

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is made and entered into this \_\_\_ day of \_\_\_, 2021. The parties to this agreement (the “Settling Parties”) are (1) plaintiff Great Northern Resources, Inc., for itself and on behalf of the Settlement Class, (2) defendants State of Oregon, Oregon Department of Administrative Services, and Katy Coba, in her Official Capacity as State Chief Operating Officer and Director of the Oregon Department of Administrative Services (the “State Defendants”), (3) defendant The Contingent, and (4) defendant Black United Fund, Inc. (the defendants listed in (2), (3) and (4) together are the “Settling Defendants”). The Agreement is subject to preliminary and final Court approval as required by Rule 23 of the Federal Rules of Civil Procedure and will become effective only if the Court orders such approvals. The Settling Parties enter into this Agreement by and through their respective counsel. As provided herein, the Settling Parties, Settling Parties’ counsel, and Class Counsel hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a final order and judgment, all claims of the Settlement Class against all defendants in the action titled *Great Northern Resources, Inc., et al. v. Cobra., et al.*, Case No. 3:20-cv-01866-IM (L) (D. Or.) (the “Action”), shall be settled and compromised upon the terms and conditions contained herein.

### **I. Recitals**

1. On March 27, 2020, in response to the unprecedented economic emergency resulting from the COVID-19 pandemic, the President signed into law the Coronavirus Aid, Relief and Economic Security (CARES) Act. The CARES Act created a Coronavirus Relief Fund (“CRF”) through which the federal government distributed funds to state, local and tribal governments to be used for expenses related to COVID-19. The State of Oregon received approximately \$1.39 billion from the CRF.
2. On or about July 14, 2020, the Oregon Emergency Board allocated approximately \$200 million of Oregon’s CRF moneys. That day, the Emergency Board allocated \$62 million of the CRF moneys to Defendant Oregon Department of Administrative Services (“DAS”) for the purpose of creating a fund to assist those who could demonstrate employment, economic, or business interruption due to COVID-19 and were an Oregon-based businesses majority-owned by persons self-identifying as Black; an Oregon community-based nonprofit organization primarily serving the Black community; or an Oregon-based individual or family who self-identifies as Black. (Am. Compl., ECF No. 32 (Dec. 6, 2020) ¶¶ 10–13.)
3. On August 20, 2020, DAS entered into a grant agreement with The Contingent, an Oregon-based non-profit with pre-existing state contract relationships (“Grant Agreement”). Pursuant to that Grant Agreement, DAS granted The Contingent \$62 million to be used for Black relief and resiliency (the “Grant”) and authorized The Contingent to issue grants in

the amounts of \$500 to \$3,000 for individuals and families and \$2,000 to \$200,000 for businesses and community-based nonprofit organizations. The Contingent contracted with Black United Fund to process the grant applications of individual applicants. (Am. Compl. ¶¶ 10, 12.)

4. Although the Fund was set to expire on December 30, 2020, under the terms of the CARES Act, and according to the Emergency Board's allocation to DAS and, correspondingly, the terms of the Grant from DAS to The Contingent, (Am. Compl. ¶ 15), The Contingent announced on December 8, 2020, that it had already received more applications than there were funds available to allocate and therefore no longer would accept applications. (*See* Defs. Opp. to Pls.' TRO, ECF No. 65 (Dec. 16, 2020) at 6–7.)
5. On October 29, 2020, plaintiff Great Northern Resources, Inc. ("Great Northern") sued on its own behalf; on November 7, 2020, Great Northern moved for a temporary restraining order. (ECF. Nos. 1, 12.)
6. The Court denied Great Northern's temporary restraining order for lack of irreparable injury—in part because The Contingent had already deposited in the Court's registry the maximum amount any applicant could obtain (\$200,000). (*See* Order, ECF No. 28 (Nov. 20, 2020).)
7. On December 6, 2020, Plaintiffs filed their "First Amended Class-Action Complaint." (Am. Compl., ECF No. 32.) The Amended Complaint added named Plaintiffs Dynamic Service Fire and Security, LLC ("Dynamic") and Walter Van Leja, who purported to bring suit on behalf of themselves as well as a class defined as "all current and future individuals, families, and businesses who: (1) live or are based in Oregon; (2) have experienced or are experiencing hardship due to COVID-19; and (3) do not self-identify as [B]lack, and who therefore have been or are currently being disqualified from the relief from the Fund on account of race." (Am. Compl. at 68.) The Amended Complaint also added Black United Fund as a defendant.
8. On December 11, 2020, Plaintiffs moved for a temporary restraining order. (ECF No. 39.)
9. The Court denied Plaintiffs' temporary restraining order as moot after The Contingent informed the Court it would deposit the balance of the Fund into the Court's registry (\$8,814,120.00). The Contingent did so with Court approval. That deposited amount, plus the \$200,000 deposited earlier with respect to Great Northern's individual claim, resulted in a deposit in the total amount of \$9,014,120.00 (the "GNR Deposit").
10. On December 29, 2020, the State Defendants submitted a brief to the Court addressing the standing of non-applicants—*i.e.*, whether those

individuals, businesses, and nonprofits, who did not apply before the Fund closed, had any claim for relief. This group includes Dynamic and Mr. Van Leja. (*See* Defs.’ Brief (Dec. 29, 2020); *see also* Am. Compl. ¶¶ 42, 47.) On the same date, The Contingent and Black United Fund submitted a brief to the Court also addressing the standing of non-applicants to receive a distribution from the Fund that had been deposited with the Court. The Court deferred its ruling on this issue and has not adjudicated this issue.

