

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), dated as of April 8, 2024 (“Effective Date”), is entered into between the United States of America, acting through the United States Department of Justice on behalf of the Pension Benefit Guaranty Corporation (collectively the “United States”), and the Central States, Southeast and Southwest Areas Pension Plan (the “Plan”). Collectively, the United States and the Plan will be referred to herein as the “Parties.”

### RECITALS

A. The American Rescue Plan Act of 2021 authorized the Pension Benefit Guaranty Corporation (“PBGC”) to provide special financial assistance (“SFA”) to eligible multiemployer plans in financial distress. Under the SFA program, PBGC makes a payment to an eligible multiemployer defined benefit pension plan in the amount that is projected to enable the plan to pay all benefits through the last day of the plan year ending in 2051. The SFA program is codified at section 4262 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and part 4262 of title 29 of the Code of Federal Regulations.

B. On November 1, 2023, PBGC updated its SFA application instructions to, among other things, require the submission of census data in all participant categories to enable PBGC to perform an independent death audit to identify deceased pension plan participants using the Social Security Administration Full Death Master File (“Full DMF”). PBGC began the independent death audits using the Full DMF to help plans more accurately calculate SFA amounts.

C. The Plan applied for, and received, SFA funds prior to the November 1, 2023, change in instructions.

D. The Plan did not have access to the Full DMF prior to, during, or after the Plan's submission of its SFA application.

E. In May 2023, PBGC's Office of Inspector General ("OIG") audited the Plan's actuarial calculations by, among other things, comparing the Plan participant roster to the Full DMF, and determined that 3,479 participants assumed to be living in the Plan's actuarial calculations were in fact deceased.

F. The Plan fully cooperated with the OIG's investigation of this matter. Among other things, the Plan provided information in support of its contention that its application complied with, and PBGC paid SFA based on, all information requirements, including census data, that were in effect at the time of the application, and that it did not violate any statute, regulation, or instruction in connection with the Plan's application for and receipt of SFA. In addition, after the OIG provided to the Plan the information about potential deceased participants that the Plan included in the participant census and requested that the Plan resolve whether they were correctly included in the amount of SFA received, the Plan determined that 3,479 deceased participants should not have been included. Thereafter, the Plan's actuaries certified to the OIG on August 25, 2023, that the amount of SFA received would have been reduced by \$126,555,536 if their deaths were known to the Plan at the time of and reflected in its application.

G. The United States contends that it has certain civil common law claims against the Plan arising from the Plan's request for and receipt of SFA funds. Specifically, the United States contends that the Plan received certain SFA funds by mistake and/or was unjustly enriched to the extent that its actuarial calculations included 3,479 deceased participants. This conduct is referred to below as the "Covered Conduct."

H. This Agreement is made in compromise of disputed claims. This Agreement is neither an admission of liability by the Plan nor a concession by the United States that its claims are not well-founded.

I. 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. The Plan shall pay to the United States \$126,555,536 (“Settlement Amount”), plus interest on the Settlement Amount at a rate of 2.25% per annum beginning on March 26, 2024, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the Department of Justice, no later than five days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, the United States, having received payment of the Settlement Amount, hereby releases the Plan, along with the individuals identified in Attachment A, from any civil claim the United States has for the Covered Conduct under the common law theories of negligent misrepresentation, payment by mistake, and unjust enrichment.

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), as amended;
- b. Any criminal liability;

- c. Except to any extent otherwise expressly provided in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of PBGC or any other federal agency and recoupment rights or other remedies with respect to Unallowable Costs (as defined below);
- 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; and
- f. Except as otherwise provided in this Agreement, including Attachment A, any liability of individuals.

4. The Plan waives and shall not assert any defenses the Plan 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 (a) the Double Jeopardy Clause in the Fifth Amendment of the Constitution, (b) the Excessive Fines Clause in the Eighth Amendment of the Constitution, or (c) any other provision of law, this Agreement bars a remedy sought in such criminal prosecution or administrative action (including recoupment or any other remedy in relation to any Unallowable Costs).

5. The Plan 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 the Plan 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 the Plan, and its present or former officers, directors, employees, shareholders, and agents in connection with:
- (1) the matters covered by this Agreement;
  - (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
  - (3) The Plan's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
  - (4) the negotiation and performance of this Agreement; and
  - (5) the payment the Plan makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by the Plan, and the Plan 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, the Plan shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by the Plan or any of its subsidiaries or affiliates from the United States. The Plan agrees that the United States, at a minimum, shall be entitled to recoup from the Plan 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 the Plan's books and records and to disagree with any calculations submitted by the Plan or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by the Plan, or the effect of any such Unallowable Costs on the amount of such payments.

7. This Agreement is intended to be for the benefit of the Parties only.

8. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

9. Each Party to this Agreement represents and warrants that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion and each signatory represents and warrants that he or she is authorized to execute this Agreement on behalf of the Party for whom he or she has signed and to bind such Party hereunder.

10. 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 District of Columbia.

11. 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.

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

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

counterpart by emailed PDF file will be equally as effective as delivery of an original executed counterpart.

14. This Agreement is binding on the Plan's successors, transferees, heirs, and assigns.

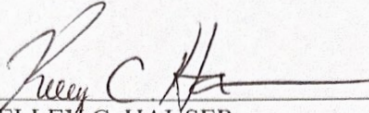
15. The Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

[SIGNATURE PAGES FOLLOW]

THE UNITED STATES OF AMERICA

DATED:

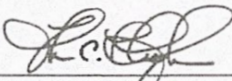
BY:

  
\_\_\_\_\_  
KELLEY C. HAUSER  
COLIN M. HUNTLEY  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION PLAN

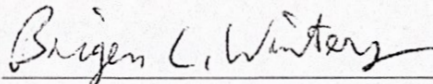
DATED:

BY:

  
\_\_\_\_\_  
THOMAS C. NYHAN  
Executive Director

DATED:

BY:

  
\_\_\_\_\_  
BRIGEN WINTERS  
MARK NIELSEN  
Groom Law Group, Chartered

*Counsel for Central States, Southeast and Southwest  
Area Pension Plan*



## ATTACHMENT A

- Charles A. Whobrey, Trustee
- Gary Dunham, Trustee
- Trevor Lawrence, Trustee
- Joseph Gronek, Trustee
- Gary F. Caldwell, Trustee
- Robert Whitaker, Trustee
- Mark F. Angerame, Trustee
- Richard K. Ellis, Trustee
- Thomas C. Nyhan, Executive Director
- John Franczyk, General Counsel
- Pete Priede, Senior Director
- Andrew Sprau, Group Manager
- Fernando Rodriguez, Division Manager
- The Segal Group, Inc.