

contemporaneously filed suggestions support of this motion, which is incorporated herein by reference.

Accordingly, Plaintiff Jackson County respectfully requests the Court order the following relief: (1) preliminarily approve the settlement as fair, reasonable, and adequate under Missouri Supreme Court Rule 52.08(e); (2) direct the notice plan be implemented as described in the Settlement Agreement; (3) confirm the appointment of the lawyers currently serving as class counsel, Patrick J. Stueve, Bradley T. Wilders, and Alexander T. Ricke of Stueve Siegel Hanson LLP, to act on behalf of the class for purposes of settlement; (4) appoint Analytics Consulting LLC to act as settlement administrator; and (5) set a final fairness hearing within 90 days of the order preliminarily approving the settlement or as soon thereafter as may be practicable

Dated: May 19, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 19, 2022 the foregoing document was filed with the Clerk of the Court using the Missouri e-filing system, which sent notification of such filing to all counsel of record.

/s/ Patrick J. Stueve

Class Counsel

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INTRODUCTION

On the verge of a class action trial and after nearly seven years of litigation featuring the review of millions of pages of documents, more than 20 depositions, and four petitions for interlocutory appeal, Plaintiff Jackson County, Missouri has reached a class-wide settlement with Trinity valued at more than \$56,000,000 providing make-whole relief to class members. To Class Counsel's knowledge this is the first successful class action or *qui tam* lawsuit in the country asserting product defect claims related to Trinity's 4-inch ET Plus guardrail end terminal. As relevant to the Court's inquiry at this stage, the settlement provides the type of best-day relief typically only achieved through a jury verdict and does so now with no risk to class members.

In 2015, Plaintiff Jackson County filed its Petition asserting tort claims against Trinity related to its dangerous and defective 4-inch ET Plus guardrail end terminal. At the time, the product had been removed from the Missouri Department of Transportation's approved products list (as well as those of many other states) and had been linked to numerous deaths and serious injuries. Plaintiff Jackson County sought the funds necessary to remove and replace these devices from class members' roads. That is what this settlement delivers.

First, the settlement provides a non-reversionary \$3,500,000 common fund to reimburse class members who previously paid to remove and replace 4-inch ET Plus devices.

Second, the settlement provides a non-reversionary \$2,500,000 common fund to provide class members with the means to locate 4-inch ET Plus devices currently on their roads.

Third, for each undamaged 4-inch ET Plus currently on a class member's roads that is claimed and approved, the settlement provides class members with one MASH Type A tangent end terminal (the current gold standard in roadside safety product testing) valued at approximately \$2,000 plus a flat \$1,700 payment for costs associated with removal and replacement. Based on

Trinity's sales data, an expert for the class estimates that 10,500 devices are eligible for replacement under the settlement providing a \$38,000,000 value to the class in cash and products.

Finally, separate from and in addition to the relief available to the class, Trinity has agreed to pay \$175,000 for the cost of notice and claims administration, a \$50,000 service award to Plaintiff Jackson County, and \$11,400,000 in attorneys' fees and advanced expenses to Class Counsel—all of which are costs that would normally be borne by class members.

In exchange for these meaningful settlement benefits, class members will release only those claims that were or could have been asserted based on the facts alleged in the Petition. The release specifically excludes any claims class members may have against Trinity arising out of personal injury and wrongful death claims related to the 4-inch ET Plus.

The settlement is fair, reasonable, and adequate and should be preliminarily approved so no Missourian is ever injured by a 4-inch ET Plus again. Plaintiff Jackson County respectfully requests the Court: (1) preliminarily approve the settlement as fair, reasonable, and adequate under Missouri Supreme Court Rule 52.08(e); (2) direct the notice plan be implemented as described in the Settlement Agreement; (3) confirm the appointment of the lawyers currently serving as class counsel, Patrick J. Stueve, Bradley T. Wilders, and Alexander T. Ricke of Stueve Siegel Hanson LLP, to act on behalf of the class for purposes of settlement; (4) appoint Analytics Consulting LLC to act as settlement administrator; and (5) set a final fairness hearing within ninety (90) days of the order preliminarily approving the settlement or as soon thereafter as may be practicable.

NATURE OF THE CLAIMS AND PROCEDURAL HISTORY

I. The Litigation Was Complex, Lengthy, and Contested

A. The Nature of the Claims.

Plaintiff Jackson County filed its Class Action Petition on November 5, 2015 seeking the cost of removing and replacing thousands of Trinity 4-inch ET Plus guardrail end terminals from

class member roads. Plaintiff asserted negligence, strict liability, negligent supplying of a dangerous instrumentality, and declaratory judgment claims against both Trinity Industries, Inc. and Trinity Highway Products, LLC (collectively referred to throughout as “Trinity”). Central to each claim was that Trinity had altered the design of its ET Plus by shortening the feeder chutes (also known as guide channels) from 5 inches to 4 inches, that the design modification was done in secret and concealed from federal and state regulators, and that the design modification rendered the ET Plus defective and unreasonably dangerous. *Stueve Aff.* at ¶ 6.

The scope of this case was significant. Plaintiff Jackson County sought to represent itself and a class of similarly situated counties, the City of St. Louis, and the Missouri Department of Transportation to remove many thousands of 4-inch ET Plus devices from thousands of roadway miles. Trinity’s sales records showed that it had sold more than 15,000 4-inch ET Plus devices for installation on class member roads. The vigorous and contested nature of the litigation reflected the significant stakes of the case. *Stueve Aff.* at ¶ 7.

B. Plaintiff Defeated Trinity’s Early Attempts at Removal and Dismissal.

Over the course of the litigation, Trinity attempted to move or have the case dismissed multiple times. The first such attempt occurred in January 2016 when Trinity removed the litigation to the U.S. District Court for the Western District of Missouri arguing that the traditional diversity jurisdiction was satisfied under 28 U.S.C. 1332(a). However, Plaintiff filed a motion to remand the litigation back to the Circuit Court of Jackson County asserting that the federal district court did not possess subject matter jurisdiction over the case, which Judge Gaitan granted after briefing. *Jackson Cty., Mo. v. Trinity Indus., Inc.*, 2016 WL 10650701 (W.D. Mo. Feb. 29, 2016); *Stueve Aff.* at ¶ 8.

However, while the case was pending in federal court, Trinity filed a motion to dismiss for failure to state a claim and lack of standing due to (purportedly) no injury in fact. *See Jackson Cty.*,

Mo. v. Trinity Indus., Inc., Case No. 4:16CV00004, Doc. 16. This was the first time—but far from the last—that Trinity raised the specter of the economic loss doctrine as an alleged complete bar to Plaintiff’s tort claims for the cost of removing and replacing the 4-inch ET Plus. The motion to remand to the Circuit Court of Jackson County was granted while the motion to dismiss was pending, and the parties filed supplemental briefs before this Court. This Court denied the Trinity’s motion to dismiss on April 24, 2017. *Stueve Aff.* at ¶ 9.

C. Plaintiff Obtained Class Certification.

In January 2017, Plaintiff Jackson County moved to certify the following class pursuant to Rule 52.08(a) and (b)(3)

All Missouri counties with populations of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014, including the independent city, the City of St. Louis; and the State of Missouri’s transportation authority, that have or had ET-Plus guardrail end terminals with 4-inch wide feeder chutes installed on roadways they own and maintain.

The parties briefed class certification between January and May 2017, which included Trinity filing supplemental briefing. The Court conducted a class certification hearing on May 24, 2017 and solicited proposed findings of fact and conclusions of law from the parties. In December 2017, the Court granted class certification. The case was then stayed to allow Trinity to petition the appellate courts to review this Court’s class certification order. *Stueve Aff.* at ¶ 10.

As expected, Trinity petitioned the Missouri Court of Appeals pursuant to Rule 52.08(f) to review the Court’s class certification order. Plaintiff opposed the petition, and it was denied. Trinity then filed a petition for a writ of prohibition in the Missouri Supreme Court. Plaintiff opposed the petition, and it was also denied. *Stueve Aff.* at ¶ 11. With the litigation proceeding as a class action, the discovery was significant and contentious.

D. The Parties Engaged in Significant Discovery.

Discovery in this case was extensive. With respect to document discovery, Plaintiff Jackson County produced over 14,000 documents. Trinity produced well over 475,000 documents. A class member—MoDOT—produced over 12,000 documents. And Plaintiff Jackson County subpoenaed document productions from five Missouri-based contractors who installed the 4-inch ET Plus totaling nearly 3,000 documents. These hundreds of thousands of documents span millions of pages. Stueve Aff. at ¶ 12.

The parties likewise served multiple rounds of interrogatories and requests for admissions. And there were over 20 depositions conducted across the country during the litigation—from Portland, Maine to Phoenix, Arizona and many places in between. These depositions included Plaintiff's expert witnesses—Dr. Marthinus C. van Schoor (liability), Mr. Eric C. Frye (damages), Mr. Thomas E. Green (crash reconstruction and other similar incidents), and Dr. Brian Coon (liability) who was withdrawn. Plaintiff also deposed Trinity's expert witnesses—Donald F. Tandy, Jr. (crash reconstruction and other similar incidents), Dr. Malcolm H. Ray (liability), and Dr. Mark A. Israel (damages). In addition, Trinity deposed Plaintiff's rebuttal expert witnesses—Mr. Kevin Schrum (rebuttal to Dr. Ray and Mr. Tandy), Mr. Eric C. Frye (rebuttal to Dr. Israel) and Dr. Norma F. Hubele (statistical analysis of ET Plus crash data). Stueve Aff. at ¶ 13.

The parties also had a number of discovery disputes that required resolution by either the Court or Special Master Charlie J. Harris, Jr. For example, Trinity issued a subpoena to MoDOT (a class member) seeking discovery regarding the ET Plus. The parties then fully briefed Plaintiff's motion for a protective order to quash the subpoena in March 2019, which the Court ultimately granted. The Missouri Court of Appeals for the Western District then refused to disturb this Court's ruling on that discovery issue after Trinity filed a petition for a writ of prohibition. Similarly, in January 2020, Plaintiff submitted a motion to compel discovery responses to Special

Master Harris while Trinity submitted a motion for protective order limiting deposition topics to Special Master Harris. These discovery disputes were routine throughout the litigation. Stueve Aff. at ¶ 14.

E. Plaintiff Defeated Trinity's Motion for Summary Judgment.

Throughout the case, Trinity asserted that Plaintiff Jackson County's claims and those of class members were barred by the economic loss doctrine. In January 2020, Trinity filed a motion for summary judgment entirely focused on the economic loss doctrine. Plaintiff opposed the motion arguing, principally, that Missouri's economic loss doctrine did not apply because Trinity had breached a duty in tort by designing and selling a product that put people at risk of harm and damaged other property because the product was unreasonably dangerous. Plaintiff relied on, among other cases, *Sch. Dist. of City of Indep., Mo., No. 30 v. U.S. Gypsum Co.*, 750 S.W.2d 442 (Mo. App. W.D. 1988) and *Kansas City v. Keene Corp.*, 855 S.W.2d 360 (Mo. banc 1993), which both found strict liability claims were actionable to recover the cost of removing and replacing asbestos from government buildings. Stueve Aff. at ¶ 15.

Contested briefing also flowed from Trinity's motion for summary judgment. Specifically, the parties contested Trinity's motion to strike the affidavits of Plaintiff's experts submitted in opposition to summary judgment and whether oral argument was necessary. The Court denied Trinity's motion for summary judgment in July 2020. Though Plaintiff prevailed on this issue, there is no doubt Trinity would have pursued these arguments on appeal. Stueve Aff. at ¶ 16.

F. Plaintiff Defeated Trinity's Motion to Decertify the Class.

With its motion for summary judgment denied, Trinity had one last arrow in its quiver to potentially avoid a class action trial: a motion to decertify the class. In December 2020, Trinity moved for class decertification arguing principally that the class did not satisfy numerosity due to the alleged number of class members and that typicality and predominance were not satisfied based

on the economic loss doctrine. In response, Plaintiff demonstrated that the class was sufficiently numerous based on Trinity's own sales records and again rebutted Trinity's economic loss doctrine arguments. After significant and contested briefing, the Court denied Trinity's motion to decertify the class. Stueve Aff. at ¶ 17.

But, Trinity was not done. Trinity filed a petition under Rule 52.08(f) with the Missouri Court of Appeals for the Western District arguing that the Court abused its discretion in refusing to decertify the class. Again, Plaintiff opposed Trinity's request for interlocutory appeal, which was denied in December 2021. Stueve Aff. at ¶ 18.

II. The Arms' Length Settlement Negotiations Overseen by Judge Atwell (Ret.)

In January of 2021, the Court set a firm trial date of April 4, 2022. The trial had been continued several times due to COVID-19, but Plaintiff was confident that the April 4, 2022 special trial setting would occur. The trial date spurred settlement discussions. Stueve Aff. at ¶ 20.

The parties first mediated on February 26, 2020 with the Hon. Charles E. Atwell (Ret.). However, the Court had not ruled on Trinity's motion for summary judgment, nor had Trinity filed its motion to decertify the class. Though the parties made little progress and did not resolve the case, the parties did, for the first time, discuss a settlement that would include both cash and products toward removing and replacing 4-inch ET Plus devices. Stueve Aff. at ¶ 21.

In April 2021, Trinity reached out to Class Counsel regarding a possible settlement structure that included products and cash to enable class members to remove and replace 4-inch ET Plus devices. Between April and December 2021, the parties exchanged drafts of a term sheet outlining a potential settlement structure. Once the parties agreed to a potential structure, they remained at an impasse on dollar amounts and other material settlement terms. As a result, the parties re-engaged Judge Atwell to mediate the case again. On January 11, 2022, the parties

conducted a full-day mediation with Judge Atwell. Although significant process was made, the parties did not reach a settlement. Stueve Aff. at ¶ 22.

Over the next five weeks, Judge Atwell continued to work the phones on a near-daily basis with Class Counsel and Trinity's counsel until, on February 18, 2022, the parties executed a binding term sheet containing the material terms of the settlement now before the Court. At the time the case settled, Class Counsel was preparing the case for the April 4, 2022 trial date, including preparing deposition designations, motions in limine, and other trial preparations. Stueve Aff. at ¶ 23.