11. The Settling Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims (as defined in Paragraph 29) of the Settlement Class. The Settling Parties intend this Agreement to bind Great Northern and the Settling Defendants, and all members of the Settlement Class who do not timely and properly exclude themselves from the Settlement.

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows:

## **II. Definitions**

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

12. “Application(s)” means those requests for funding, grants, and/or moneys from the Fund, submitted to the Fund and/or The Contingent, via The Contingent’s website or any other method.
13. “Claim” means those Applications submitted prior to December 8, 2020, by and on behalf of any Claimant, which do *not* indicate the Claimant identifies as Black, or as a Black-owned business or Black-focused non-profit organization.
14. “Claimant” means a Settlement Class Member who does not opt-out of the Settlement Class.
15. “Class Counsel” means:

MURPHY & BUCHAL LLP  
James L. Buchal  
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Portland, Oregon 97214

BENBROOK LAW GROUP, PC  
Bradley Benbrook  
Stephen M. Duvernay  
400 Capitol Mall, Suite 2530

Sacramento, California 95814

MITCHELL LAW PLLC  
Jonathan F. Mitchell  
111 Congress Avenue  
Suite 400  
Austin, Texas 78701

16. “Court” means the United States District Court for the District of Oregon.
17. “Effective Date” means the second business day after all of the following events have occurred:
  - a. All Settling Parties, Settling Parties’ counsel, and Class Counsel have executed this Agreement;
  - b. The Court has entered the Final Approval Order without material change to the Settling Parties’ agreed-upon proposed Final Approval Order as described in Paragraph 19; and
  - c. The time for seeking rehearing or appellate or other review of the Final Approval Order has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired.

Notwithstanding the foregoing, the Effective Date shall not be earlier than 35 days after Final Approval (as defined in Paragraph 18).

18. “Final Approval” means the date on which the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.
19. “Final Approval Order” means the order and judgment that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.
20. “Fund” means those moneys allocated by the Oregon Emergency Board to Defendant Oregon Department of Administrative Services, totaling \$62,000,000, for the purpose of creating a fund available to Oregon-based businesses majority-owned by persons self-identifying as Black; Oregon-

based community organizations primarily serving the Black community; and Oregon-based individuals who self-identify as Black.

21. “Non-Applicant” means those individuals, businesses, and nonprofits who did *not* submit an application for funding to the Fund and/or The Contingent prior to midnight on December 9, 2020, for any reason whatsoever.
22. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.
23. “Notice Deadline” means 20 days after Preliminary Approval.
24. “Notice Program” means the notice methods provided for in this Agreement and consists of (i) a mailed notice to all those Settlement Class Members for whom the Settling Defendants can ascertain an electronic email address and/or other mailing address from its or The Contingent’s records, with reasonable effort (“Mailed Notice”); and (ii) Notice posted on the Settlement Website. The forms of notice shall be agreed upon by Class Counsel and the Settling Defendants and approved by the Court. Additional description of the contemplated Notice Program is provided in Section VII hereof.
25. “Objection Deadline” means 30 days after the Notice Deadline.
26. “Opt-Out Deadline” means 30 days after the Notice Deadline.
27. “Settling Parties” means the Settlement Plaintiff and the Settling Defendants.
28. “Preliminary Approval” means the date on which the Court enters, without material change, an order preliminarily approving the Settlement in the form jointly agreed upon by the Parties.
29. “Released Claims” means all claims to be released as specified in Section XI.
30. “Released Parties” means those persons and entities released as specified in Section XI.
31. “Releases” means all of the releases contained in Section XI.
32. “Releasing Party or Parties” means the Settlement Plaintiff and all Settlement Class Members who do not timely and properly exclude themselves from the Settlement, and each of their respective heirs, assigns, beneficiaries, and successors.

