variations within 5% of this estimate will have no impact on the Settlement; but the Parties agree that any variations above 5% will result in proportional increases in the Settlement Fund in an amount in proportion to the number of members above that threshold.
- C. **Funding.** By no later than seven (7) business days after the Effective Date, Defendant shall deposit the Total Settlement Amount into the Settlement, as well as the up to Twenty Thousand Dollars (\$20,000) of the Total Settlement Amount allocated for Settlement Administration Costs to be covered by Defendant separately from the Settlement Fund. The Settlement Administrator will act as escrow agent and will have the authority to release the settlement funds from escrow immediately for purposes of administering the Settlement reflected in this Agreement immediately following the Effective Date.
- D. **Unclaimed Funds.** Any portion of the Net Settlement Amount not distributed as per the terms hereof, including any Settlement Checks not cashed after the expiration of ninety (90) days following issuance of Settlement Checks to Claiming Settlement Class Members shall be first used to reimburse Defendant for Settlement Administration costs, and, if in excess of such Settlement Administration costs, shall be distributed to a *cy pres* unless in such a substantial sum so as to make an additional distribution to the Settlement Class Members who have cashed their checks administratively feasible and beneficial to the Settlement Class Members when weighed against the additional costs of such potential distribution (which are to be paid from the Settlement Fund), and in that case will be distributed to the Settlement Class Members before any *cy pres* distribution. The Settlement Administrator shall transmit any funds remaining in the Net Settlement Fund to Defendant or the *cy press*, as appropriate, within thirty

(30) days after the expiration of all Settlement Checks (including checks reissued).

- E. **Additional Agreements.** The Parties agree that they will represent to the Court that applicants of Balfour Beatty Construction and other original affiliated companies included as Defendants in the action are not included in the settlement because pre-mediation discovery showed that Balfour Beatty Construction applicants were provided disclosure and authorization documents which were materially different from the documents provided to Balfour Beatty Infrastructure applicants, do not support the allegations made in the Complaint with respect to the documents previously used by Balfour Beatty Infrastructure, and which do not have the same alleged defects as the Balfour Beatty Infrastructure documents. The Parties also agree that they will represent to the Court that the Balfour Beatty Infrastructure documents have been changed as a result of this lawsuit.

9.1 Attorneys' Fees, Expenses and Costs

- A. At the Fairness Hearing and through the Application for Final Approval, Class Counsel will petition the Court for an award of attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of actual litigation expenses and costs, all of which are to be paid from the Settlement Fund.
- B. The substance of Class Counsel's application for attorneys' fees and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Class Counsel's application for fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval. Any amount not approved by the Court will become part of the Net Settlement Fund to be distributed to Claiming Settlement Class Members.
- C. Payment to Class Counsel of Court-approved fees and costs from the Total Settlement Amount shall be made by the Settlement Administrator nine (9) business days after the Effective Date.

9.2 Service Award

- A. In return for his services rendered to the Class, Named Plaintiff will apply to the Court to receive up to Ten Thousand Dollars (\$10,000) as a Service Award to be paid from the Settlement Fund.
- B. The application for a Service Award is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of the Court's ruling on the application for the Service Award will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval, Final Approval Order, or the fairness or reasonableness of this Agreement. Any amount not approved by the Court will become part of the Net Settlement Fund to be distributed to Claiming Settlement Class Members.
- C. Named Plaintiff will execute a general release as set forth in Section 10(B), in consideration for receipt of the Service Award.
- D. The Settlement Administrator will mail the Court-approved Service Award to the Named Plaintiff within nine (9) business days after the Effective Date.

9.3. Claiming Settlement Class Member Payments

- A. **Allocation.** Each Claiming Settlement Class Member's proportionate share of the Net Settlement Fund shall be determined by the Settlement Administrator pursuant to the following formula: each individual who submits a timely claim form is to be paid an amount to be determined by dividing the amount of the net settlement fund by the number of the Claiming Settlement Class Member's shares of the settlement fund. Every Claiming Settlement Class Member will be entitled to one share of the settlement fund. Claiming Settlement Class Members with residential addresses in California on file with Defendant shall be entitled to an additional 9 shares each of the settlement fund.
- B. **Timing of Payments.** Twelve (12) business days after the Effective Date, the Settlement Administrator will mail Settlement Checks to all Claiming Settlement Class Members.
- C. **Check Cashing Period.** Claiming Settlement Class Members will have ninety (90) days from the date the Settlement Checks are issued by the Settlement Administrator to cash, deposit, or otherwise negotiate their Settlement Check.
- D. **Check Cashing Reminders.** The Settlement Administrator will send reminders via email (if and where available) and First-Class United States Mail forty-five (45) days after the issuance of Settlement Checks to Claiming Settlement Class

