

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and between Priority Construction Corporation ("Priority"), and the United States Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section ("IER") (collectively "the Parties").

### I. BACKGROUND

WHEREAS, by letter dated June 12, 2019, IER notified Priority that it had initiated an independent investigation, DJ# 197-35-497 ("IER Investigation"), to determine whether Priority had a preference for hiring workers with temporary employment visas over U.S. workers, based upon their citizenship status, in violation of the Immigration and Nationality Act's anti-discrimination provision, 8 U.S.C. § 1324b.

WHEREAS, after the IER Investigation, IER determined that there is reasonable cause to believe that from at least mid-January 2019 through mid-March 2019, Priority did not fairly consider potentially qualified U.S. workers because of their citizenship or immigration status, and instead preferred to hire workers with H-2B visas in violation of 8 U.S.C. § 1324b(a)(1)(B). Specifically, Priority failed to give a bona fide review to 17 employment applications that U.S. workers submitted during Priority's recruitment period, even though some of the applicants may have been qualified.

WHEREAS, IER and Priority wish to resolve IER's reasonable cause findings without further delay or expense and hereby acknowledge that they are voluntarily entering into this Agreement.

NOW, THEREFORE, in consideration of the below mutual promises, and to fully and finally resolve the IER Investigation as of the date of this Agreement, the Parties agree as follows:

### II. TERMS OF SETTLEMENT

1. This Agreement shall become effective as of the date the last party signs the Agreement, referred to as the "Effective Date." The term of this Agreement is three years following the Effective Date.
2. Priority shall pay civil penalties to the United States Treasury in the amount of forty thousand, six hundred dollars (\$40,600). Within five days of the Effective Date, Priority shall send IER the name, title, phone number, and email address of the person responsible for remitting the civil penalties. Priority shall pay \$20,600 via the FedWire electronic fund transfer system within 15 days of receipt of fund transfer instructions from IER. On or before April 13, 2022, Priority shall pay the remaining \$20,000 via the FedWire electronic fund transfer system. On each day of payment, Priority shall confirm via email to Erik Lang at [Erik.Lang@usdoj.gov](mailto:Erik.Lang@usdoj.gov) and Liza Zamd at [Liza.Zamd@usdoj.gov](mailto:Liza.Zamd@usdoj.gov) (or any other individual IER designates) that payment was made.

3. The provisions of Paragraph 2 notwithstanding, IER shall not seek from Priority any additional civil penalty for the citizenship status discrimination in violation of 8 U.S.C. § 1324b(a)(1)(B) that is the subject of the IER Investigation through the Effective Date.
4. Pursuant to 8 U.S.C. § 1324b, Respondent shall not discriminate against individuals based on citizenship, immigration status, or national origin, during the recruitment, hiring, firing, referral for a fee, and employment eligibility verification and reverification processes (together, the “EEV” process), or intimidate, threaten, coerce, or retaliate against any person for participating in the Investigation or exercising any right or privilege secured under 8 U.S.C. § 1324b.
5. For the term of this Agreement, before employing any visa workers for any positions, Priority will ensure that it or its agent (as applicable), shall comply with all applicable H-visa recruiting obligations, and take the following supplemental actions to recruit and/or hire individuals with current work authorization in the United States (“U.S. workers”):
  - a. Ensure that each of Priority’s job orders, or the job order of any agents Priority may contract with, are accessible and visible on the Maryland Workforce Exchange and any other website, to job seekers in every job classification;
  - b. Post a job advertisement (or comparable notice of employment opportunity) on at least three job posting websites, besides the required state workforce agency website, no earlier than 45 days before the projected work start date, renew such postings every seven days, and not remove such postings sooner than 14 days before the projected work start date, or until all positions are filled by U.S. workers, whichever is earlier;
  - c. Ensure that any job requirement for any position is directly related to the job and the skills necessary for the position, and obtain IER’s approval under § 1324b for all job requirements, at least 30 days in advance of their use in any government filing or job posting;
  - d. Make a good faith attempt to contact all applicants who express interest online, by phone, in person, or via email, including responding within 72 hours to all applicants;
  - e. Give each applicant full consideration for employment, regardless of the applicant’s method of application;
  - f. Not reject any U.S. worker who applies or expresses interest in a position at least 14 days prior to the work start date, unless Priority identifies a lawful job-related reason for such rejection;
  - g. Enable full functionality of all electronic or online platforms, such that job seekers are not impeded from applying online;
  - h. Enable any notifications available as part of electronic or online platforms that indicate to Priority or an agent that there is a new applicant;
  - i. Not close any of its H-2B related job orders until 14 days before the work start date;
  - j. Maintain a list of all places where it posts job advertisements,