33. “Settlement” means the settlement into which the Settling Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement.
34. “Settlement Administrator” means Settlement Services, Inc. Class Counsel and the State Defendants may, by agreement, substitute a different Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Class Counsel or the State Defendants may move the Court to substitute a different Settlement Administrator, upon a showing that the responsibilities of the Settlement Administrator have not been adequately executed by the incumbent.
35. “Settlement Class” means the class defined in Paragraph 42.
36. “Settlement Class Fund” means the total cash consideration to be provided by the State Defendants to members of the Settlement Class pursuant to the Settlement, as provided for in Paragraph 44.
37. “Settlement Class Member” means any person included in the Settlement Class.
38. “Settlement Plaintiff” means Great Northern.
39. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following Preliminary Approval, but prior to the commencement of the Notice Program, as provided for in Section VII.
40. Except where otherwise specified, any time period specified in this Agreement shall be counted in calendar days.
41. Except where otherwise specified, any reference to a Paragraph, Section, or Exhibit shall be to the specified paragraph or section of this Agreement, or to the specified exhibit to this Agreement.

### **III. Certification of the Settlement Class**

42. For settlement purposes only, the Settlement Plaintiff shall seek, and Settling Defendants shall not oppose, certification of the following Settlement Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure:

All individuals, businesses, and nonprofits that submitted applications for funding to the Fund and/or The Contingent prior to December 9, 2020, and that have not indicated on their applications that they identify as Black, are a Black-owned business, or are a Black-focused organization.

43. For settlement purposes only, the Settlement Plaintiff shall also seek, and Settling Defendants shall not oppose, appointment of Class Counsel, and appointment of Great Northern as class representative, to represent the Settlement Class.

#### **IV. Settlement Consideration**

44. Subject to approval by the Court, the total cash consideration to be provided by the State Defendants to members of the Settlement Class pursuant to the Settlement shall be equal to the amount required under Paragraph 77.
45. Subject to approval by the Court, State Defendants agree to pay Settlement Plaintiff \$45,000 from moneys other than those comprising the Fund. That amount represents the estimated maximum amount Settlement Plaintiff would have received through its application to the Fund based on the COVID-related expenses that Settlement Plaintiff listed (\$25,000) plus the Service Award discussed below in Section XII (\$20,000).
46. Subject to approval by the Court, State Defendants agree to pay Class Counsels' attorneys' fees in the total amount of \$135,945.00 for work in the Action through February 14, 2021. Subject to further approval by the Court, State Defendants agree to pay Class Counsels' attorneys' fees in an amount not to exceed \$50,000 for work performed from February 15, 2021 through Final Approval. State Defendants also agree to consider in good faith a future request for additional fees, based solely on time worked at hourly rates, should Settlement Plaintiff's counsel be required to perform significant additional work related to this settlement.
47. The State Defendants will pay all fees, costs, charges, and expenses of the Settlement Administrator, including the costs of Notice incurred in connection with the administration of the Notice Program as set forth in Section VII. For avoidance of doubt, other than as specified in Paragraph 86, the State Defendants shall not bear any fees, costs, charges, or expenses incurred by the Settlement Plaintiff or by Class Counsel, including, but not limited to, those of any experts retained by the Settlement Plaintiff or by Class Counsel.

#### **V. Preliminary Approval**

48. Upon execution of this Agreement by all signatories, Class Counsel shall promptly move the Court for an order granting preliminary approval of this Settlement ("Preliminary Approval Order"). The proposed Preliminary Approval Order that will be filed in connection with the motion shall be in a form agreed upon by the Settling Parties. The motion for preliminary approval shall request that the Court: (1) preliminarily approve the terms of the Settlement as within the range of fairness,

reasonableness; and adequacy; (2) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notice; (4) approve the procedures set forth in Section VII for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (5) stay deadlines in the Action unrelated to Preliminary Approval and Final Approval, pending Final Approval of the Settlement; and (6) schedule a Final Approval hearing for a time and date mutually convenient for the Court, and counsel for all parties to the Action, at which Final Approval hearing the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith and should be finally approved, and determine whether to approve Class Counsel's application for attorneys' fees, costs, and expenses, and for a Service Award. The motion for preliminary approval shall also include a recitation of why the Court is *not* certifying a class including Non-Applicants in a form agreed upon by the Settling Parties.

49. Within 10 days after the filing of the motion for preliminary approval, the State Defendants, at their own expense, shall serve or cause to be served a notice of the proposed Settlement, in conformance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715(b) ("CAFA").

## **VI. Settlement Administrator**

50. The Settlement Administrator shall administer various aspects of the Settlement as described in Paragraph 51 and shall perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing Notice to Settlement Class Members as described in Section VII and administering the Claims processes.
51. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include:
  - a. Obtaining from The Contingent and/or the State Defendants the name and mailing address information (whether electronic or other) for any Settlement Class Members as to whom the State Defendants possess such information in reasonably accessible electronic form, verifying and updating such information through the National Change of Address database, sending the Mailed Notice to any such Settlement Class Members, and re-mailing returned notices to the extent updated address information can be obtained through reasonable efforts;
  - b. Maintaining the Settlement Website;