SUMMARY OF KEY SETTLEMENT TERMS

I. The Scope of the Settlement

The settlement would bind all members of the litigation class that this Court certified in December 2017:

All Missouri counties with populations of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014, including the independent city, the City of St. Louis; and the State of Missouri's transportation authority, that have or had ET-Plus guardrail end terminals with 4-inch wide feeder chutes installed on roadways they own and maintain.

See Ex. 1, Settlement Agreement at ¶ 1.3.

II. The Settlement Benefits

This settlement provides more than \$56,000,000 in value to class members. In addition to separately covering the costs associated with litigation and settlement (*i.e.*, service award, notice administration, claims administration, and attorneys' fees and expenses), the settlement provides three forms of recovery for class members. Importantly, these categories are not mutually exclusive; in other words, class members may submit claims for each form of relief for which they qualify. The purpose of the settlement relief is three-fold: (1) reimburse class members who proactively removed these devices; (2) provide class members the means to locate these devices

that are still on their roads; and (3) provide class members the means to remove and replace these devices with safer MASH standard devices at no cost to the class members.

First, the settlement creates a non-reversionary \$3,500,000 common fund to compensate class members for costs they previously incurred to remove and replace undamaged 4-inch ET Plus devices. This fund will be available for a one-year period following the Effective Date and will pay approved claims on a rolling basis. *See* Ex. 1, Settlement Agreement at § 6.

Second, the settlement creates a non-reversionary \$2,500,000 common fund to compensate class members for the costs of locating 4-inch ET Plus devices on their roads. This fund will be available for a 90-day period following the Effective Date and will pay approved claims shortly thereafter to enable class members to locate these devices for removal. *Id.* at § 7.

Third, the settlement provides class members with the means to remove and replace each undamaged 4-inch ET Plus on their roads at no cost to the class member. For a six-year period following the Effective Date, class members may submit as many claims as necessary to remove and replace these devices. For each undamaged 4-inch ET Plus identified, claimed, and approved, the class member will receive one MoDOT-approved Type A MASH tangent end terminal plus a flat payment of \$1,700 to cover the costs of removal and replacement. Each Type A MASH tangent end terminal has a retail value of approximately \$2,000 meaning that each class member will receive approximately \$3,700 in cash and products per replaced 4-inch ET Plus. Given that Plaintiff's damages expert calculated there are approximately 10,500 4-inch ET Plus devices on class member roads as of February 2022, this component of the settlement confers an approximately \$38,000,000 on class members. *Id.* at § 8; *see also* Stueve Aff. at ¶ 29.

Equally important to the cash value of the settlement is the reality that this settlement will result in a significant, state-wide upgrade of many thousands of guardrail end terminals from the

dangerous and defective 4-inch ET Plus (a product tested to the less exacting NCHRP 350 standard) with new MASH end terminals. This settlement will help prevent death and serious injury. Stueve Aff. at ¶ 33.

III. The Release is Narrowly Tailored

The release is tailored to the claims that were investigated and litigated as part of the case. In other words, the release is not broader than appropriate and, in fact, the release carves out certain claims class members may possess against Trinity related to deaths or personal injuries suffered on class member roads involving a 4-inch ET Plus. In exchange for the significant value afforded by the settlement, class members release the following claims:

Any claims that were or could have been asserted against the “Released Entities” or against any other person or entity involved in any manner with the design, development, testing, patent, purchase, license, marketing, sale, manufacture, assembly, distribution, delivery, installation, supervision of installation, repair, maintenance, or approval of the 4-inch ET Plus end terminals at issue, by any Class Member based on the facts alleged in the Petition dated November 5, 2015, provided, however, that Class Members shall not release any claims arising out of personal injury or wrongful death claims or lawsuits against any Class Member.

See Ex. 1, Settlement Agreement at ¶¶ 1.21-1.22, 9.1-9.2.

IV. The Notice Process and Claims Process

There will be two rounds of notice—one following preliminary approval and one following final approval—overseen by well-regarded administrator Analytics Consulting LLC. *Id.* at §§ 3, 5. Trinity agrees to separately pay the cost of notice and claims administration up to a cap of \$175,000, which Class Counsel reasonably believes will more than cover the cost of administration. *Id.* at ¶ 3.2.

Within 14 days of the Court’s order preliminarily approving the settlement, Analytics will issue the Settlement Notice and one copy of the Settlement Agreement by U.S. Mail to each class member. This information will also be available on a settlement website and Analytics will

likewise maintain a toll-free phone number and email address for class members to obtain more information about the settlement. Class members will have 45 days from the date of mailing to object to the settlement. *Id.* at ¶¶ 3.4-3.6. The Settlement Notice is attached to the Settlement Agreement as Exhibit A.

Following final approval of the settlement and within 14 days of the Effective Date, Analytics will send class members the Claim Notice and Claim Form (Exhibits B and C, respectively, to the Settlement Agreement), which explains how they can submit a claim for any and all of the benefits available under the settlement. *Id.* at ¶ 5.2. Claims will be evaluated by Analytics. If the claim is denied, class members will have the opportunity to appeal the denial to Analytics (with input from Class Counsel). And ultimately, if a claim is denied, class members may appeal the denial of a claim to this Court, but this Court's decision will be final. There is a similar process for Trinity to challenge approved claims. *Id.* at ¶¶ 6.7-6.9, 7.7-7.9, 8.5-8.8.

V. Service Award and Attorneys' Fees and Costs

In recognition of the significant work performed by Plaintiff Jackson County (including presenting multiple witnesses for depositions and producing more than 14,000 documents), Trinity has agreed to pay (subject to Court approval) a \$50,000 service award to Plaintiff Jackson County. *Id.* at ¶ 11.1. Importantly, the service award does not diminish the benefits payable to class members and, in fact, is a separate, additional benefit borne by Trinity under the settlement. *Id.*

Similarly, Trinity has agreed to pay Class Counsel (subject to Court approval) a combined award of attorneys' fees and costs of \$11,400,000. *Id.* at ¶ 10.1. This represents reimbursement of Class Counsel's approximately \$950,000 in advanced litigation expenses and a modest multiplier on Class Counsel's lodestar, which, as of the date of this filing, is over \$9,500,000 for more than 14,000 hours of attorney and paralegal time—and these will continue to increase as Class Counsel moves this settlement through approval and the six-year claims process. And, importantly, Trinity

has agreed to pay Class Counsel’s fees and costs separate from and in addition to the relief payable to class members. Class Counsel’s fee and cost award was negotiated only after the class and Trinity had reached an agreement on the substantive benefits the settlement would provide to class members. *Stueve Aff.* at ¶ 19.¹

ARGUMENT

I. Standard for Preliminary Approval of Class Action Settlements

A class action may not be dismissed, compromised or settled without court approval. Rule 52.08(e). This Court’s role in reviewing a proposed settlement at the preliminary approval stage is set forth in detail in *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369 (Mo. App. W.D. 1997).

As explained in *Byrd*, the trial court “has a ‘gatekeeper’ role in reviewing the proposed settlement before preliminarily approving it and sending out notice to the class.” *Id.* at 382. “[P]rior to certifying a temporary settlement class, the trial court should first conduct a preliminary examination of the record before it and make a preliminary determination as to whether it appears that a settlement class should be tentatively certified.” *Id.* at 383. The Court emphasized “that this determination ... will be only preliminary and that ... it is at most a determination that there is what might be termed ‘probable cause’ to submit the proposal to class members and hold a full scale hearing as to its fairness.” *Id.* (internal citations omitted).

¹ The reasonableness of Plaintiff Jackson County’s service award and Class Counsel’s attorneys’ fee and expense award will be the subject of a separate motion following preliminary approval. Class Counsel will file the motion to award attorneys’ fees and costs and approve the service award prior to the deadline for class members to object to the settlement. In that motion, Class Counsel will fully analyze the fee and expense award under the standard set out by the Missouri Supreme Court in *Berry v. Volkswagen Grp. of Am., Inc.*, 397 S.W.3d 425 (Mo. 2013). Thus, although Class Counsel believe the fee is reasonable because it was negotiated separately, will be paid separate from and in addition to the relief payable to the class, and is supported by the significant expenditure of time and resources by Class Counsel as well as the excellent result achieved for class members, the Court need not decide the issue in connection with preliminary approval because it is an issue for final approval.

The Court identified the following factors that are typically considered when a court makes a fairness evaluation: “(1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs’ success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members.” *Id.* at 378 n.6; *see also Ring v. Metropolitan St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo. App. E.D. 2000) (reciting *Byrd* factors and stating: “The most important consideration in determining if a settlement is fair, reasonable, and adequate is the strength of the plaintiff’s case on the merits balanced against the offered settlement.”)

This “preliminary ‘probable cause’ review” should also include consideration of whether it appears the settlement class can meet the requirements of Rule 52.08(a) and (b)(3). *Byrd*, 956 S.W.2d at 382-83. In that regard, the trial court should review “whether it appeared that [Plaintiff’s] counsel was adequate, that the named plaintiffs were adequate representatives of the class, that there is no apparent conflict of interest between the representatives and the class or among the class, that the settlement on its face appears to be fair and to have been the result of arm’s length negotiations, that it appears that the named plaintiffs’ claims are typical of those of the class, and that it appears that common issues will predominate.” *Id.* at 383.

II. The Court Previously Certified the Class Finding Rule 52.08’s Requirements Satisfied

This Court has already found Rule 52.08(a) and (b)(3)’s class certification requirements satisfied.² In fact, not only has this Court already certified the class, the Missouri Court of Appeals for the Western District denied Trinity’s petition seeking review of class certification, the Missouri

² *See* Findings of Fact, Conclusions of Law, and Order of Class Certification dated December 6, 2017.

Supreme Court denied transfer on that issue, this Court denied Trinity's motion to decertify the class³, and Trinity's petition for review of the denial of decertification to the Missouri Court of Appeals for the Western District has also been denied. *Stueve Aff.* at ¶¶ 10-11, 17-18. The Court can conclude that the litigation class satisfies Rule 52.08(a) and (b)(3)'s requirements for settlement purposes. *Byrd*, 956 S.W.2d at 383.

III. The Settlement is Fair, Reasonable, and Adequate

As the Missouri Court of Appeals for the Eastern District noted regarding the evaluation of class action settlements, the "most important consideration in determining if a settlement is fair, reasonable, and adequate is the strength of the plaintiff's case on the merits balanced against the offered settlement." *Ring*, 41 S.W.3d at 492. This settlement provides class members with over \$56,000,000 in value and does so without the risk of trial and appeal. And, importantly, it does so right now, ensuring these devices can be removed from Missouri roads as soon as possible preventing further injury and death. When Plaintiff Jackson County filed this case, it did so with the intention of making sure every class member could remove and replace Trinity's 4-inch ET Plus. That is what this settlement accomplishes. The settlement should be approved as fair, reasonable, and adequate.

A. There is no fraud or collusion in the settlement.

Settlement negotiations in this case were lengthy, conducted at arm's length, and overseen by Judge Atwell (Ret.). *Stueve Aff.* at ¶¶ 20-23. In fact, absent Judge Atwell's involvement, it is likely this case would have been tried because there was significant distance between the parties' positions. *Id.* The Court can readily conclude that there is no fraud or collusion in this settlement.

³ See Order Denying Trinity's Motion to Decertify Class dated November 19, 2021.

First and foremost, the settlement in this case only occurred after two unsuccessful mediations with Judge Atwell—one in February 2020 and one in January 2022. *Id.* After the mediation in January of this year, Judge Atwell continued his efforts by conducting near-daily calls with the parties’ counsel for over a month, which ultimately resulted in the settlement before the Court. *Id.* That Judge Atwell shepherded this settlement through and beyond the formal mediation weighs strongly in favor of finding no collusion or fraud. *See, e.g., In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016) (noting that “participation of an independent mediator ... virtually [e]nsures that the negotiations were conducted at arm’s length and without collusion between the parties”).

And in other respects, this settlement possesses the hallmarks of an arm’s-length resolution. For starters, the fact that Plaintiff Jackson County and Class Counsel obtained this settlement given Trinity’s opposition to any case challenging the 4-inch ET Plus and the sheer value of the settlement demonstrate the lack of collusion. To Class Counsel’s knowledge, this is the first successful class action on behalf of government entities or *qui tam* action against Trinity related to the 4-inch ET Plus. Trinity has fought cases seeking to remove and replace the 4-inch ET Plus tooth and nail, and, as this Court knows, this case was no different. And the settlement confers more than \$56,000,000 in value on class members representing make-whole relief. This type of relief is only obtained where the lawyers for the class are negotiating from a position of strength—summary judgment denied, class decertification denied, and trial looming.

Likewise, this settlement bears no indicia of collusion. For example, this a non-reversionary settlement. In other words, none of the money made available under this settlement will revert to Trinity. In addition, the scope of the release is limited to those claims that were or could have been asserted based on the facts alleged in Plaintiff Jackson County’s Petition. *See Ex.*

1, Settlement Agreement at § 9. In other words, class members release only the claims that were actually in dispute in the case. The hallmarks of an arm's-length negotiation and clear lack of collusion in the settlement weigh in favor of approval.

B. This case was complex, expensive, and lengthy, which weighs in favor of approval.

After nearly seven years of litigation, it is clear this case was complex, expensive, and lengthy. *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. App. E.D. 2011) (finding that “litigation leading up to settlement lasted nearly five years, was procedurally and substantively complex,” lengthy, and expensive—ultimately, weighing in favor of approval).

Start with complexity. This case involved several complicated legal issues, namely Trinity's attempt to apply the economic loss doctrine—a so-called “silver bullet” defense—to the class members' tort claims for the cost of removing and replacing the 4-inch ET Plus. This was the subject of Trinity's motion for summary judgment and a main thrust of Trinity's motion to decertify the class. This case was likewise procedurally complicated with Trinity petitioning the Missouri Court of Appeals for the Western District three times for interlocutory review of this Court's orders—specifically, Trinity sought review of the grant of class certification, the denial of absent class member discovery, as well as the denial of class decertification—and petitioning the Missouri Supreme Court to review this Court's class certification decision. *Stueve Aff.* at ¶¶ 10-11, 14, 17-18.