- whether in print or online.
- k. Continue to update its recruitment report after submitting it to the Department of Labor (DOL), as required by 20 C.F.R. § 655.48(b).
  - l. Assess the results of its efforts to recruit U.S. workers within 14 days after the start date of the work associated with each job posting, and, during the next recruiting period, document and undertake any additional appropriate recruitment efforts it determines are likely to be effective to increase applications from qualified U.S. workers.
  - m. Keep a written record of the action(s) it or an agent takes with respect to each application, including whether or not the individual was successfully contacted, the dates and times of attempted contacts, interview dates (if applicable), job offer dates (if applicable), hire dates (if applicable), and reason(s) for the non-selection (if applicable).
  - n. Retain a copy of every job application and resume any individual submits to Priority or its agent, including but not limited to those accessible through a state workforce agency job bank that relate to temporary or permanent jobs Priority advertises.
  - o. Keep a copy of all H-2B-related forms, documents, applications, petitions, letters, and responses to requests for more information that it provides to and/or receives from DOL and U.S. Department of Homeland Security.
  - p. Provide to IER, within 14 days of IER's request, all of the documentation related to the provisions of this Paragraph.
6. Within 30 days of the Effective Date, Priority shall review its employment policies and revise such policies to prohibit discrimination on the basis of citizenship status and national origin in the recruitment, hiring, and firing processes. Priority shall provide IER with such policies for IER's review and approval with 45 days of the Effective Date. During the term of this Agreement, Priority shall provide all draft revisions to its employment policies made pursuant to this paragraph, for IER review and approval relating to 8 U.S.C. § 1324b, at least 30 days prior to the implementation date of such revisions.
7. Within 90 days from the Effective Date, all of Priority's employees, contractors, and agents with any responsibility for recruiting and/or hiring U.S. workers employed by Priority, shall participate in training on their obligation to comply with 8 U.S.C. § 1324b.
- a. The trainings shall consist of viewing a free remote IER employer webinar presentation, which IER shall provide on a date mutually agreeable to the Parties.
  - b. All employees will be paid their normal rate of pay during the training, and the training will occur during their normally scheduled workdays and work hours. Priority shall bear all employee costs associated with these training sessions.
  - c. During the term of this Agreement, all individuals Priority hires or promotes into positions with any responsibility for the activities listed

above, shall review a webinar IER approves within 60 days of hire or promotion.

- d. Priority shall send webinar attendance records via email to [Erik.Lang@usdoj.gov](mailto:Erik.Lang@usdoj.gov) and [Liza.Zamd@usdoj.gov](mailto:Liza.Zamd@usdoj.gov) (or any other individual IER designates) within ten days of each training.
8. During the term of this Agreement, IER reserves the right to make reasonable inquiries to Priority as necessary to determine Priority's compliance with this Agreement. As a part of such review, IER may require written reports concerning compliance, inspect Priority's premises, examine witnesses, and examine and copy Priority's documents. Unless otherwise noted in this Agreement, Priority shall respond to IER's requests within 30 days.
9. If IER has reason to believe that Priority is in violation of any provision of this Agreement, IER may, in its sole discretion, notify Priority of the potential violation without opening an investigation. Priority will then have 30 days from the date of IER's notification to resolve the alleged violation to IER's satisfaction before IER deems Priority to be in violation of this Agreement.
10. This Agreement does not affect the right of any individual to file a charge alleging an unfair immigration-related employment practice against Priority, IER's authority to investigate or file a complaint on behalf of any such individual, or IER's authority to conduct an independent investigation of Priority's employment practices occurring after the Effective Date or outside the scope of the IER Investigation.

### **III. ADDITIONAL TERMS OF SETTLEMENT**

11. This Agreement resolves any and all differences between the Parties with respect to Priority relating to the IER Investigation, DJ # 197-35-497, through the Effective Date. Accordingly, the terms of this Agreement neither address nor evaluate Respondent's practices for compliance with any law other than 8 U.S.C. § 1324b.
12. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the IER Investigation. This Agreement is governed by the laws of the United States. This Agreement shall be deemed to have been drafted by both Parties and shall not be construed against any one party in the event of a subsequent dispute concerning the terms of the Agreement. The Parties agree that the paragraphs set forth in Part II of this Agreement (entitled "Terms of Settlement") are material terms, without waiver of either Parties' right to argue that other terms in the Agreement are material.
13. This Agreement may be enforced in the United States District Court for the District of Maryland for any claims over which that court has subject matter jurisdiction. Otherwise, a party must bring any claim or counterclaim to enforce the Agreement in a court of competent jurisdiction. This Paragraph, or the initiation of a lawsuit to enforce the Agreement under this Paragraph, including any counterclaims asserted, does not



constitute and should not be construed as a waiver of sovereign immunity or any other defense the United States might have against a claim for enforcement.


14. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected and the term or provision shall be deemed not to be a part of this Agreement. The Parties shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid. For purposes of interpreting this agreement, both Parties shall be deemed to have drafted it.
15. The Parties agree that, as of the Effective Date, litigation concerning the violations of 8 U.S.C. § 1324b that are the subject of the IER Investigation is not reasonably foreseeable. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the party is no longer required to maintain such a litigation hold. Nothing in this Paragraph relieves either party of any other obligations imposed by this Agreement.
16. The Parties shall bear their own costs, attorneys' fees and other expenses incurred in this action.
17. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. The Parties shall be bound by electronic and/or scanned signatures.

Priority Construction, Inc.

  
\_\_\_\_\_  
Juan Ponce  
President

10-25-21  
Date

Immigrant and Employee Rights Section

  
\_\_\_\_\_  
Alberto Ruisanchez  
Deputy Special Counsel

10/27/21  
Date

C. Sebastian Aloom  
Special Litigation Counsel

Erik W. Lang  
Liza Zamd  
Senior Trial Attorneys