- c. Establishing and maintaining a post office box for mailed written notifications of exclusion from the Settlement Class;
  - d. Responding to any mailed Settlement Class Member inquiries;
  - e. Processing all written notifications of exclusion from the Settlement Class;
  - f. Providing weekly reports and, no later than 10 days after the Opt-Out Deadline, a final report to Class Counsel and the Settling Defendants, that summarize the number of written notifications of exclusion received that week, the total number of written notifications of exclusion received to date, and other pertinent information;
  - g. Providing notice to the Settling Parties of all objections received no later than 10 days after the Objection Deadline.
  - h. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly provided written notification of exclusion from the Settlement Class;
  - i. Receiving funds from the State Defendants to disburse to Settlement Class Members, and dispersing Settlement Payments to Settlement Class Members;
  - j. After the Effective Date, processing and transmitting information about Claims to the Settling Defendants;
  - k. Providing weekly reports to Class Counsel and the Settling Defendants summarizing the number of Claims since the prior reporting period, the total number of Claims received to date, the number of Claims granted and denied since the prior reporting period, the total number of Claims granted and denied to date, and other pertinent information; and
  - l. Performing any Settlement-administration-related function at the agreed-upon instruction of all Settling Parties, provided such instructions do not materially change any substantive provisions of this Agreement or the rights or obligations of any Party.
52. The Settlement Administrator will process Claims in order of receipt by The Contingent. For clarity, the Settlement Administrator will process and fund Applications irrespective of the Fund's race-conscious criteria. In doing so, the Settlement Administrator may rely on the work The

Contingent has already performed in processing applications submitted to it.

53. The Settlement Administrator will *not* process the following: (1) Applications eligible for funding which satisfy the Fund's race-conscious criteria, as such Applications will be processed and funded by The Contingent using Fund moneys; and (2) Applications submitted after 11:59:59 p.m. Pacific on December 8, 2020, in accordance with Paragraph 42.
54. The Settlement Administrator shall establish a Settlement Website as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Notice, the order preliminarily approving this Settlement, and such other documents as Class Counsel and the Settling Defendants agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website will be agreed upon in writing by the State Defendants and Class Counsel. The Settlement Website shall not include any advertising, and shall not bear or include the logo, crest, seal, or any other identifying mark used by any Settling Party that is protected federal or state trademark law. Ownership of the Settlement Website URL shall be transferred to the State Defendants within 10 days of the date on which operation of the Settlement Website ceases.
55. In consultation with the Administrator, the Settling Parties agree to create a mutually agreeable schedule for accomplishment of tasks enumerated in Paragraph 51, including various tasks related to processing and disbursement of Claims, to be provided in the Settlement Agreement for the Court's Final Approval. The Settling Parties hereby agree that the aforementioned timeline will be as short as practicable.

## **VII. Notice to Settlement Class Members**

56. Within 14 days after Preliminary Approval, The Contingent or the State Defendants will provide to the Settlement Administrator data files (collectively, the "Class List") that (a) identify the Settlement Class Members; (b) contain the electronic mailing address of any Settlement Class Members as to whom the State Defendants possess such information; and (c) contain the physical mailing address information for any Settlement Class Members as to whom the State Defendants possess such information, in reasonably accessible electronic form (the "Class Mailing List"). Contemporaneously with providing the Class Mailing List, The Contingent or the State Defendants will provide all data pertaining to applications submitted by Settlement Class Members.

57. Upon receipt of the Class Mailing List, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the nature of the Action; the definition of the Settlement Class; a description of the Settlement Plaintiff's claims, brought on their behalf and on behalf of the Settlement Class Members; that a Settlement Class Member may enter an appearance through an attorney if the member so desires; that the Court will exclude from the class any Settlement Class Member who requests exclusion; a date by which Settlement Class Members may exclude themselves from the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing is scheduled to occur; the binding effect of a class judgment to Settlement Class Members under Fed. R. Civ. P. 23(c)(3), including notice that Settlement Class Members will release all claims against all Defendants; and the address of the Settlement Website at which Settlement Class Members may access this Agreement and other related documents and information.
58. The Notice shall inform Settlement Class Members that (1) their applications will be evaluated by the Settlement Administrator applying the same criteria as The Contingent would have applied to the Settlement Class Member's application but for the Fund's race conscious criteria, (2) if the Class Member is entitled to a Settlement Payment according to those criteria, then the Class Member shall receive his or her Settlement Payment (as defined below, at Paragraph 70) electronically unless otherwise specified; and (3) the Settlement Administrator's determination as to whether a particular Class Member is entitled to a Settlement Payment, as well as the amount of any such Settlement Payment, is final.
59. The Notice shall include a procedure for Settlement Class Members to exclude themselves from the Settlement Class by notifying the Settlement Administrator in writing of the Settlement Class Member's intent to exclude himself or herself from the Settlement Class. Such written notification must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. The written notification must include the individual's name and address; a statement that Settlement Class Member wants to be excluded from the Settlement in *Great Northern Resources, Inc., et al. v. Cobra., et al.*, Case No. 3:20-cv-01866-IM (L) (D. Or.); and Settlement Class Member's signature. The Settlement Administrator shall provide the Settling Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Class Counsel shall file with the Court no later than 10 days prior to the Final Approval Hearing. Any Settlement Class Member who does not timely and validly exclude himself or herself shall be bound by the terms of this Agreement.