Likewise, the facts of this case were complicated. The class offered six expert witnesses while Trinity offered three. *Id.* at ¶ 13. These experts provided testimony on the design, manufacture, and testing of the 4-inch ET Plus, crash reconstruction, the number of 4-inch ET Plus devices on the road, and class-wide damages.

Also, given the nearly seven years of litigation and the number of experts involved, the case was certainly expensive. Class Counsel advanced approximately \$950,000 in litigation expenses and expended more than \$9,500,000 in lodestar to prepare this case for trial—numbers that would have increased dramatically had this case been tried. *Stueve Aff.* at ¶ 19.⁴ If the class obtained a favorable verdict, Trinity would have undoubtedly exercised every appellate avenue available continuing the delay for years. *Bachman*, 344 S.W.3d at 266 (holding that the “likelihood of potential additional years, complexity, and expense on appeal” weighed in favor of approval). The contested, lengthy, and expensive nature of this litigation weighs in favor of approval.

C. The stage of the proceedings weighs in favor of approval because the case settled on the verge of trial after seven years of litigation.

This case settled after nearly seven years of litigation, completion of discovery, and the exhaustion of Trinity’s pre-trial motions to limit the scope of the case. Further, the settlement was reached on February 18, 2022, just a few weeks shy of the April 4, 2022 trial date. *Stueve Aff.* at ¶ 23. The Court can conclude that the stage of the proceedings weighs in favor of approval. *Bachman*, 344 S.W.3d at 266 (noting that “the settlement was reached weeks before trial and after extensive discovery had been completed” and finding that weighed in favor of approval).

D. The settlement affords complete relief despite material risks.

Plaintiff Jackson County’s Petition sought as damages in this case the amount of money necessary to remove and replace every 4-inch ET Plus on roads owned or maintained by class members. That is exactly what this settlement provides class members. As described in detail above, the settlement: (1) compensates class members for the cost of previously removed and replaced 4-inch ET Plus devices; (2) compensates class members for the cost of locating 4-inch

⁴ Class Counsel’s lodestar and advanced expenses will continue to increase as this case moves through the approval process and ultimately through a six-year claim period.

ET Plus devices on their roads; (3) pays to remove and replace those undamaged 4-inch ET Plus devices that are on class members' roads; and (4) pays for the cost of the litigation (attorneys' fees and service awards) and the cost of the notice and claims administration process. Valued at more than \$56,000,000, this settlement is essentially a complete win for the class with no risks or the delay associated with trial and appeal. Stueve Aff. at ¶¶ 24-35.

The settlement is made all the more impressive when considered against the backdrop of the 4-inch ET Plus and the potential hurdles at trial. First, to achieve this result outside settlement would require a jury trial where Trinity would present its well-developed version of the facts. Second, though Plaintiff believes it would have prevailed at trial, any jury verdict would have been appealed which would have kept these 4-inch ET Plus devices on the road for several more years and would have also given Trinity another chance to present its economic loss doctrine and class decertification arguments. Third, this is the first such settlement in the country. Numerous local and state governments have prosecuted similar class action or *qui tam* cases against Trinity regarding the 4-inch ET Plus, but this settlement is the first to succeed. Stueve Aff. at ¶ 32. The significant value provided to class members by this settlement weighs strongly in favor of approval.

E. Class Counsel supports the settlement.

The three primary lawyers representing the class have over 50 years of combined experience prosecuting and defending complex product and consumer cases. Stueve Aff. at ¶ 4. Given the advanced stage of this litigation, Class Counsel have gained a comprehensive knowledge of the facts relating to the respective claims and defenses and have sufficient evidence on which to base an intelligent assessment of the settlement proposal. Based on their knowledge of the case and the applicable law, as well as their experience in large class actions, Class Counsel believe the settlement is fair, reasonable, and adequate. Stueve Aff. at ¶¶ 24-35. "Although the Court is not

bound by the counsel's opinion, their opinion nevertheless is entitled to great weight." *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 702 (E.D. Mo. 2002). Moreover, Plaintiff Jackson County has approved the settlement. *Stueve Aff.* at ¶ 35. This factor favors preliminary approval.

Given that every "fairness factors" favor preliminary approval, the Court should approve the settlement as fair, reasonable, and adequate.

IV. The Notice Plan Should Be Approved

There are two primary inquiries related to notice in class action settlements. First, does the method of notice satisfy due process. Second, is the content of the notice accurate. *Byrd*, 956 S.W.2d 369, 385. The Court should find both inquiries satisfied by the robust notice plan provided in the Settlement Agreement.

With respect to the method of notice, under the Settlement Agreement, each class member will be sent an individualized notice by U.S. Mail. This is the best notice practicable under the circumstances, satisfies due process, and ensures that each class member receives individual notice of the settlement. *See Byrd*, 956 S.W.2d 369, 389; *see also* Fed. R. Civ. P. 23(c)(2)(B) ("[T]he court must direct to class members the best notice that is practicable under the circumstances, *including individual notice* to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means." (emphasis added). That each class member will receive two individualized notices by U.S. Mail—in addition to having access to the settlement documents on a settlement website maintained by Analytics—easily satisfies due process.

With respect to the content of the notices, the Missouri Court of Appeals for the Western District has noted that the notice must "contain an adequate description of the proceedings written in objective, neutral terms, that, insofar as possible, may be understood by the average absentee class member." *Byrd*, 956 S.W.2d at 385 (quoting *In re Nissan Motor Corp. Antitrust Litig.*, 552

F.2d 1088, 1104 (5th Cir. 1977)). In this case, the proposed notices (Exhibits A and B to the Settlement Agreement) explain in easily understood language the terms of the settlement, the benefits available to class members, how and when to submit claims, the class member's options, how class members can object, the deadline to object, and how to obtain more information from Analytics and Class Counsel. The notices are accurate and easily understood and should be approved. Further, the Settlement Notice will include a copy of the Settlement Agreement. Ex. 1, Settlement Agreement at ¶ 3.4.

Finally, the Court will note that the Settlement Agreement does not provide a second opportunity for class members to opt out of the case. Unlike most class action settlements, this class has already been certified by the Court. And, as a part of that process, class members were given the opportunity to opt out of the class. None did. *Stueve Aff.* at ¶ 11. Missouri Courts do not require a second opportunity to opt out of a class action. *Doyle v. Fluor Corp.*, 400 S.W.3d 316, 324 (Mo. App. E.D. 2013) (affirming approval of class action settlement on appeal and holding: "to extinguish all doubt, we find no abuse of discretion in the trial court's determination that a second opt-out period is not required under Rule 52.08 and would have unnecessarily disrupted settlement proceedings and prolonged the case to the detriment of all parties."). The Court should approve the notice plan.

CONCLUSION

Based on the foregoing, Plaintiff Jackson County, on behalf of the certified class, respectfully requests the Court preliminarily approve the settlement as fair, reasonable, and adequate and grant the relief specifically enumerated in the accompanying Motion.

Dated: May 19, 2022

Respectfully submitted,

STUEVE SIEGEL HANSON LLP

/s/ Patrick J. Stueve

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CLASS COUNSEL

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 19, 2022 the foregoing document was filed with the Clerk of the Court using the Missouri e-filing system, which sent notification of such filing to all counsel of record.

/s/ Patrick J. Stueve

Class Counsel

extensive experience litigating and resolving class actions. In addition to trial work, I have an active appellate practice and have successfully argued numerous cases before federal and state appellate courts across the country. My experience, honors, and awards are further detailed on our firm website, www.stuevesiegel.com. I also note that, though not specifically at issue with respect to the pending preliminary approval motion, I will provide a complete explanation of my firm's credentials in connection with the motion to award attorneys' fees, costs, and expenses prior to final approval. The three main lawyers representing the class, Mr. Wilders, Mr. Ricke, and myself, have combined experience of approximately 50 years in class actions and other complex litigation.

5. I and my firm coordinated with two other Kansas City law firms in prosecuting this case. We worked most closely with John Schirger and Matt Lytle at Miller Schirger LLC—the firm previously serving as class counsel and currently serving as Jackson County's individual counsel—in prosecution of this case. Likewise, the firm also coordinated with Theresa Otto and Patrick Hunt of Baty Otto Coronado Scheer P.C. who are outside counsel for class member the Missouri Department of Transportation's ("MoDOT").

The Nature of the Claims

6. Plaintiff Jackson County filed its Class Action Petition on November 5, 2015 seeking the cost of removing and replacing thousands of Trinity 4-inch ET Plus guardrail end terminals from class member roads. Plaintiff asserted negligence, strict liability, negligent supplying of a dangerous instrumentality, and declaratory judgment claims against both Trinity Industries, Inc. and Trinity Highway Products, LLC (collectively referred to throughout as "Trinity"). Central to each claim was that Trinity had altered the design of its ET Plus by shortening the feeder chutes (also known as guide channels) from 5 inches to 4 inches, that the

design modification was done in secret and concealed from federal and state regulators, and that the design modification rendered the ET Plus defective and unreasonably dangerous.

7. The scope of this case was significant. Plaintiff Jackson County sought to represent itself and a class of similarly situated counties, the City of St. Louis, and MoDOT to remove many thousands of 4-inch ET Plus devices from thousands of roadway miles. Trinity's sales records showed that it had sold more than 15,000 4-inch ET Plus devices for installation on class member roads. The vigorous and contested nature of the litigation reflected the significant stakes of the case.

The Procedural History of the Litigation

8. Over the course of the litigation, Trinity attempted to move or have the case dismissed multiple times. The first such attempt occurred in January 2016 when Trinity removed the litigation to the U.S. District Court for the Western District of Missouri arguing that traditional diversity jurisdiction was satisfied under 28 U.S.C. 1332(a). However, Plaintiff filed a motion to remand the litigation back to the Circuit Court of Jackson County asserting that the federal district court did not possess subject matter jurisdiction over the case, which Judge Gaitan granted after briefing. *Jackson Cnty., Mo. v. Trinity Indus., Inc.*, 2016 WL 10650701 (W.D. Mo. Feb. 29, 2016).

9. However, while the case was pending in federal court, Trinity filed a motion to dismiss for failure to state a claim and lack of standing due to (purportedly) no injury in fact. *See Jackson Cnty., Mo. v. Trinity Indus., Inc.*, Case No. 4:16CV00004, Doc. 16. This was the first time—but far from the last—that Trinity raised the specter of the economic loss doctrine as an alleged complete bar to Plaintiff's tort claims for the cost of removing and replacing the 4-inch ET Plus. The motion to remand to the Circuit Court of Jackson County was granted while the motion

to dismiss was pending, and the parties filed supplemental briefs before this Court. This Court denied the Trinity's motion to dismiss on April 24, 2017.

10. In January 2017, Plaintiff Jackson County moved to certify the following class pursuant to Rule 52.08(a) and (b)(3):

All Missouri counties with populations of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014, including the independent city, the City of St. Louis; and the State of Missouri's transportation authority, that have or had ET-Plus guardrail end terminals with 4-inch wide feeder chutes installed on roadways they own and maintain.

The parties briefed class certification between January and May 2017, which included Trinity filing supplemental briefing. The Court conducted a class certification hearing on May 24, 2017 and solicited proposed findings of fact and conclusions of law from the parties. In December 2017, the Court granted class certification. The case was then stayed to allow Trinity to petition the appellate courts to review this Court's class certification order.

11. As expected, Trinity petitioned the Missouri Court of Appeals pursuant to Rule 52.08(f) to review the Court's class certification order. Plaintiff opposed the petition, and it was denied. Trinity then filed a petition for a writ of prohibition in the Missouri Supreme Court. Plaintiff opposed the petition, and it was also denied. The Court then approved Plaintiff's notice plan whereby each potential class member received a paper copy of the notice (including a link to the litigation website and Class Counsel's contact information) by U.S. Mail. No class members opted out of the litigation. With the litigation proceeding as a class action, the discovery was significant and contentious.

12. Discovery in this case was extensive. With respect to document discovery, Plaintiff Jackson County produced over 14,000 documents. Trinity produced over 476,000 documents. A class member—the Missouri Department of Transportation—produced over 12,000 documents.

And Plaintiff Jackson County subpoenaed document productions from five Missouri-based contractors who installed the 4-inch ET Plus totaling nearly 3,000 documents. These hundreds of thousands of documents span millions of pages.

13. The parties likewise served multiple rounds of interrogatories and requests for admissions. And there were over 20 depositions conducted across the country during the litigation—from Portland, Maine to Phoenix, Arizona and many places in between. These depositions included Plaintiff's expert witnesses—Dr. Marthinus C. van Schoor (liability), Mr. Eric C. Frye (damages), Mr. Thomas E. Green (crash reconstruction and other similar incidents), and Dr. Brian Coon (liability) who was withdrawn. Plaintiff also deposed Trinity's expert witnesses—Donald F. Tandy, Jr. (crash reconstruction and other similar incidents), Dr. Malcolm H. Ray (liability), and Dr. Mark A. Israel (damages). In addition, Trinity deposed Plaintiff's rebuttal expert witnesses—Mr. Kevin Schrum (rebuttal to Dr. Ray and Mr. Tandy), Mr. Eric C. Frye (rebuttal to Dr. Israel) and Dr. Norma F. Hubele (statistical analysis of ET Plus crash data).

14. The parties also had a number of discovery disputes that required resolution by either the Court or Special Master Charlie J. Harris, Jr. For example, Trinity issued a subpoena to MoDOT (a class member) seeking discovery regarding the ET Plus. The parties then fully briefed Plaintiff's motion for a protective order to quash the subpoena in March 2019, which the Court ultimately granted. The Missouri Court of Appeals for the Western District then refused to disturb this Court's ruling on that discovery issue after Trinity filed a petition for a writ of prohibition. Similarly, in January 2020, Plaintiff submitted a motion to compel discovery responses to Special Master Harris while Trinity submitted a motion for protective order limiting deposition topics to Special Master Harris. These discovery disputes were routine throughout the litigation.