Members who have not yet cashed their Settlement Check reminding them to negotiate their Settlement Check prior to the ninety (90) day deadline.

9.4. Tax Characterization of Payments

- A.** For tax purposes, the payments to Claiming Settlement Class Members pursuant to Section 9.3 shall be treated as 1099 non-wage income as statutory penalties. Such payments shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law as determined by the Settlement Administrator, under the payee's name and social security number on an IRS Form 1099. Payment of attorneys' fees and costs pursuant to Section 9.1 shall be made without withholding. Class Counsel will receive a Form 1099 for this payment. Payment of Service Awards pursuant to Section 9.2 will be reported as deemed appropriate by the Settlement Administrator. Class Counsel and Named Plaintiff must provide the Settlement Administrator information necessary to issue Forms 1099 to the extent the Settlement Administrator determines such issuance is required. Claiming Settlement Class Members shall be required to provide any information the Settlement Administrator deems necessary to comply with its tax reporting obligations, if any, to the extent such information is not already supplied in the Class List.
- B.** Individual tax responsibility for Individual Settlement Amounts received pursuant to Section 9.3 shall be the sole responsibility of the Claiming Settlement Class Member who receives such payment as to their individual payment obligations.

10. RELEASE

- A. Settlement Class Member Release.** By operation of the Final Approval Order, except as to such rights or claims as may be created by this Agreement, each Claiming Settlement Class Member, on his or her behalf and on behalf of his or her respective, current, former and future heirs, spouses, executors, administrators, agents, and attorneys forever and fully releases the Released Parties from the Released Settlement Class Claims. There is no admission of liability by the Released Parties.
- B. Named Plaintiff Release.** By the execution of this Agreement, Named Plaintiff fully and finally releases and forever discharges Released Parties from the Released Named Plaintiff Claims. As to claims released herein, Plaintiff releases all interests he may have in bringing class, collective, or mass action claims other than his interest in representing the Settlement Class Members for purposes of this Settlement. Plaintiff agrees not to solicit additional claims against the Released Parties and is unaware of any other third-parties who have told Plaintiff they have background check related claims against the Released Parties. Plaintiff agrees not

to knowingly re-apply to work for the Released Parties, but he may keep working for any party acquired by Released Parties after Plaintiff started working there. There is no admission of liability by the Released Parties.

Plaintiff agrees not to disparage the Released Parties and not to publicize the Named Plaintiff Release to third parties short of a statement that his claims against the Released Parties are resolved (subject to good faith negotiation and agreement by the parties over language used in any statement Plaintiff wishes to make).

- C. **Confidentiality and Press Releases.** Plaintiff agrees not to disparage the Released Parties and not to publicize the General Release to third-parties short of a statement that his claims against the Released Parties are resolved (subject to good faith negotiation and agreement by the parties over language used in any statement Plaintiff wishes to make). The parties also agree that they will make no media, press, or website statements (including but not limited to sharing the settlement with websites) with regard to the settlement, unless agreed to by the parties.

Named Plaintiff has seven (7) calendar days from the date he signs this Agreement to change his mind and revoke this Agreement. If he does not advise Defendant in writing within seven (7) calendar days after signing it that he has revoked this Agreement, this Agreement shall be enforceable and binding on all Parties on the eighth (8th) calendar day after they sign it.

- D. **California Civil Code § 1542.** All releases provided for in this section shall include releases of unknown claims pursuant to Cal. Civil Code. § 1542 and any comparable provision of state or local law with respect to Plaintiff, and solely to the extent such claims are within the scope of the defined “Settlement Class Member Release” with respect to the Settlement Class Members.