60. The Notice shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs, and expenses, and for the Service Award. Objections to the Settlement or to the application for attorneys' fees, costs, expenses, and for the Service Award must be electronically filed with the Court, or mailed to the Clerk of the Court, with a copy to Class Counsel and the Settling Defendants' counsel. For an objection to be considered by the Court the objection must be: (a) electronically filed by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, Class Counsel, and the Settling Defendants' Counsel, at the addresses listed in the Notice, and postmarked by no later than the Objection Deadline.
  
61. For an objection to be considered by the Court, the objection must also set forth:
  - a. the name of the Action;
  - b. the objector's full name, address, email address, and telephone number;
  - c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
  - d. all grounds for the objection, accompanied by any legal support for the objection;
  - e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement, the fee application, or the application for Service Awards;
  - f. the identity of all counsel representing the objector who will appear at the Final Approval Hearing;
  - g. a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection;
  - h. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
  - i. the objector's signature (an attorney's signature is not sufficient).
  
62. Notice shall be provided in two ways: Mailed Notice (to persons on the Class Mailing List), and Notice on the Settlement Website, with each method implemented pursuant to the terms of this section.

63. After the Settlement Administrator receives the Class Mailing List from the either State Defendants or The Contingent, the Settlement Administrator shall send the Mailed Notice to every Settlement Class Member for which the Class Mailing List provides an electronic mailing address; but if the electronically sent Mailed Notice is returned as undeliverable, and for those Settlement Members for which the Class Mailing List does *not* provide an electronic mailing address, the Settlement Administrator shall run the Class Member's physical mailing addresses included in the Class Mailing List through the National Change of Address Database, and, excluding any Department of Justice facilities, halfway houses, group homes, and other post-incarceration temporary housing facilities, shall send the Mailed Notice to Settlement Class Member's physical mailing address (the "Mailed Notice Program"). For any Mailed Notices sent to a Settlement Class Member's physical mailing address that are returned with forwarding address information, the Settlement Administrator shall re-mail the Mailed Notice to the updated address indicated. For any Mailed Notices that are returned undeliverable without forwarding address information, the Settlement Administrator shall use reasonable efforts to identify updated mailing addresses and re-mail the Mailed Notice to the extent updated addresses are identified. The Settlement Administrator need only make one attempt, excluding any Mailed Notices sent electronically, to re-mail any Mailed Notices that are returned as undeliverable.
64. The Mailed Notice Program, with the exception of any re-mailed notice, shall be completed by the Notice Deadline.
65. The Settlement Administrator shall post the Notice on the Settlement Website in the form agreed to by the Settling Parties and approved by the Court. The Notice shall be posted on the Settlement Website by the Notice Deadline.
66. Within 7 days after the Notice Deadline, the Settlement Administrator shall provide Class Counsel and the Settling Defendants with one or more affidavits confirming that the Mailed Notice Program and posting of Notice on the Settlement Website were completed in accordance with the Parties' instructions and the Court's approval. Class Counsel shall file such affidavit(s) with the Court as an exhibit to or in conjunction with the Settlement Plaintiffs' motion for final approval of the Settlement.
67. Within the parameters set forth in this Section VII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and the Settling Defendants, provided such agreements do not materially change any substantive provision of this Agreement or the rights or obligations of any Settling Party.

## **VIII. Final Approval Order and Judgment**

68. The Settlement Plaintiff's motion for preliminary approval of the Settlement shall include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. The Final Approval Hearing shall be scheduled no earlier than 90 days after the CAFA notices are mailed to ensure compliance with 28 U.S.C. § 1715. By no later than 7 days after the Objection Deadline, Settlement Plaintiff shall file a motion for final approval of the Settlement and an application for attorneys' fees, costs, and expenses and for the Service Award, and the Settlement Administrator shall post the same on the Settlement Website within two business days after said filing. By no later than 14 days prior to the Final Approval Hearing, the Settling Parties shall file any responses to any objections, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards.
69. The proposed Final Approval Order that will be filed with the motion for final approval shall be in a form agreed upon by Class Counsel and the Settling Defendants. Such proposed Final Approval Order shall, among other things:
  - a. Determine that the Settlement is fair, adequate, and reasonable;
  - b. Finally certify the Settlement Class for settlement purposes only;
  - c. Determine that the Notice provided satisfied Due Process requirements;
  - d. Dismiss Settlement Plaintiff's claims with prejudice as to all defendants;
  - e. Release the Settling Defendants and the Released Parties from the Released Claims, as set forth in Section XI;
  - f. Order the Clerk of Court to disburse to The Contingent from the Court Registry the balance of the GNR Deposit that remains as of the date of Final Approval, taking into account amounts disbursed pursuant in connection with a separate settlement with plaintiffs Van Leja and Dynamic, so that The Contingent may, immediately after the Effective Date, disburse those funds in accordance with the then-effective terms of the amended Grant Agreement between The Contingent and the Oregon Department of Administrative Services;
  - g. Reserve the Court's continuing and exclusive jurisdiction over the parties and all Settlement Class Members (including all objectors)