15. Throughout the case, Trinity asserted that Plaintiff Jackson County's claims and those of class members were barred by the economic loss doctrine. In January 2020, Trinity filed a motion for summary judgment entirely focused on the economic loss doctrine. Plaintiff opposed the motion arguing principally that Missouri's economic loss doctrine did not apply because Trinity had breached a duty in tort by designing and selling a product that put people at risk of harm and damaged other property because the product was unreasonably dangerous. Plaintiff relied on, among other cases, *Sch. Dist. of City of Indep., Mo., No. 30 v. U.S. Gypsum Co.*, 750 S.W.2d 442 (Mo. App. W.D. 1988) and *Kansas City v. Keene Corp.*, 855 S.W.2d 360 (Mo. banc 1993), which both found strict liability claims were actionable to recover the cost of removing and replacing asbestos from government buildings.

16. As part of Trinity's motion for summary judgment, the parties also had contested briefing regarding Trinity's motion to strike the affidavits of Plaintiff's experts submitted in opposition to summary judgment and on whether oral argument was necessary. Ultimately, the Court denied Trinity's motion for summary judgment in July 2020. Though Plaintiff prevailed on this issue, there is no doubt Trinity would have pursued these arguments on appeal.

17. With its motion for summary judgment denied, Trinity had one last arrow in its quiver to potentially avoid a class action trial: a motion to decertify the class. In December 2020, Trinity moved for class decertification arguing principally that the class did not satisfy numerosity due to the alleged number of class members and that typicality and predominance were not satisfied based on the economic loss doctrine. In response, Plaintiff demonstrated that the class was sufficiently numerous based on Trinity's own sales records and again rebutted Trinity's economic loss doctrine arguments. After significant and contested briefing, the Court denied the motion to decertify the class.

18. However, Trinity was not done. Trinity filed a petition under Rule 52.08(f) with the Missouri Court of Appeals for the Western District arguing that the Court abused its discretion in refusing to decertify the class. Plaintiff again opposed Trinity's request for interlocutory appeal, which was denied in December 2021.

19. Class Counsel's work on this case was significant and reflects the high-stakes nature of the litigation. Class Counsel (including previous Class Counsel and Plaintiff Jackson County's outside counsel at Miller Schirger LLC and class member MoDOT's outside counsel at Baty Otto Coronado Scheer P.C) have collectively expended more than 14,000 hours for a total lodestar exceeding \$9,500,000. In addition, Class Counsel advanced significant litigation expenses of approximately \$950,000. Class Counsel will continue to expend time and money on behalf of the class through the approval and claims process though Class Counsel's aggregate fee and expense recovery will not increase as it is set by agreement.

Judge Atwell (Ret.) Oversaw the Parties' Arm's-Length Settlement Negotiations

20. In January of 2021, the Court set a firm trial date of April 4, 2022. The trial had been continued several times due to COVID-19, but Plaintiff was confident that the April 4, 2022 special trial setting would occur. The trial date spurred settlement discussions.

21. The parties first mediated on February 26, 2020 with Judge Atwell. However, the Court had not ruled on Trinity's motion for summary judgment, nor had Trinity filed its motion to decertify the class. Though the parties made little progress and did not resolve the case, the parties did, for the first time, discuss a settlement that included both cash and products enabling class members to remove and replace 4-inch ET Plus devices on their roads.

22. In April 2021, Trinity reached out to Class Counsel regarding a possible settlement structure that included products and cash to enable class members to remove and replace 4-inch

ET Plus devices. Between April and December 2021, the parties exchanged drafts of a term sheet outlining a potential settlement structure. Once the parties had agreed to a potential structure, they remained at an impasse on dollar amounts and other material settlement terms. As a result, the parties re-engaged Judge Atwell to mediate the case once again. On January 11, 2022, the parties conducted a full-day mediation with Judge Atwell. Although significant process was made, the parties did not reach a settlement.

23. Over the next five weeks, Judge Atwell continued to work the phones on a near-daily basis with Class Counsel and Trinity's counsel until, on February 18, 2022, the parties executed a binding term sheet containing the material terms of the settlement now before the Court. At the time the case settled, Class Counsel was preparing the case for the April 4, 2022 trial date, including preparing deposition designations, motions in limine, and other trial preparations.

The Settlement Agreement is Fair, Reasonable, and Adequate

24. The Class Action Settlement Agreement ("Settlement Agreement") is attached to this Affidavit as Exhibit 1. In addition, there are important documents attached as exhibits to the Settlement Agreement. The Settlement Notice (Ex. A), the Claim Notice (Ex. B), and the Claim Form (Ex. C) are each attached to the Settlement Agreement.

25. The full terms of the settlement are contained in the Settlement Agreement. In this Affidavit, I provide context for why I and my colleagues believe the monetary and in-kind relief created by this settlement provide make-whole or near complete relief for class members in this first-of-its-kind settlement.

26. I refer to this settlement as making class members whole because this lawsuit sought the cost of removing and replacing 4-inch ET Plus devices from Missouri roads. This

settlement provides class members with the cash and products necessary to do that at no cost to class members.

27. First, the settlement creates a non-reversionary \$3,500,000 common fund to compensate class members for costs they previously incurred to remove and replace undamaged 4-inch ET Plus devices. This fund will be available for a one-year period following the Effective Date and will pay approved claims on a rolling basis.

28. Second, the settlement agreement creates a non-reversionary \$2,500,000 common fund to compensate class members for the costs of locating 4-inch ET Plus devices on their roads. This fund will be available for a 90-day period following the Effective Date and will pay approved claims shortly thereafter to enable class members to locate these devices for removal.

29. Third, the settlement provides class members with the means to remove and replace each undamaged 4-inch ET Plus on their roads at no cost to the class member. For a six-year period following the Effective Date, class members may submit as many claims as necessary to remove and replace these devices on their roads as of February 18, 2022. For each undamaged 4-inch ET Plus identified, claimed, and approved, the class member will receive one MoDOT-approved Type A MASH tangent end terminal plus a flat payment of \$1,700 to cover the costs of removal and replacement. Each Type A MASH tangent end terminal has a retail value of approximately \$2,000 meaning that each class member will receive approximately \$3,700 in cash and products per replaced 4-inch ET Plus. Given that Plaintiff's damages expert calculated there are approximately 10,500 4-inch ET Plus devices on class member roads as of February 2022, this component of the settlement confers an approximately \$38,000,000 on class members.

30. And fourth, the settlement provides that the cost of the litigation and settlement will be paid separately by Trinity. Specifically, Trinity has agreed to separately pay Class Counsel's

attorneys' fees and costs in the aggregate amount of \$11,400,000; \$175,000 to Analytics Consulting LLC for the cost of notice and claims administration; and a \$50,000 service award to Plaintiff Jackson County.

31. All told, Trinity is agreeing to pay cash and products with a value of approximately \$56,000,000 to class members in exchange for the limited release of claims provided in the Settlement Agreement.

32. To Class Counsel's knowledge, this is the first successful prosecution in the country of a class action or *qui tam* action on behalf of state and local governments seeking to recover the cost of removing and replacing Trinity's 4-inch ET Plus. In the wake of the revelations that Trinity had concealed from federal and state regulators that it modified the width of the guide channels on the ET Plus from 5 inches to 4 inches, numerous state class actions and *qui tam* actions were filed in jurisdictions around the United States. To Class Counsel's knowledge, this case is the only one that has been successful.

33. In addition to the tangible relief this settlement provides class members, the settlement also will upgrade all of these 4-inch ET Plus devices, which, in addition to being alleged to be defective, were tested to the older, less rigorous NCHRP 350 Standard. As a part of this settlement, those devices will be upgraded to MASH Standard devices, which is the current gold standard in roadside safety devices. In my opinion, this settlement will help prevent avoidable death and serious injury. Though I am not attempting to assign a dollar amount to this benefit, it is significant benefit for anyone who drives on Missouri roads. And, importantly, all of this relief is available for the class with none of the risks associated with trial and subsequent appeals.

34. Based on my experience and considering the significant relief provided by this settlement and the circumstances under which it was obtained, I believe this is an exceptional

settlement that is certainly fair, reasonable, and adequate such that it merits preliminary approval under Missouri Rule of Civil Procedure 52.08(e).

35. Plaintiff Jackson County also supports the settlement as fair, reasonable, and adequate as evidenced by the County Counselor's signature on the Settlement Agreement.

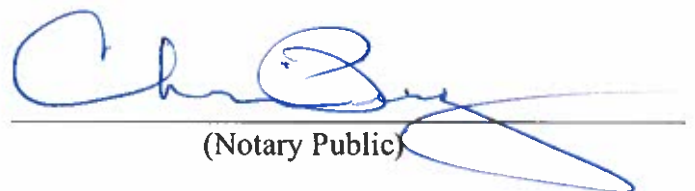
I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed May 19, 2022.


Patrick J. Stueve

STATE OF MISSOURI)
) S.S.
COUNTY OF JACKSON)

Subscribed and sworn to before the undersigned on May 19, 2022.


(Notary Public)

My commission expires:

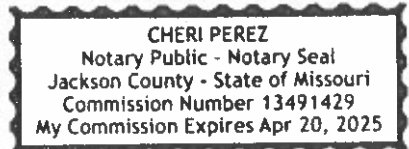


EXHIBIT 1

1.6 “Class Representative” means Jackson County, Missouri.

1.7 “Common Fund for Prior ET Plus Replacement” means the \$3,500,000 (USD) common fund created pursuant to this Agreement to reimburse Class Members for costs, specified in Section 6.6, they incurred before February 18, 2022, to remove and replace undamaged 4-inch ET Plus devices on roads owned and maintained by the respective Class Members.

1.8 “Common Fund for ET Plus Location” means the \$2,500,000 (USD) common fund created pursuant to this Agreement to reimburse Class Members for the cost of locating and identifying undamaged 4-inch ET Plus devices currently on roads owned and maintained by the respective Class Members.

1.9 “Court” means the Circuit Court of Jackson County at Independence, Missouri where the Litigation was filed, is pending, and the Settlement will be submitted for approval.

1.10 “Defendant” or “Defendants” means Defendants Trinity Industries, Inc. and Trinity Highway Products, LLC, including their past, present and future direct or indirect parent companies, affiliate companies, subsidiary companies, assigns, and successor entities

1.11 “Defense Counsel” mean Defendants’ counsel of record in the Litigation, including: Bartlit Beck LLP and Scharnhorst Ast Kennard Griffin PC.

1.12 “Effective Date” means the date of the Final Judgment.

1.13 “4-inch ET Plus” means the ET Plus guardrail end terminal with 4-inch wide guide channels manufactured and sold by Trinity Highway Products, LLC. For purposes of this Agreement, the term “feeder chutes” is synonymous with the term “guide channels.”

1.14 The term “undamaged” in reference to a 4-inch ET Plus means that the device is not materially damaged to the point that an ordinary person exercising reasonable care in maintaining roads would remove the device. Ordinary wear and tear does not render a 4-inch ET Plus “damaged” as that term is used in this Agreement.

1.15 “Final Judgment” means (a) if no appeal from the Final Approval Order is filed, the date of expiration of the time for the filing or noticing of any appeal from the Judgment; or (b) if an appeal from the Final Approval Order is filed, and the Final Approval Order is affirmed or the appeal dismissed (“Appellate Judgment”), the date of such affirmance or dismissal; or (c) if a petition for review of the Appellate Judgment is filed and denied, the date the petition is denied; or (d) if a petition for review of the Appellate Judgment is filed and granted, or the Missouri Supreme Court orders review of the Appellate Judgment on its own motion, the date the Appellate Judgment is affirmed or the review proceeding dismissed, provided no other appeals or certiorari petitions may be filed; or (e) if any further appeal or certiorari petition is filed and not dismissed or denied, the date the Final Approval Order is upheld on appeal in all material respects and is no longer subject to any further appellate review.

1.16 “Litigation” means the lawsuit captioned *Jackson County, Missouri v. Trinity Industries, Inc., et al.*, Case No. 1516-CV23684, pending in the Circuit Court of Jackson County at Independence, Missouri.

1.17 “Settlement Notice” means the class action notice of settlement, substantially in the form of **Exhibit A** hereto, to be published on the settlement website and disseminated to Class Members by first class mail following the entry of the Preliminary Approval Order.

1.18 “Claim Notice” means the notice to Class Members, substantially in the form of **Exhibit B** hereto, to be published on the settlement website and disseminated to Class Members by first class mail following the entry of the Final Approval Order. The Claim Notice will also include a copy of the Claim Form.

1.19 “Preliminary Approval Order” means the Court’s order granting preliminary approval of this Agreement and ordering dissemination of the Settlement Notice. The parties will work together in good faith to submit a joint proposed preliminary approval order to the Court. Class Counsel will draft the initial joint proposed preliminary approval order.

1.20 “Final Approval Order” means the Court’s order granting final approval of this Agreement and entering judgment on the Agreement. The parties will work together in good faith to submit a joint proposed final approval order to the Court. Class Counsel will draft the initial joint proposed final approval order.

1.21 “Released Claims” means any claims that were or could have been asserted against the “Released Entities,” or against any other person or entity involved in any manner with the design, development, testing, patent, purchase, license, marketing, sale, manufacture, assembly, distribution, delivery, installation, supervision of installation, repair, maintenance, or approval of the 4-inch ET Plus end terminals at issue, by any Class Member based on the facts alleged in the Petition dated November 5, 2015, provided, however, that Class Members shall not release any claims arising out of personal injury or wrongful death claims or lawsuits against any Class Member.

1.22 “Released Entities” means Defendants Trinity Industries, Inc. and Trinity Highway Products, LLC, including their past, present and future direct or indirect parent companies, affiliate companies, subsidiary companies, assigns, and successor entities and each of their affiliates, and the past, present and future direct or indirect officers, directors, shareholders, employees, predecessors, parents, subsidiaries, insurers, agents, attorneys, assigns, affiliates, stockholders, owners, controlling persons, members, managers, contractors, licensors, licensees, dealers, patent holders, manufacturers, servants, successors, trustees, representatives, heirs, executors, and assigns of all of the foregoing people and entities.