11. DENIAL OF LIABILITY

- A. Defendant has agreed to the terms of this Agreement without in any way acknowledging any fault or liability, and with the understanding that terms have been reached because this Settlement will avoid further expenses and disruption of Defendant’s business due to the pendency and expense of litigation. Nothing in this Agreement shall be deemed or used as an admission of liability by Defendant, nor as an admission that a class should be certified for any purposes other than settlement purposes.

12. INTENT TO RESOLVE ENTIRE LAWSUIT

- A. The Parties expressly agree that the intent of this settlement is to resolve the lawsuit in its entirety, that after consummation of the final approval of the settlement the lawsuit will be dismissed with prejudice and no claims and Defendants shall be left remaining. The Parties shall take all reasonable steps to accomplish this result and intent.

12. PUBLICITY

- A. No media, press, or website statements (including but not limited to sharing the settlement with websites by the Parties with regard to the settlement, unless agreed to by the Parties). To the extent the Parties are contacted by the media, they will refer the media to the appropriate settlement documents absent agreement otherwise.

13. INTERPRETATION AND ENFORCEMENT

- A. **Cooperation Between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. Each Party, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- B. **No Assignment.** Class Counsel and the Named Plaintiff represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including but not limited to, any interest in the claims, or any related action.
- C. **No In-Hand Clients.** Plaintiff's counsel confirms there are no other "in hand" clients with claims against the Released Parties based on the Released Parties' background screening processes.
- D. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings of the Parties regarding the subject matter of the Agreement shall be deemed merged into this Agreement.
- E. **Binding Effect.** This Agreement shall be binding upon the Parties; and Defendant's successors and/or assigns will be bound by this Agreement as well.
- F. **Arm's Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arm's length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are

material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless expressly stated.

- G. Captions.** The captions or headings of the Sections and the paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- H. Governing Law.** This Agreement shall in all respect be interpreted, enforced, and governed by and under the laws of the State of California, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.
- I. Waiver, etc. to Be in Writing.** No waiver, modification, or amendment to the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties, and then only to the extent set forth in such written waiver, modification, or amendment. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement and, such Party, notwithstanding such failure, shall have the right thereafter to insist upon specific performance of any and all provisions of this Agreement.
- J. When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution and approval by the Court. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- K. Signatures.** This Agreement is valid and binding only if signed by the Parties and their authorized representatives.
- L. Facsimile, Fax, and Email Signatures.** Any Party may execute this Agreement by signing or causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile, email, or other electronic means to counsel for the other Party. Any signature made and transmitted by facsimile, email, or other electronic means for the purposes of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page.
- M. Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this

Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

- N. **Disputes Over Settlement Terms.** Disagreements between the Parties as to the written terms of the Agreement shall be presented to the mediator to provide guidance to the Parties before any Party seeks recourse otherwise.

WE AGREE TO THESE TERMS,

DATED: 6-2, 2022

BALFOUR BEATTY INFRASTRUCTURE, INC.

By:  _____

Its: US Civils Vice President

DATED: ^{06/06/2022} _____, 2022



A. REED

SETTLEMENT AGREEMENT ADDENDUM

Pursuant to Section 13(I) of the Settlement Agreement, the parties modify Section 5(B) as follows:

5(B):

Settlement Class Members who choose to opt out of the Settlement as set forth in this Agreement must send a signed statement to the Settlement Administrator that states that he or she is opting out of the Settlement, and include his or her name, address, telephone number, and signature, and a statement indicating his or her intention to opt-out, such as: "I opt out of the Balfour background check settlement." ("Opt-out Statement"). This signed statement can be submitted by First Class United States mail, e-mail, or fax. To be effective, an Opt-out Statement must be post-marked or otherwise received by the Bar Date.

Date: October 12, 2022

LITTLER MENDELSON, P.C.

/s/ William J. Simmons

SHAHRAM SAMIE, ESQ.

GARRICK Y. CHAN, ESQ.

WILLIAM J. SIMMONS, ESQ.

Attorneys for Defendants

Date: October 12, 2022

OUTTEN & GOLDEN, LLP

/s/ Christopher M. McNerney

JAHAN C. SAGAFI, ESQ.

CHRISTOPHER M. MCNERNEY, ESQ.

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Attorneys for Plaintiff