to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

## **IX. Settlement Distribution**

70. A Settlement Class Member is eligible to receive a settlement payment (“Settlement Payment”) if the Settlement Class Member submitted a qualifying Claim, as defined by Paragraph 13. Not all Claims qualify for an award. In order for a Claimant to receive a Settlement Payment, a Claimant’s application must meet the race-neutral criteria of the Fund—for example, by adequately demonstrating losses related to COVID-19. The Settlement Administrator shall have sole discretion to determine whether a Claim qualifies for a Settlement Payment and to determine the amount of such Settlement Payment (if any).
71. Settlement Payments will be made via the method prescribed on the Settlement Class Member’s Claim. Should this method not allow for the successful deposit of any Settlement Payment, then the Settlement Administrator shall contact the Settlement Class Member, via the address identified in Paragraph 57, and obtain information permitting an alternative method of deposit. The Settlement Administrator shall make one and only one attempt to obtain updated information for the disbursement of a Claimant’s Settlement Payment.
72. Within 20 days of the State Defendants making a Settlement Payment, the Settlement Administrator shall mail a notice to the Settlement Class Member informing Settlement Class Member of the fact of such deposit.
73. If the Settlement Administrator is unable to obtain updated information for the disbursement of a Claimant’s Settlement Payment under those methods set forth in Paragraph 71, then that Claimant’s Settlement will be deemed an Unclaimed Settlement Payment and subject to disposition as set forth in Paragraph 74.
74. The total amount of any Unclaimed Settlement Payments shall be applied to the costs of Notice and settlement administration that have been incurred as of 150 days after the Effective Date. Any Unclaimed Settlement Payments remaining after payment of such costs will be returned to DAS; all eligible Claims having been fully funded as set forth under Paragraph 77, no *cy pres* recipients will be permitted under the terms of this Agreement.

## **X. Claims Process**

75. Pursuant to Paragraph 13, each Settlement Class Member has already submitted a Claim for the purpose of this Agreement. A Settlement Class Member will not be allowed to supplement, amend, or change their Claim at this time and the Settlement Administrator shall process all Claims as

submitted to the Fund and/or The Contingent. The Settlement Administrator shall determine the amount of any Settlement Payment to be paid by applying the same criteria—other than racial self-identification—as The Contingent did to similar Claims. In processing a Claim, the Settlement Administrator may rely on any processing The Contingent already performed with respect to that Claim.

76. All Claims shall be subject to such anti-fraud procedures as the Settlement Administrator shall adopt in its discretion. The Settlement Administrator shall be responsible for developing an appropriate plan to audit Claims.
77. Within 30 days of the Effective Date, the Settlement Administrator shall submit a report to the State Defendants and Class Counsel of all Claims eligible for a Settlement Payment as defined by Paragraph 70. The State Defendants shall then transfer to the Settlement Administrator an amount equal in value to the total Settlement Amount of those Claims, less the amounts of Claims submitted by Settlement Class Members who opted out of this Agreement (“Settlement Fund”). The Settlement Fund shall be made with moneys other than those comprising the Fund.
78. Within 90 days after the Effective Date, the Settlement Administrator shall distribute Settlement Payments to each Claimant entitled to receive them under the provisions of Paragraph 71. Settlement Payments made by check shall have an appropriate legend to indicate that such payments are Settlement Payments.
79. The Settlement Administrator shall make one and only one attempt to re-mail any returned check to the extent updated address information can be obtained through reasonable efforts. The Settlement Administrator shall provide no more than one such check to each Settlement Class Member and shall do so at no cost to the recipient. Checks shall be valid for 180 days. After expiration of any check, the State Defendants will conduct an escheatment process in accordance with the State Defendants’ standard practice and applicable law.
80. Within the parameters set forth in this Section X, further specific details of the Claims process shall be subject to the agreement of Class Counsel and the State Defendants. In the event that the Settlement Administrator determines, in its discretion, that any adjustment to the Claims process or deadlines is called for, the Settlement Administrator shall confer with Class Counsel and the State Defendants. Changes may be made to the Claims process set forth in this Section X, by agreement between Class Counsel and the State Defendants, in order to facilitate the working of the Claims process or accomplishment of the goals of the Claims process, subject to approval by the Court.