1.23 “Settlement” means the terms of the settlement set out in this Agreement.

1.24 “Settlement Administrator” means the third-party settlement and claims administrator agreed upon by the Parties and appointed by the court to administer the notice program and claims process.

Section 2: Settlement Consideration

Pursuant to this Agreement, Defendants will provide six types of consideration to Class Members, subject to the terms of this Agreement. The Settlement Administrator, and not Defendants, shall be responsible for distributing any funds to Class Members – including any determinations of who, when, and how much to pay – all as specified in this Agreement. The Settlement Agreement notes that Trinity Industries, Inc. will pay all of the settlement consideration discussed within this Agreement; however, Defendants are jointly and severally liable for all consideration required of Defendants under this Agreement.

2.1 **Common Fund for Prior ET Plus Replacement.** Pursuant to this Agreement, Trinity Industries, Inc. will pay \$3,500,000 into the Qualified Settlement Fund maintained by the Settlement Administrator to reimburse Class Members for the costs, as specified in Section 6.6, incurred removing and replacing, before February 18, 2022, undamaged 4-inch ET Plus devices from roads owned and maintained by the respective Class Members. The claims process and terms and conditions for the Common Fund for Prior ET Plus Replacement are described in Section 6.

2.2 **Common Fund for ET Plus Location.** Pursuant to this Agreement Trinity Industries, Inc. will pay \$2,500,000 (USD) into the Qualified Settlement Fund maintained by the Settlement Administrator to reimburse Class Members for the cost of locating and identifying undamaged 4-inch ET Plus devices on roads owned and maintained by the respective Class Members. The claims process and terms and conditions for the Common Fund for ET Plus Location is described in Section 7.

2.3 **Replace ET Plus Devices.** During the Claim Period, Class Members will be able to make a claim for the replacement of any undamaged 4-inch ET Plus existing on roads, on or after February 18, 2022, owned and maintained by the Class Members, consistent with the claims process and terms and conditions described in Section 8. For each eligible, undamaged 4-inch ET Plus a Class Member identifies and obtains approval for consistent with the claims process described in this Agreement, Trinity Industries, Inc. will provide, or pay for others to provide, one SoftStop end terminal or other Missouri Department of Transportation-approved Type A MASH tangent end terminal (at Trinity Industries, Inc.'s option) at no charge to the Class Member. For each eligible undamaged 4-inch ET Plus a Class Member identifies and obtains approval for consistent with the claims process identified in Section 8, the Class Member will be entitled to \$1,700 (USD) from the Qualified Settlement Fund toward the costs associated with removal and replacement of the 4-inch ET Plus, subject to the terms of Section 8.

2.4 **Class Counsel's Attorneys' Fees, Costs, and Expenses.** As described in Section 10, Trinity Industries, Inc. agrees to pay Class Counsel's reasonable attorneys' fees and litigation expenses in the aggregate amount of \$11,400,000 (USD), subject to Court approval.

2.5 **Class Representative Service Award.** As described in Section 11, Trinity Industries, Inc. agrees to pay Class Representative Jackson County, Missouri a service award in the amount of \$50,000 (USD), subject to Court approval.

2.6 Notice and Claims Administration. As described in Section 3, Trinity Industries, Inc. agrees to pay the reasonable costs of notice to the Class Members and claims administration. However, Defendants' obligation to pay the cost of notice and claims administration is capped at \$175,000 (USD). Notwithstanding the foregoing, to the extent Defendants challenge the Settlement Administrator's decision to approve a Class Member's claim, Trinity Industries, Inc. will separately be responsible for the administrative costs associated with the challenge, which the Settlement Administrator will separately track and bill to Trinity Industries, Inc. Administrative costs incurred by the Settlement Administrator related to any challenge by Defendants will not count toward the \$175,000 notice and administration cap.

Section 3: Settlement Notice to Class Members

3.1 Class Counsel and Defendants agree, subject to Court approval, to use Analytics Consulting LLC as the Settlement Administrator.

3.2 Defendants will separately pay the reasonable costs of notice and claims administration as quoted by the Settlement Administrator. However, those costs will be capped at \$175,000 (USD), subject to Section 2.6. To the extent the costs of notice and claims administration exceed \$175,000 (USD), those costs will be paid from the portion of the Qualified Settlement Fund funded by the \$1,700 (USD) payments for future 4-inch ET Plus replacements. The Settlement Administrator will invoice Trinity Industries, Inc. monthly.

3.3 The Settlement Administrator will implement a direct mail and website notice program for the Settlement Notice consistent with this Agreement and with the Preliminary Approval Order to apprise Class Members of their rights under the Agreement.

3.4 Within 14 days of the Preliminary Approval Order, the Settlement Administrator will send the Settlement Notice, along with this Agreement, by first class mail to each Class Member. The Settlement Administrator will utilize its best efforts and practices to obtain updated contact information for each Class Member since the class action certification notice was issued in the Litigation in or around June 2019.

3.5 Within 14 days of the Preliminary Approval Order, the Settlement Administrator will create and host a settlement website that contains information for Class Members regarding their rights and obligations under this Agreement. The settlement website will contain, at least, the Petition, the Answer, the Court's December 6, 2017 Order granting class certification, the Settlement Notice, Plaintiff's motion for preliminary approval of the settlement, Plaintiff's motion for final approval of the settlement, and any further motions and orders regarding the Agreement as appropriate. The settlement website will be maintained until the conclusion of the Claim Period.

3.6 Class Members will have 45 days from the date the Settlement Notices are mailed to object to the Agreement. Any objections must be submitted in writing and contain: (1) identification of the Class Member and reasonable supporting documentation evidencing the objector's right to act on behalf of the Class Member, including proof that objector is a Class Member; (2) identification of any counsel representing the objecting Class Member; (3) the factual

and legal basis for the objection; and (4) a statement of whether the Class Member plans to appear in person at the final fairness hearing. Any objections must be mailed to the Settlement Administrator, who shall promptly remit copies to Class Counsel and Defendants' Counsel. Any objection that is not postmarked on or before 45 days from the date of the mailing of the Settlement Notices will be untimely and not considered.

3.7 The Settlement Administrator will timely make available to Defendants any and all materials of whatever kind that any and all Class Members submit or otherwise make available to the Settlement Administrator.

Section 4: Establishing and Funding the Qualified Settlement Fund

4.1 Within 14 days of the Effective Date, the Settlement Administrator will create a Qualified Settlement Fund pursuant to Treas. Reg. §1.468B-1 that will hold all payments from Defendants for the Common Fund for Prior ET Plus Replacement, the Common Fund for ET Plus Location, and the Common Fund for the \$1,700 (USD) payments for future 4-inch ET Plus replacements, to be accounted for separately. The Settlement Administrator will be responsible for all compliance and tax filings for the Qualified Settlement Fund. The costs associated with maintaining the Qualified Settlement Fund will be paid from the Qualified Settlement Fund.

4.2 Upon creation of the Qualified Settlement Fund, the Settlement Administrator will provide wire instructions and a W-9 for the account to Defendants.

4.3 Within 21 days of receiving the wire instructions and W-9 from the Settlement Administrator as provided in Section 4.2, Trinity Industries, Inc. will wire \$6,000,000 (USD) into the Qualified Settlement Fund (representing \$3,500,000 (USD) for the Common Fund for Prior ET Plus Replacement and \$2,500,000 (USD) for the Common Fund for ET Plus Location).

Section 5: Claim Notice to Class Members

5.1 The Settlement Administrator will implement a direct mail and website notice program for the Claim Notice consistent with this Agreement to apprise Class Members of their rights and obligations under the Agreement following the entry of the Final Approval Order.

5.2 Within 14 days of the Effective Date, the Settlement Administrator will send the Claim Notice (including the Claim Form) by first class mail to each Class Member. The Settlement Administrator will utilize its best efforts and practices to obtain updated contact information for each Class Member.

5.3 Within 14 days of the Effective Date, the Settlement Administrator will post the information contained in the Claim Notice (including the Claim Form) on the settlement website. The Settlement Administrator will maintain the settlement website for the duration of the Claim Period.

5.4 For the duration of the Claim Period, the Settlement Administrator will maintain a post office box, email address, and ShareFile (or other equivalent electronic file transfer service)

to receive Class Member claims pursuant to this Agreement. The Settlement Administrator will post these methods of submitting a claim on the settlement website and maintain it there for the duration of the Claim Period.

5.5 For the duration of the Claim Period, the Settlement Administrator will provide quarterly reports to Class Counsel and Defendants regarding claims activity, including identifying claims submitted to the Settlement Administrator; identifying whether the Settlement Administrator has approved or denied the claims; identifying whether Defendants have paid the claims; and any outstanding issues regarding unpaid claims. This is in addition to claims reporting obligations required elsewhere in this Agreement.

Section 6: Claims Process for the Common Fund for Prior ET Plus Replacement

6.1 As described above in Section 4.3, Trinity Industries, Inc. will pay \$3,500,000 (USD) into the Qualified Settlement Fund specifically for Class Members to make claims against the Common Fund for Prior ET Plus Replacement. If, after the passage of the one-year period following the Effective Date, the Common Fund for Prior ET Plus Replacement is not exhausted by Class Member claims for the costs incurred removing and replacing, before February 18, 2022, undamaged 4-inch ET Plus devices from roads owned and maintained by the respective Class Members, the fund may be used to fund Defendants' other obligations under this Agreement, but it shall not revert to Defendants.

6.2 For a one-year period following the Effective Date, Class Members will be eligible to make a claim against the Common Fund for Prior ET Plus Replacement. Claims will be paid on a quarterly basis until the expiration of the one-year period following the Effective Date or until the funds are exhausted, whichever is earlier.

6.3 Only undamaged 4-inch ET Plus devices that were removed and replaced from roads owned and maintained by a Class Member on or before February 18, 2022, are eligible for reimbursement.

6.4 To make a claim against the Common Fund for Prior ET Plus Replacement under this Section, Class Members must submit a claim to the Settlement Administrator. Class Members may use the Claim Form or submit a letter that includes the information required in the Claim Form. In addition, Class Members must submit with their Claim Form (or equivalent letter) reasonable supporting documentation showing the date, location, number of undamaged 4-inch ET Plus devices replaced, and cost of removal and replacement of each undamaged 4-inch ET Plus device on roads the Class Member owns and maintains.

6.5 For purposes of this section, reasonable supporting documentation for each undamaged 4-inch ET Plus device replaced includes any documents sufficient to show the removal and replacement of an undamaged 4-inch ET Plus device, and the date, location, and cost of removal and replacement. These documents include, but are not limited to, contracts, bid documents, invoices, payments, change orders, and other project documents. These documents can also be accompanied by an attestation from the Class Member explaining the documentation submitted with the Claim Form and the basis for the claim. The Settlement Administrator will

approve any claim from a Class Member for the cost of removal and replacement under this Section that reasonably establishes that one or more undamaged 4-inch ET Plus devices were removed and replaced, on or before February 18, 2022, from roads owned and maintained by a Class Member and the location, date, and cost of each such removal and replacement.

6.6 The costs eligible for reimbursement under this Section include any costs reasonably related to the removal and replacement of an undamaged 4-inch ET Plus and charged by, and paid to, the contractor or entity removing and replacing the 4-inch ET Plus. These costs include, but are not limited to, locating the previously removed 4-inch ET Plus, the replacement end terminal, the removal and disposal of the 4-inch ET Plus, traffic control, as well as guardrail, transition sections, and grading for the replacement guardrail end terminal system and other costs that are reasonably related to the removal and replacement of an undamaged 4-inch ET Plus.

6.7 During the one-year period for Class Members to make claims under this Section, the Settlement Administrator will make an initial determination of whether the claims should be approved or denied within 30 days of the submission of the claim. The Settlement Administrator will inform the Class Member, Class Counsel, and Defendants of its decision to approve or deny the Class Member's claim and will make available to the Class Member, Class Counsel, and Defendants all information submitted by the Class Member in support of the claim within seven days of its decision.

6.8 If the Class Member's claim is denied, the Class Member may petition the Settlement Administrator to review the Class Member's claim within 21 days of the Class Member being informed by the Settlement Administrator that its claim has been denied. The Settlement Administrator will then approve or deny the claim based on the criteria set forth in Section 6. If the Class Member's petition for review is denied, the Class Member may petition the Court for review of the denied claim, and Defendants shall be provided notice and afforded an opportunity to be heard; however, the Court's decision will be final and not subject to appeal. Any appeal to the Court must be done within seven days of the Class Member being informed by the Settlement Administrator that its petition has been denied.

6.9 If the Class Member's claim is granted, the Defendants may petition the Settlement Administrator to review the Class Member's claim within 21 days of the Defendants being informed by the Settlement Administrator that the Class Member's claim has been granted and of receipt of all information submitted by the Class Member in support of the claim. If the approved claim involves a large volume of past replacements and supporting documentation, Defendants may apply to the Settlement Administrator for an extension of time to file a petition, and such requests will be liberally granted. The Settlement Administrator will then approve or deny the claim based on the criteria set forth in this Section 6. If either Defendant's petition for review is denied, the Defendants may petition the Court for review of the Class member's claim at issue, and the Class Member shall be provided notice and afforded an opportunity to be heard; however, the Court's decision will be final and not subject to appeal. Any appeal to the Court must be done within seven days of the Defendants being informed by the Settlement Administrator that the Defendants' petition has been denied.

6.10 Every 90 days from the Effective Date until the \$3,500,000 (USD) fund is exhausted or until the one-year claim period expires, the Settlement Administrator will prepare a report for Class Counsel and Defendants identifying the number of claims, the Class Members that submitted claims, the number of undamaged 4-inch ET Plus devices claimed were previously removed by each Class Member, and the dollar amount sought by each Class Member.

6.11 The Settlement Administrator will issue checks pursuant to this Section to Class Members for approved claims on a quarterly basis following the Effective Date. The Settlement Administrator shall not pay any claim within 30 days of approval or any claim that has been disputed and is pending review by the Settlement Administrator or Court.

6.12 If the aggregate amount of approved claims at any point under this Section is more than \$3,500,000 (USD), the Settlement Administrator will issue checks as follows:

- a. First, any checks already issued during the payment period shall be valid and irrevocable.
- b. Second, each Class Member submitting an approved claim will recover the full costs associated with the Class Member's removal and replacement of up to 25 undamaged 4-inch ET Plus devices from the funds remaining.
- c. Third, any remaining funds will be distributed pro rata to Class Members based on the total value of each Class Member's outstanding, approved claims.

Section 7: Claims Process for the Common Fund for ET Plus Location

7.1 In accordance with Section 4 of this Agreement, Trinity Industries, Inc. will pay \$2,500,000 (USD) into the Qualified Settlement Fund specifically for Class Members to make claims against the Common Fund for ET Plus Location. If the Common Fund for ET Plus Location is not exhausted by Class Member claims or if funds paid under this Section 7 are unused by a Class Member and returned to the Common Fund pursuant to Section 7.5, the remainder of the fund will be used to pay excess claims against the Common Fund for Prior ET Plus Replacement. If the Common Fund for ET Plus Location is not exhausted and the Common Fund for Prior ET Plus Replacement is not exhausted, the fund may be used to fund Defendants' other obligations under this Agreement, but it shall not revert to Defendants.

7.2 For a 90-day period following the Effective Date, Class Members will be eligible to make a claim against the Common Fund for ET Plus Location.

7.3 To make a claim against the Common Fund for ET Plus Location under this Section, Class Members must submit a claim to the Settlement Administrator. Class Members may use the Claim Form or submit a letter that includes the information required in the Claim Form. In addition, Class Members must submit with their Claim Form (or equivalent letter) reasonable documentation supporting the Class Member's claimed cost of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member.

7.4 For purposes of this Section, reasonable supporting documentation includes any documents establishing the projected reasonable cost of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member. These documents include, but are not limited to, contracts for a survey or scan of Class Member roads, bid documents, invoices, payments, change orders, and other project documents. These documents can also be accompanied by an attestation from the Class Member explaining the Class Member's good faith estimate of the cost to locate 4-inch ET Plus devices on roads owned and maintained by the Class Member. The Settlement Administrator will approve any claim from a Class Member under this Section that reasonably establishes the reasonable projected costs of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member, although this does not preclude the Settlement Administrator, subject to Court oversight, from auditing any such request for accuracy and reasonableness.

7.5 Class Members in their Claim Form (or equivalent letter) must attest that the funds approved under this Section 7 of this Agreement will be used for the sole purpose of paying the costs of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member and that the Class Member will return within two years of the Class Member's receipt of funds approved under this Section 7 of this Agreement to the Settlement Administrator for deposit in the Common Fund any funds paid to the Class Member under this Section 7 that have not been used for the purpose of locating 4-inch ET Plus devices. By the end of the two-year period, each Class Member who received funds under this Section 7 must certify in writing to the Settlement Administrator that all funds have been used for the sole purpose of paying the costs of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member or that all unused funds have been returned to the Settlement Administrator for deposit in the Common Fund.

7.6 In evaluating the reasonableness of a claim under this Section 7, the Settlement Administrator will take into consideration the number of road miles owned and maintained by the Class Member. In other words, the more road miles a Class Member owns and maintains, the more expensive it may be to locate 4-inch ET Plus devices.

7.7 During the 90-day period during which Class Members may make claims under this Section, the Settlement Administrator will make an initial determination of whether a claim should be approved or denied within 30 days of the submission of the claim. The Settlement Administrator will inform the Class Member, Class Counsel, and Defendants of its decision to approve or deny the Class Member's claim within seven days of its decision.

7.8 If the Class Member's claim is denied, the Class Member may petition the Settlement Administrator to review the Class Member's claim within 30 days of the denial of its claim. The Settlement Administrator will then approve or deny the claim based on the criteria set forth in this Section. If the Class Member's petition for review is denied, the Class Member may petition the Court for review; however, the Court's decision will be final and not subject to appeal. Any appeal to the Court must be done within seven days of the denial of the petition to the Settlement Administrator.

7.9 Within 14 days following the conclusion of the 90-day period for Class Members to submit claims under this section, the Settlement Administrator will prepare a report for Class Counsel and Defendants identifying the number of claims, the Class Members that submitted

claims, and the dollar amount sought by each Class Member. If the aggregate amount claimed is equal to or less than \$2,500,000, the Settlement Administrator will issue settlement checks to each Class Member in the amount of their approved claim within 30 days of the conclusion of the 90-day period for Class Members to submit claims under this Section.

7.10 If the aggregate amount claimed is more than \$2,500,000, the Settlement Administrator will issue checks as follows:

- a. The Common Fund for ET Plus Location will be distributed pro rata among Class Members submitting claims based on the Class Member's proportional miles of roads owned and maintained by the Class Member relative to the total miles of roads owned and maintained by all Class Members submitting claims under this Section.
- b. The Settlement Administrator will submit its report and proposed allocation under this Paragraph to Class Counsel and Defendants within 14 days of the conclusion of the 90-day period for Class Members to submit claims under this Section.
- c. Settlement checks will be issued to each Class Member for their proportional share of the Common Fund for ET Plus Location within 30 days of the conclusion of the 90-day period for Class Members to submit claims under this Section.

7.11 Notwithstanding the foregoing, if a Class Member uses a third-party contractor to perform the work described in this Section 7, then the Class Member's approved claim will be paid directly to the third-party contractor by the Settlement Administrator as the work is invoiced. If the work performed by the third-party contractor is lower than the estimated cost approved for the Class Member under this Section 7, then only the amount actually invoiced will be paid and the difference will remain in the Qualified Settlement Fund to be used as provided in Section 7.1.

Section 8: Claims Process to Replace ET Plus Devices

8.1 During the Claim Period, Class Members will be able to make a claim for the replacement of any undamaged 4-inch ET Plus existing, on or after February 18, 2022, on the roads owned and maintained by the Class Member. For each eligible 4-inch ET Plus, Trinity Industries, Inc. agrees to provide, or pay for others to provide, one SoftStop end terminal or other MoDOT-approved Type A MASH tangent end terminal (at Trinity Industries Inc.'s option) at no charge to the Class Member. For each approved claim for 4-inch ET Plus replacement under this Section, Trinity Industries Inc. will also pay \$1,700 (USD) per replaced ET Plus into the Qualified Settlement Fund toward the costs associated with removal and replacement, unless not-exhausted funds are available to fund Defendants' obligations, as described in Section 7.1, in which case those not-exhausted funds shall be used instead.

8.2 Class Members may submit as many claims for the replacement of any existing, undamaged 4-inch ET Plus units on roads owned and maintained by a Class Member as necessary during the Claim Period and may do so on a rolling basis during the Claim Period.

8.3 To make a claim under this Section, Class Members must submit a claim to the Settlement Administrator. Class Members shall use the Claim Form, which shall contain the signature of a person authorized to bind the submitting Class Member, certifying the truth of the information contained in the Claim Form and the accompanying documentation. In addition, Class Members must submit with their Claim Form reasonable supporting documentation showing that the Class Member has identified and replaced, or will promptly replace, an undamaged 4-inch ET Plus on roads owned and maintained by the Class Member. With respect to the removed 4-inch ET Plus, the Class Member may either (1) attest that the removed 4-inch ET Plus will not be installed on any roads owned and maintained by the Class Member and that it will not be resold for installation *or* (2) that it will be sold for scrap metal. Alternatively, Defendants, at their option and expense, may arrange for the removed 4-inch ET Plus to be destroyed. However, Defendants must exercise this right within 30 days of the final approval of a Class Member claim and then promptly work with the Class Member to collect the removed 4-inch ET Plus at no cost to the Class Member.

8.4 For purposes of this Section, reasonable supporting documentation must include documents sufficient to show that (a) the Class Member has replaced, or will promptly replace, an undamaged 4-inch ET Plus; (b) the location of the 4-inch ET Plus on roads owned and maintained by the Class Member; (c) the date on which the replacement was made or is reasonably expected to be made; (d) that the 4-inch ET Plus involved in the claim has or had 4-inch wide guide channels; and (e) that the 4-inch ET Plus involved in the claim is undamaged, or if already replaced, was undamaged at the time of replacement. Each submission for each end terminal must include photographs, videos, or lidar scan imaging and data sufficient to identify the end terminal as an undamaged ET Plus with 4-inch guide channels. Additional supporting documents include, but are not limited to, the results of a survey or scan of Class Member roads pursuant to Section 7, contracts for removal of a 4-inch ET Plus, bid documents for the removal of a 4-inch ET Plus, invoices for the removal of a 4-inch ET Plus, payments for the removal of a 4-inch ET Plus, change orders for the removal of a 4-inch ET Plus, other project documents related to the removal of a 4-inch ET Plus, and/or measurements. These documents shall be accompanied by an attestation from the Class Member explaining the Class Member's good faith basis for entitlement to a claim for ET Plus Replacement under this Section. The Settlement Administrator will approve any claim from a Class Member under this Section that reasonably shows that (a) the Class Member has replaced, or will promptly replace, a 4-inch ET Plus; (b) the location of the 4-inch ET Plus on roads owned and maintained by the Class Member; (c) the date on which the replacement was made or is reasonably expected to be made; (d) that the 4-inch ET Plus involved in the claim has or had 4-inch wide guide channels; and (e) that the 4-inch ET Plus involved in the claim is undamaged, or if already replaced, was undamaged at the time of replacement.

8.5 During the Claim Period, the Settlement Administrator will make an initial determination of whether a claim should be approved or denied within 30 days of the submission of the claim. The Settlement Administrator will inform the Class Member, Class Counsel, and Defendants of its decision to approve or deny the Class Member's claim and will make available to the Class Member, Class Counsel, and Defendants all information submitted by the Class Member in support of the claim within seven days of its decision.

8.6 If the Class Member's claim is denied, the Class Member may petition the Settlement Administrator to review the Class Member's claim within 21 days of the Class Member being informed by the Settlement Administrator that its claim has been denied. The Settlement Administrator will then approve or deny the claim based on the criteria set forth in this Section. If the Class Member's petition for review is denied, the Class Member may petition the Court for review, and the Defendants shall be provided notice and afforded an opportunity to be heard; however, the Court's decision will be final and not subject to appeal. Any appeal to the Court must be done within seven days of the Class Member being informed by the Settlement Administrator that its petition has been denied.

8.7 If the Class Member's claim is granted, the Defendants may petition the Settlement Administrator to review the Class Member's claim within 14 days of Defendants being informed by the Settlement Administrator that the Class Member's claim has been granted and of receipt of all information submitted by the Class Member in support of the claim. If the approved claim involves a large volume of replacements and supporting documentation, Defendants may apply to the Settlement Administrator for an extension of time to file a petition, and such requests will be liberally granted. The Settlement Administrator will then approve or deny the claim based on the criteria set forth in Section 6 above. If either Defendant's petition for review is denied, the Defendants may petition the Court for review of the Class member's claim at issue, and the Class Member shall be provided notice and afforded an opportunity to be heard; however, the Court's decision will be final and not subject to appeal. Any appeal to the Court must be done within seven days of the Defendants being informed by the Settlement Administrator that the Defendants' petition has been denied.

8.8 The Settlement Administrator will prepare a report every month for Class Counsel and Defendants identifying, for all approved claims for which the 30 day period to petition has run and for which no petition to the Settlement Administrator or Court is outstanding, the Class Members that submitted a claim, the number of SoftStop devices (or other MoDOT-approved Type A MASH tangent end terminal) approved for each Class Member, the reasonable supporting documentation submitted with the claim, and the number of \$1,700 (USD) payments approved for each Class Member. This report will also contain the shipping address supplied by the Class Member for the replacement Type A MASH tangent end terminal to be shipped to.

8.9 Within 30 days of receipt of the Settlement Administrator's report, Trinity Industries, Inc. will wire the total approved dollar amounts to the Qualified Settlement Fund, unless not-exhausted funds are available to fund Defendants' obligations, as described in Section 7.1, in which case those not-exhausted funds shall be used instead.

8.10 Within 30 days of receipt of the Settlement Administrator's report, Trinity Industries, Inc. will order on the Class Member's behalf and subsequently pay for the approved number of SoftStop devices (or other MoDOT-approved Type A MASH tangent end terminal at Trinity Industries, Inc.'s option) requested by each Class Member to be shipped to the addresses within the State of Missouri provided by the Class Member. These end terminals will be shipped to the addresses at no charge to the Class Member. All Parties acknowledge and agree that factors outside of Defendants control, including supply or shipping constraints, may delay shipment or delivery of these end terminals, and this Agreement only requires that Trinity Industries, Inc. act

in good faith to ensure timely shipment of the SoftStop devices or other MoDOT-approved Type A MASH tangent end terminals.

8.11 Any end terminals, parts, materials, equipment, or components provided to Class Members under this Agreement from suppliers or manufacturers of MoDOT-approved Type A MASH tangent end terminals will be covered under any express or implied warranty provided by the specific supplier, manufacturer, or installer of the MoDOT-approved Type A MASH tangent end terminals. Trinity Industries, Inc. neither makes nor assumes any warranties express or implied regarding the MoDOT-approved Type A MASH tangent end terminals that are subject to this Agreement.

8.12 Within seven days of receipt of settlement funds for approved claims under this Section into the Qualified Settlement Fund, the Settlement Administrator will issue checks to Class Members.

Section 9: Release of Claims

9.1 In exchange for the monetary consideration provided in this Agreement, and for other good and valuable consideration and undertakings set forth in this Agreement, immediately and automatically, upon the Effective Date, all Class Members will have completely and forever discharged and released the Released Claims as against the Released Entities.

9.2 Class Counsel, Plaintiff, and the Class Members acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Agreement, and to release the Released Claims, and, by executing this Agreement, agree that they have not relied upon any statements or representations made by Defendants, or any individual or entity representing Defendants, other than as expressly set forth in this Agreement. Plaintiff and the Class Members expressly waive and assume the risk of any and all Released Claims that the Plaintiff and the Class Members do not know about or suspect to exist, and which, if known, would materially affect Plaintiff's and the Class Members' decision to enter into this Agreement. Plaintiff and the Class Members specifically acknowledge, understand, and agree that they are not relying in any way on any matter or information conveyed or not conveyed by Defendants to them. Plaintiff and the Class Members further agree that they accept the consideration provided in this Agreement as a complete compromise, resolution, and settlement of the Released Claims.