## **XI. Releases**

81. As of the Effective Date, the Settling Parties and Claimants, each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have fully and irrevocably released and forever discharged the State Defendants, The Contingent and Black United Fund, and each of their present and former agencies, political subdivisions, officials, parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively, the “Released Parties”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that were or could have been alleged in the Action and result from, arise out of, are based upon, or in any way relate to the Fund (the “Released Claims”).
82. For the avoidance of doubt, the releases are general releases and the Released Claims include any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States, including violation of 42 U.S.C. § 1981, 42 U.S.C. § 1983 or 42 U.S.C. § 2000d, and any comparable Oregon statute, regulation or constitutional provision; causes of action under the common or civil laws of any state in the United States, including but not limited to unjust enrichment, negligence, breach of contract, breach of implied contract, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, rescission, or reformation; and also including, but not limited to, any and all claims in any state or federal court of the United States for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, the creation of a fund for future damages, statutory penalties, restitution, the appointment of a receiver, and any other form of relief. The Released Claims do not include any claims arising from or relating to any conduct after the Effective Date.
83. Upon the Effective Date, and to the fullest extent permitted by law, each Releasing Party, including Settlement Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in

this or any other forum (other than the participation in the Settlement as provided herein) in which any of the Released Claims is asserted.

84. Settlement Plaintiff and/or any Releasing Party may hereafter discover facts other than or different from those that the Releasing Party knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of this Section XI, or the law applicable to such claims may change. Nonetheless, each Releasing Party agrees that, as of the Effective Date, they shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or noncontingent claims with respect to all of the matters described in or subsumed by this Paragraph and this Section XI.
85. In addition to any other defenses the Released Parties may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

## **XII. Attorneys' Fees, Costs, Expenses, and Service Awards**

86. If approved by the Court, State Defendants agree to pay \$135,945.00 for attorneys' fees, costs, and expenses for work performed by Class Counsel through February 14, 2021. Subject to further approval by the Court, State Defendants agree to pay Class Counsels' attorneys' fees in an amount not to exceed \$50,000 for work performed from February 15, 2021 through Final Approval. State Defendants also agree to consider in good faith a future request for additional fees, based solely on time worked at hourly rates, should Settlement Plaintiff's counsel be required to perform significant additional work related to this settlement.
87. If approved by the Court, State Defendants agree to pay a service award of \$20,000 to Settlement Plaintiff (the "Service Award"), in addition to the estimated maximum amount Settlement Plaintiff might have received based on its claimed COVID-19 expenses had its Fund application been processed without applying race-conscious criteria (\$25,000).
88. Class Counsel's attorneys' fees, costs and expenses, as well as the Service Award, shall be paid by the State Defendants separate and apart from the payments described in Section IX.
89. Within 14 business days after the Effective Date, or as soon as practical, the State Defendants shall pay to Class Counsel all Court approved attorneys' fees, costs, and expenses, and the Service Award. In the event that the award of attorneys' fees, costs, and expenses, or the Service

Awards is reduced on appeal, the State Defendants shall only pay the reduced amount. Class Counsel shall timely furnish to State Defendants any required tax information or forms before the State Defendants must make any such payments.

90. The payment of attorneys' fees, costs, and expenses and the Service Awards pursuant to Paragraphs 86 and 87 shall be made through a wired deposit by the State Defendants into an attorney client trust account to be designated by Class Counsel. After attorneys' fees, costs, and expenses and the Service Awards have been deposited into this account, Class Counsel shall be solely responsible for allocating such attorneys' fees, costs, and expenses and the Service Award, and the State Defendants shall have no role in the allocation.
91. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs, and expenses, or the payment of the Service Awards, in the amounts that Class Counsel requests, the remaining provisions of this Agreement shall remain in full force and effect. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of attorneys' fees, costs, and expenses or of the Service Award shall constitute grounds for cancellation or termination of this Agreement.

### **XIII. Termination of Settlement**

92. This Settlement may be terminated by either the Settlement Plaintiff or by any of the Settling Defendants by serving on counsel for all parties and filing with the Court a written notice of termination within 14 days (or such longer time as may be agreed between Class Counsel and the State Defendants) after any of the following occurrences:
  - a. Settling Parties agree to termination before the Effective Date;
  - b. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement on material terms agreed to by the Settling Parties;
  - c. An appellate court reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
  - d. The Court or any reviewing appellate court incorporates material terms or provisions into, or deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the Preliminary Approval Order, the Final Approval Order, or the Settlement; or
  - e. The Effective Date does not occur.

93. Any of the Settling Parties shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within 14 days of Settling Parties' receipt from the Settlement Administrator of the final report specified in Paragraph VI.51.f, if more than 10% of Settlement Class Members submit valid written notifications to exclude themselves from the Settlement Class. Defendants believe there to be approximately 1,252 Fund applicants who are potential Class Members.

#### **XIV. Effect of a Termination**

94. The grounds upon which this Agreement may be terminated are set forth in Section XIII. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of the State Defendants' obligations under the Agreement shall cease to be of any force and effect; and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including, but not limited to, the Settlement Plaintiff's right to seek class certification and all Defendants' right to oppose class certification.
95. In the event the Settlement is terminated in accordance with the provisions of Paragraphs 92 and/or 93, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.
96. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of Paragraphs 92 and/or 93.