Section 10: Class Counsel's Attorneys' Fees, Costs, and Expenses

10.1 In addition to the funds and in-kind relief made available under this Agreement, Trinity Industries, Inc. agrees to separately pay Class Counsel's reasonable attorneys' fees and litigation expenses of \$11,400,000 (USD). Defendants do not agree to pay more than \$11,400,000 (USD) in combined attorneys' fees and litigation expenses. The payment of Class Counsel's reasonable attorneys' fees and expenses is subject to Court approval. Defendants agree not to object, oppose, or assist in any objection or opposition to Class Counsel's request to the Court for combined attorneys' fees and litigation expenses up to \$11,400,000 (USD). Class Counsel agree they will not seek and will not accept more than \$11,400,000 (USD) in combined attorneys' fees and litigation expenses related to this Litigation.

10.2 Within 14 days of the Effective Date, Trinity Industries Inc. will wire the combined amount of attorneys' fees and expenses awarded by the Court to Class Counsel, in an amount not to exceed \$11,400,000 (USD). Class Counsel will provide Defendants with a completed IRS Form W-9 and wire instructions within one day of the Effective Date.

10.3 Class Counsel in their sole discretion will allocate attorneys' fees and expenses among the counsel performing common benefit work at Class Counsel's direction.

Section 11: Class Representative Service Award

11.1 In addition to the funds and in-kind relief made available under this Agreement, Defendants agree to separately pay, subject to Court approval, a service award in an amount not to exceed \$50,000 (USD) to Class Representative Jackson County, Missouri. Defendants agree not to object, oppose, or assist in any objection or opposition to Class Representative's request for a service award up to \$50,000 (USD).

11.2 Within 14 days of the Effective Date, Trinity Industries, Inc. will issue a check to Class Representative Jackson County, Missouri in the amount of the approved service award in an amount not to exceed \$50,000 (USD). Trinity Industries, Inc. will mail the check to Class Counsel who will then distribute it to the Class Representative.

Section 12: Contingency if the Effective Date Does Not Occur

12.1 In the event the Effective Date does not occur, the parties agree to work together in good faith to modify this Agreement to achieve a settlement that the Court will approve. To the extent the parties encounter difficulties reaching an agreement, the parties agree to reengage The Hon. Charles Atwell (Ret.) to mediate the dispute within 30 days of the failure of the Effective Date to occur.

12.2 In the event the Effective Date does not occur and the parties are unable to resolve their dispute following mediation, this Agreement will be void. The parties will revert to the same position they were in as of February 17, 2022. Defendants agree to offer Brian Smith (in his capacity as fact witness and corporate representative) for a two-day deposition before trial. The parties further agree that, within 90 days of the completion of renewed mediation with judge Atwell, they will seek a new trial date. In the event the Effective Date does not occur, the parties will share the costs of the Settlement Administrator evenly.

Section 13: Miscellaneous Provisions

13.1 Defendants deny all allegations made by Plaintiff and the Class Members in the Lawsuit.

13.2 This Agreement is not, and the terms of this Agreement are not to be construed as, an admission of any liability of any kind whatsoever by Defendants, including but not limited to strict liability, negligence, willful misconduct, noncompliance with a legal obligation, breach of

contract, breach of warranty, liability, intentional misconduct, gross negligence, or fault, misconduct, or wrongdoing of any kind whatsoever by Defendants, but is to be construed strictly as a compromise and settlement for the purpose of avoiding further controversy, litigation, and expense.

13.3 Each Class Member on its own behalf understands and agrees that each Class Member is responsible for any tax consequences to each such Class Member arising from, related to, or any way connected with the relief afforded to each such corresponding Class Member under this Agreement.

13.4 The parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

13.5 This Agreement may be amended or modified only by a written instrument signed by or on behalf of all parties or their respective successors-in-interest.

13.6 This Agreement and the Exhibits attached hereto constitute the entire agreement among the parties, and no representations, warranties, or inducements have been made to any party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants covered and memorialized herein. Except as otherwise provided herein, the parties will bear their own respective costs.

13.7 Class Counsel, on behalf of the Class, are expressly authorized by the Class Representative to take all appropriate action required or permitted to be taken by the Class pursuant to this Agreement to effectuate its terms, and are expressly authorized by the Class Representative to enter into any non-material modifications or amendments to this Agreement on behalf of the Class that Class Counsel deem appropriate, subject to agreement by the Defendants and the approval of the Court.

13.8 The persons executing this Agreement on behalf of each party warrants that he or she has the full authority to do so.

13.9 This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original counterparts will be filed with the Court.

13.10 This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

13.11 The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement through the duration of the Claim Period, and all parties hereto, including Class Members, submit to the jurisdiction of the Court for purposes of implementing and enforcing the Agreement.

13.12 This Agreement and the Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Missouri without giving effect to that State's choice-of-law principles.

Defendant Trinity Industries, Inc.

Dated: _____

By: _____

Title: _____

Defendant Trinity Highway Products, LLC

Dated: _____

By: _____

Title: _____

Class Representative Jackson County, Mo.

Dated: May 10, 2022

By: Bryan O Covinsky

Title: County Counselor of JACKSON County

13.12 This Agreement and the Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Missouri without giving effect to that State's choice-of-law principles.

Defendant Trinity Industries, Inc.

Dated: _____

By: _____

Title: _____

Defendant Trinity Highway Products, LLC

Dated: 5/19/2022

By: 

Title: President

Class Representative Jackson County, Mo.

Dated: _____

By: _____

Title: _____

13.12 This Agreement and the Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Missouri without giving effect to that State's choice-of-law principles.

Defendant Trinity Industries, Inc.

Dated: May 19, 2022

By: Sarah Teahart

Title: EVP and Chief Legal Officer

Defendant Trinity Highway Products, LLC

Dated: _____

By: _____

Title: _____

Class Representative Jackson County, Mo.

Dated: _____

By: _____

Title: _____

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Jackson County, Missouri v. Trinity Industries, Inc., and Trinity Highway Products, LLC

If you have or had Trinity ET Plus guardrail end terminals with 4-inch wide feeder chutes installed on roadways you own and maintain, you may be included in a proposed class action settlement. Please read this Notice carefully.

TO: <<Class Member Entity>>
<<c/o County Executive, Commissioner, etc.>>
<<Address >>
<<City>><<State>><<Zip>>

Your ID Number is <<ID>>

Dear <<Name>>,

You have been sent this Notice of Proposed Class Action Settlement (the "Notice") because you might be a Class Member in the class action lawsuit captioned *Jackson County, Missouri, et al. v. Trinity Industries, Inc., et al.*, pending in the Circuit Court of Jackson County, Missouri, Case No. 1516-CV23684 ("the Court"). The Court approved this notice.

If you have removed an undamaged ET Plus guardrail end terminal with 4-inch wide feeder chutes from roadways you own and maintain, or you have an undamaged ET Plus guardrail end terminal with 4-inch wide feeder chutes installed on roadways you own and maintain, then you may be entitled to monetary and in-kind benefits afforded under the proposed class action settlement.

The enclosed Notice explains your legal rights.

Please read the Notice carefully as your legal rights may be impacted.

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

**A COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.
YOU ARE NOT BEING SUED.
THIS NOTICE AFFECTS YOUR LEGAL RIGHTS.**

A proposed settlement has been reached in this case between Class Representative Jackson County, Missouri and Defendants Trinity Industries, Inc., and Trinity Highway Products, LLC (collectively referred to throughout this Notice as “Trinity”) to resolve a class action alleging that the ET Plus guardrail end terminal with 4-inch wide feeder chutes manufactured and sold by Trinity Highway Products, LLC (referred to throughout this Notice as “4-inch ET Plus”) was defectively designed and unreasonably dangerous. Trinity denies these allegations. The Court has preliminarily approved the settlement and authorized this Notice to Class Members.

The proposed settlement provides for both monetary relief if you previously replaced an undamaged 4-inch ET Plus on roads you own and maintain and materials and money to replace existing, undamaged 4-inch ET Pluses that are on roads you own and maintain, subject to the terms and conditions set forth in the proposed settlement. This Notice explains your rights and options under the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
SUBMIT A CLAIM FORM AFTER THE SETTLEMENT IS APPROVED	<p>The only way to get payment and in-kind relief.</p> <p>If you are a Class Member and you submit a valid and timely claim form, you may be, subject to the terms and conditions set forth in the proposed settlement, entitled to monetary relief for the removal and replacement of undamaged 4-inch ET Plus devices that you have already removed and replaced, before February 18, 2022, on roads you own and maintain; the cost of locating undamaged 4-inch ET Plus devices on roads you own and maintain; a free MASH Type A tangent End Terminal for each undamaged 4-inch ET Plus existing, on or after February 18, 2022, on roads you own and maintain, and that you elect to replace; and a flat \$1,700 payment for each undamaged 4-inch ET Plus existing, on or after February 18, 2022, on roads you own and maintain, and that you elect to replace during the period set forth by this settlement.</p>
OBJECT	<p>Write to the Court about why you don’t like the settlement.</p> <p>If you file an objection, you may also be heard at the court hearing held to determine the fairness of the settlement.</p>

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

DO NOTHING	<p>Get no payment. Give up rights.</p> <p>By doing nothing, you will not receive any compensation made available through the proposed settlement. You will still give up your right to sue Trinity for claims released under the settlement.</p>
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BASIC INFORMATION

1. Why did I get this Notice?

You are either: a Missouri county with a population of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014; the independent city, the City of St. Louis; or the State of Missouri's transportation authority. The Court decided to allow a class action lawsuit to proceed against Trinity related to whether the 4-inch ET Plus devices that Trinity Highway Products, LLC manufactured and sold are defective. Trinity denies these allegations. You were previously sent a notice advising you of class certification and your right to exclude yourself from the litigation in or around June and July of 2019.

Class Representative Jackson County (on behalf of itself and the certified class) has reached a settlement with Defendants. The details of the proposed settlement—including how you can obtain monetary and in-kind relief—are described in this Notice.

2. What is this lawsuit about?

This lawsuit is about whether the 4-inch ET Plus was defective and unreasonably dangerous. Plaintiff sought the cost of removing and replacing these devices from all roads owned and maintained by Class Members. Trinity denies these allegations. You can read Plaintiff's Class Action Complaint at [\[class website\]](#).

THE SETTLEMENT BENEFITS

3. What benefits are available to Class Members under the settlement?

There are three types of relief available under the proposed settlement, all of which are subject to the terms and conditions of the proposed settlement.

Included with this Notice is a copy of the Settlement Agreement. You can read more about the specific types of relief available and how to claim them in the Agreement.

Reimbursement for Prior ET Plus Replacement: Trinity Industries, Inc. will pay \$3,500,000 to reimburse Class Members for the costs incurred removing and replacing, before February 18, 2022, undamaged 4-inch ET Plus devices from roads owned and maintained by the respective Class Members. Class Members may submit a claim and, if

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

approved, recover monetary relief based on the cost of undamaged 4-inch ET Plus devices the Class Member previously removed and replaced.

Reimbursement for Cost of Locating ET Plus Devices: Trinity Industries, Inc. will pay \$2,500,000 to reimburse Class Members for the cost of locating and identifying undamaged 4-inch ET Plus devices on roads owned and maintained by the respective Class Members. Class Members may submit a claim and, if approved, receive monetary relief based on the cost of locating undamaged 4-inch ET Plus devices on roads owned and maintained by the Class Member.

Replace ET Plus Devices. During the six-year period following the date of the Final Judgment, Class Members will be able to make a claim for the replacement of any undamaged 4-inch ET Plus existing on roads, on or after February 18, 2022, owned and maintained by the Class Members. For each eligible, undamaged 4-inch ET Plus a Class Member identifies and obtains approval for, Trinity Industries, Inc. will provide, or pay for others to provide, one SoftStop end terminal or other Missouri Department of Transportation-approved Type A MASH tangent end terminal (at Trinity Industries, Inc.'s option) at no charge to the Class Member. For each eligible undamaged 4-inch ET Plus a Class Member identifies and obtains approval for, the Class Member will be entitled to \$1,700 from the Qualified Settlement Fund toward the costs associated with removal and replacement of the 4-inch ET Plus. Class Members may submit as many claims as necessary during the six year period.

OBTAINING SETTLEMENT BENEFITS

4. Do I have to do anything right now to obtain settlement benefits?

No. You do not have to do anything right now to collect your Settlement benefits. If the Court approves the settlement, you will receive a Claim Notice and Claim Form in the mail that you can submit to obtain your settlement benefits.

5. After the Settlement is approved, how do I obtain settlement benefits?

Once the Court approves the settlement, you will receive a Claim Notice and Claim Form in the mail. After you receive the Claim Notice, you will be able to submit the Claim Form by mail or electronically to recover the different types of benefits available under the Settlement.

6. How do I submit a claim for reimbursement of ET Pluses already replaced?

Once the Court approves the settlement, you will receive a Claim Notice and Claim Form in the mail. After you receive the Claim Notice, you will be able to submit the Claim Form by mail or electronically. If your claim is approved, you will, subject to the terms and conditions of the proposed settlement, recover amounts you previously spent to remove and replace undamaged 4-inch ET Plus devices from roads you owned and maintained.

\$3,500,000 has been allocated to reimburse Class Members for costs they have incurred to previously remove and replace undamaged 4-inch ET Plus devices. Class Members will be able to submit claims for a one-year period following the Final Judgment. Claims will

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

be paid on a quarterly basis until the expiration of the one-year period or until the funds are exhausted, whichever is earlier.

The process for submitting a claim will be explained in the Claim Notice and Claim Form. But generally speaking, Class Members will be able to submit a Claim Form or letter describing the number of undamaged 4-inch ET Plus devices the Class Member replaced, when, where, and the cost to do so. Valid claims must be supported by reasonable supporting documentation showing the number of undamaged 4-inch ET Plus devices replaced, when they were replaced, where they were replaced, and the costs of removal and replacement.