#### **XV. No Admission of Liability**

97. Defendants dispute the claims alleged in the Action and do not by this Agreement, or otherwise, admit any liability or wrongdoing of any kind. Settling Defendants have agreed to enter into this Agreement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action, and to allow much needed money to be distributed to Fund applicants.
98. Class Counsel and the Settlement Plaintiff believe that the claims asserted in the Action are meritorious, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this

complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel and the Settlement Plaintiff have concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

99. The Settling Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Settling Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.
100. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Settlement Plaintiff or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.

#### **XVI. Miscellaneous Provisions**

101. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
102. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.
103. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.
104. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.
105. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

106. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.
107. Governing Law. The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Oregon, without regard to the principles thereof regarding choice of law.
108. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.
109. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.
110. Notices. All notices to Class Counsel provided for herein, shall be sent by overnight mail to:

James L. Buchal  
MURPHY & BUCHAL LLP  
3425 SE Yamhill Street, Suite 100  
Portland, Oregon 97214

Bradley Benbrook  
Stephen M. Duvernay  
BENBROOK LAW GROUP, PC  
400 Capitol Mall, Suite 2530  
Sacramento, California 95814

All notices to the State Defendants, provided for herein, shall be sent by overnight mail to:

Clifford S. Davidson  
Kelly H. Dove

Snell & Wilmer, LLP  
One Centerpointe Drive, Suite 170  
Lake Oswego, OR 97035

**[Notice information for The Contingent.]**

All notices to Black United Fund, Inc., provided for herein, shall be sent by overnight mail to:

Lindsey H. Hughes  
Hillary A. Taylor  
Keating Jones Hughes, PC  
200 SW Market Street, Suite 900  
Portland, OR 97201

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Settling Parties, the Settling Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

111. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by counsel for all Settling Parties and, if the Settlement has been approved preliminarily by the Court, then such amendment or modification must also be approved by the Court.
112. No Waiver. The waiver by any Settling Party of any breach of this Agreement by another Settling Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
113. Authority. Any person executing this Agreement in a representative capacity represents and warrants that such person is fully authorized to do so and to bind the Settling Party on whose behalf such person signs this Agreement to all of the terms and provisions of this Agreement.
114. Agreement Mutually Prepared. None of the Settling Parties shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.
115. Independent Investigation and Decision to Settle. The Settling Parties understand and acknowledge (a) that they have performed an independent investigation of the allegations of fact and law made in connection with

this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. It is the Settling Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in any substantive or procedural law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law or changes in any substantive or procedural law, subsequently occurring or otherwise.

116. Receipt of Advice of Counsel. Each Settling Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained in Section XI, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

IN WITNESS THEREOF, Class Counsel, Settling Defendants, and counsel for Settling Defendants, cause this Agreement to be executed.

Dated: \_\_\_\_\_  
GREAT NORTHERN RESOURCES, INC.  
By:  
Its:  
*Plaintiff*

Dated: \_\_\_\_\_  
REPRESENTATIVE OF THE STATE OF  
OREGON, DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
*Defendant*

Dated: \_\_\_\_\_  
Katy Coba  
*Defendant*

Dated: \_\_\_\_\_  
THE CONTINGENT  
By: Ben Sand  
Its: CEO  
*Defendant*

Dated: \_\_\_\_\_  
BLACK UNITED FUND  
By: Dr. LM Alaiyo Foster  
Its: CEO  
*Defendant*

Dated: \_\_\_\_\_

MURPHY & BUCHAL LLP  
James L. Buchal  
3425 SE Yamhill Street, Suite 100  
Portland, Oregon 97214

BENBROOK LAW GROUP, PC  
Bradley Benbrook  
Stephen M. Duvernay  
400 Capitol Mall, Suite 2530  
Sacramento, California 95814

MITCHELL LAW PLLC  
Jonathan F. Mitchell  
111 Congress Avenue  
Suite 400  
Austin, Texas 78701  
*Class Counsel*

Dated: \_\_\_\_\_

Clifford S. Davidson  
*Special Assistant Attorney General*  
Kelly H. Dove  
Snell & Wilmer, LLP  
One Centerpointe Drive, Suite 170  
Lake Oswego, OR 97035  
*Counsel for Defendants State of Oregon,  
Oregon Department of Administrative  
Services, and Katy Coba, in her Official  
Capacity as State Chief Operating Officer  
and Director of the Oregon Department of  
Administrative Services*

Dated: \_\_\_\_\_

Amanda T. Gamblin  
Nika F. Aldrich, Jr.  
Schwabe, Williamson & Wyatt  
1211 SW 5th Ave  
Ste. 1900  
Portland, OR 97204  
*Counsel for The Contingent*

Dated: \_\_\_\_\_

Lindsey H. Hughes  
Hillary A. Taylor  
Keating Jones Hughes, PC  
200 SW Market Street, Suite 900  
Portland, OR 97201  
*Counsel for Black United Fund, Inc.*