Reasonable supporting documents include any documents sufficient to show the removal and replacement of an undamaged 4-inch ET Plus device, and the date, location, and cost of removal and replacement. These documents include, but are not limited to, contracts, bid documents, invoices, payments, change orders, and other project documents. These documents can also be accompanied by an attestation from the Class Member explaining the documentation submitted with the Claim Form and the basis for the claim. Subject to the terms and conditions of the proposed settlement, the Settlement Administrator will approve any claim from a Class Member for the cost of removal and replacement that reasonably establishes that one or more undamaged 4-inch ET Plus devices were removed and replaced, on or before February 18, 2022, from roads owned and maintained by a Class Member and the location, date, and cost of each such removal and replacement. The costs eligible for reimbursement include costs reasonably related to the removal and replacement of an undamaged 4-inch ET Plus and charged by, and paid to, the contractor or entity removing and replacing the 4-inch ET Plus. These costs include, but are not limited to, locating the previously removed 4-inch ET Plus, the replacement end terminal, the removal and disposal of the 4-inch ET Plus, traffic control, as well as guardrail, transition sections, and grading for the replacement guardrail end terminal system and other costs that are reasonably related to the removal and replacement of an undamaged 4-inch ET Plus. The full claims process is explained in the Settlement Agreement, which is included in this Notice. In the event claims are submitted in excess of the \$3,500,000, the Settlement Agreement explains how claims will be prioritized and treated.

7. How do I submit a claim for the cost of locating 4-inch ET Plus devices on my roads?

Once the Court approves the settlement, you will receive a Claim Notice and Claim Form in the mail. After you receive the Claim Notice, you will be able to submit the Claim Form by mail or electronically for reimbursement of the cost of locating undamaged 4-inch ET Plus devices on your roads.

\$2,500,000 has been allocated to reimburse Class Members for the cost of locating undamaged 4-inch ET Plus devices on roads owned and maintained by Class Members. Class Members will be able to submit claims for a 90-day period following the Final Judgment. Claims will be paid following the 90-day claim period.

The process for submitting a claim will be explained in the Claim Notice and Claim Form. But generally speaking, Class Members will be able to submit a Claim Form or letter explaining the claimed cost of locating undamaged 4-inch ET Plus devices on roads owned and maintained by the Class Member. Class Members must submit with their Claim Form (or equivalent letter) reasonable documentation supporting the Class Member's claimed

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

cost of locating undamaged 4-inch ET Plus devices on roads owned and maintained by the Class Member.

Reasonable supporting documentation includes any documents establishing the projected reasonable cost of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member. These documents include, but are not limited to, contracts for a survey or scan of Class Member roads, bid documents, invoices, payments, change orders, and other project documents. These documents can also be accompanied by an attestation from the Class Member explaining the Class Member's good faith estimate of the cost to locate 4-inch ET Plus devices on roads owned and maintained by the Class Member. Subject to the terms and conditions of the proposed settlement, the Settlement Administrator will approve any claim from a Class Member under this Section that reasonably establishes the reasonable projected costs of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member, although this does not preclude the Settlement Administrator, subject to Court oversight, from auditing any such request for accuracy and reasonableness.

The full claims process is explained in the Settlement Agreement, which is included with this Notice. In the event claims are submitted in excess of the \$2,500,000, the Settlement Agreement explains how claims will be prioritized and treated.

8. How do I submit a claim for replacing 4-inch ET Plus devices on my roads?

Once the Court approves the settlement, you will receive a Claim Notice and Claim Form in the mail. After you receive the Claim Notice, you will be able to submit the Claim Form by mail or electronically. Subject to the terms and conditions of the proposed settlement, approved claims will receive a free SoftStop end terminal or other MoDOT-approved Type A MASH tangent end terminal (at Trinity Industries, Inc.'s option) plus a flat payment of \$1,700 toward the cost associated with removal and replacement of each undamaged 4-inch ET Plus on your roads as of February 18, 2022 that you replace.

As many claims as necessary may be submitted throughout a six-year period following the date of the Final Judgment. Class Members must use the Claim Form, which shall contain the signature of a person authorized to bind the submitting Class Member, certifying the truth of the information contained in the Claim Form and the accompanying documentation. In addition, Class Members must submit with their Claim Form reasonable supporting documentation showing that the Class Member has identified and replaced, or will promptly replace, an undamaged 4-inch ET Plus on roads owned and maintained by the Class Member. With respect to the removed 4-inch ET Plus, the Class Member may either (1) attest that the removed 4-inch ET Plus will not be installed on any roads owned and maintained by the Class Member and that it will not be resold for installation or (2) that it will be sold for scrap metal. Alternatively, Trinity, at its option and expense, may arrange for the removed 4-inch ET Plus to be destroyed. However, Trinity must exercise this right within 30 days of the final approval of a Class Member claim and then promptly work with the Class Member to collect the removed 4-inch ET Plus at no cost to the Class Member.

Claims will be paid and the new end terminal will be ordered within 30 days of receipt of each report from the Settlement Administrator, identifying approved claims as described

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

in the settlement agreement. Factors outside of Trinity's control, including supply or shipping constraints, may delay shipment or delivery of the new end terminal.

The full claims process is explained in the Settlement Agreement, which is included with this Notice.

9. What happens if I do not submit a claim?

If any Class Member does not submit a claim as described in the Settlement Agreement, the Class Member will not recover anything from this settlement. But the Class Member will still be bound by the settlement.

10. What am I giving up to get a payment?

Nothing. Because this Court previously certified this case as a class action and granted an opportunity to exclude yourself, all Class Members are part of the settlement. If you are a Class Member, you should submit a claim and obtain the benefits to which you are entitled. If you don't, you will still release your claims but will not receive any of the benefits.

11. What claims are being released by the settlement?

1.1 As part of the Settlement, Class Members are completely and forever discharging and releasing any and all claims that were or could have been asserted against the Released Entities based on the facts alleged in the Plaintiff's Class Action Petition, which you can review on the settlement website at [\[link\]](#). This includes claims against Trinity for the cost of removing and replacing 4-inch ET Plus devices. However, the release does **not** include any claims arising out of personal injury or wrongful death claims or lawsuits against any Class Member. "Released Entities" means Defendants Trinity Industries, Inc. and Trinity Highway Products, LLC, including their past, present and future direct or indirect parent companies, affiliate companies, subsidiary companies, assigns, and successor entities and each of their affiliates, and the past, present and future direct or indirect officers, directors, shareholders, employees, predecessors, parents, subsidiaries, insurers, agents, attorneys, assigns, affiliates, stockholders, owners, controlling persons, members, managers, contractors, licensors, licensees, dealers, patent holders, manufacturers, servants, successors, trustees, representatives, heirs, executors, and assigns of all of the foregoing people and entities.

THE CLASS DEFINITION

12. How do I know if I am a Class Member?

The Class includes: All Missouri counties with populations of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014, including the independent city, the City of St. Louis, and the State of Missouri's transportation authority, that have or had ET-Plus guardrail end terminal systems with 4-inch wide feeder chutes installed on roadways they own and maintain. You are receiving this notice because you have been identified as either: a Missouri county with a population of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014; the independent city, the City of St. Louis; or the State of Missouri's transportation authority. You are part of this Class if you are among those specified groups and have or had ET-Plus

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

guardrail end terminals with 4-inch wide feeder chutes installed on roadways you own and maintain.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Yes. The Court appointed the following lawyers as “Class Counsel” to represent all the members of the Class:

Patrick J. Stueve
Bradley T. Wilders
Alexander T. Ricke
Stueve Siegel Hanson LLP
460 Nichols Road, Suite 200
Kansas City, MO 64113

14. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you may be represented by your own lawyer. For example, you can ask your own lawyer to appear on your behalf in Court if you want someone other than Class Counsel to speak for you. However, you will be responsible for any fees which that lawyer may charge for representing you.

15. How will the lawyers be paid?

This case has been pending since 2015 and the lawyers representing the Plaintiff and the Class have not been paid anything for their time. Nor have they been reimbursed for the expenses advanced on behalf of Class Members. After Class Counsel negotiated this settlement on behalf of the Class, Class Counsel and Trinity separately negotiated a reasonable attorneys’ fee and reimbursement of advanced expenses. Trinity has agreed to pay Class Counsel’s attorneys’ fees and expenses in the aggregate amount of \$11,400,000. This amount must be approved by the Court. Importantly, the amounts paid to Class Counsel are separate from and in addition to the amounts going to Class Members. Any amount awarded will *not* reduce the benefits available to the Class described above.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court I do not like the Settlement?

If you are a Class Member, you can object to the settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to:

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

[Analytics Consulting LLC]
[Trinity ET Plus Settlement PO Box]
[Address]
[City, State, Zip]

Your objection must provide the following information: (1) identification of the Class Member and reasonable supporting documentation evidencing the objector's right to act on behalf of the Class Member, including proof that objector is a Class Member; (2) identification of any counsel representing the objecting Class Member; (3) the factual and legal basis for the objection; and (4) a statement of whether the Class Member plans to appear in person at the final fairness hearing.

Any objections must be postmarked or received by the Settlement Administrator no later than [45 days from mailing of the Notice]. Any objection that is not postmarked on or before [date] or does not comply with the requirements above will be considered untimely and invalid and will not be considered by the Court.

THE FINAL FAIRNESS HEARING

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at [time] a.m. on [date], in the Circuit Court of Jackson County, Missouri at Independence, 308 West Kansas, Independence, MO 64050 in Division 2. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Garrett will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. The Court may also decide how much to pay the Class Representative as a service award for prosecuting this case on behalf of the Class. Jackson County, as the Class Representative, may seek a \$50,000 or less service award based on its role in bringing this result about for the Class. Defendants have agreed not to object to the Class Representative's request for a service award up to \$50,000. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

18. Do I have to come to the Final Fairness Hearing?

No. Class Counsel will answer any questions Judge Garrett may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your valid, written objection on time, the Court will consider it. You may also pay your own lawyer to attend if you wish.

Questions? visit [\[class website\]](#), or call [toll free number], or email [insert email]

19. May I speak at the Final Fairness Hearing?

You may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intention to Appear” in *Jackson County, Missouri et al. v. Trinity Industries, Inc., et al.*, Case No. 1516-CV23684. Be sure to include your name and address, and your signature. Your Notice of Intention to Appear must be postmarked no later than [45 days from the mailing of the Notice], and be sent to the Settlement Administrator at the following address:

[Analytics Consulting LLC]
 [Trinity ET Plus Settlement PO Box]
 [Address]
 [City, State, Zip]

DOING NOTHING

20. What happens if I do nothing at all?

You do not have to do anything in response to this Notice right now. However, to obtain the settlement benefits described above, you must submit a claim in response to the Claim Notice after the settlement is granted final approval. You will receive a Claim Notice and Claim Form in the mail after the settlement is granted final approval. If you do nothing in response to the Claim Notice and Claim Form, you will receive nothing from this Settlement. However, you will remain bound by the terms of the Settlement.

GETTING MORE INFORMATION

21. Are there more details available?

Visit the website, [website], where you will find other documents relevant to the Settlement. Updates regarding the case will also be available on the settlement website.

You may also contact the Settlement Administrator at:

[Analytics Consulting LLC]
 [Trinity ET Plus Settlement PO Box]
 [Address]
 [City, State, Zip]
 [phone]
 [email]

You may also contact Class Counsel:

Patrick J. Stueve
 Bradley T. Wilders
 Alexander T. Ricke
Stueve Siegel Hanson LLP

Questions? visit [class website], or call [toll free number], or email [insert email]

460 Nichols Road, Suite 200
Kansas City, MO 64113
[generic ssh email]
[generic ssh VM box]

PLEASE DO NOT CONTACT THE COURT

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

Exhibit B

NOTICE OF CLASS ACTION SETTLEMENT

SUBMIT YOUR CLAIM FOR MONETARY AND IN-KIND BENEFITS

Jackson County, Missouri v. Trinity Industries, Inc., and Trinity Highway Products, LLC

If you have or had Trinity ET Plus guardrail end terminals with 4-inch wide feeder chutes installed on roadways you own and maintain, you may be able to submit a claim for monetary and in-kind benefits. You must submit a claim to recover.

TO: <<Class Member Entity>>
<<c/o County Executive, Commissioner, etc.>>
<<Address >>
<<City>><<State>><<Zip>>

Your ID Number is <<ID>>

Dear <<Name>>,

You have been sent this Notice of Class Action Settlement (the “Notice”) because you might be a Class Member and entitled to relief from the class action settlement reached in *Jackson County, Missouri, et al. v. Trinity Industries, Inc., et al.*, pending in the Circuit Court of Jackson County, Missouri, Case No. 1516-CV23684 (“the Court”).

This Notice explains how you submit a claim to recover the monetary and in-kind relief available. The Settlement provides money for Class Members who previously removed and replaced undamaged 4-inch ET Plus devices, money for the cost of locating undamaged 4-inch ET Plus devices on roads owned and maintained by Class Members, and a new MASH Type A tangent end terminal plus a flat payment of \$1,700 for each undamaged, 4-inch ET Plus currently on roads owned and maintained by Class Members and that Class Members elect to replace, all subject to the terms and conditions set forth in the Settlement. The Settlement provides meaningful value to Class Members, but it is only available if you submit a claim in response to this Notice.

Please read the Notice carefully as your legal rights may be impacted.

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

**A COURT AUTHORIZED THIS NOTICE.
 THIS IS NOT A SOLICITATION FROM A LAWYER.
 YOU ARE NOT BEING SUED.
 THIS NOTICE AFFECTS YOUR LEGAL RIGHTS.**

The Court has approved a class action settlement in this case between Class Representative Jackson County, Missouri and Defendants Trinity Industries, Inc. and Trinity Highway Products, LLC (collectively referred to throughout this Notice as “Trinity”) to resolve a class action alleging that Trinity’s ET Plus guardrail with 4-inch wide feeder chutes (referred to throughout this Notice as “4-inch ET Plus”) was defectively designed and unreasonably dangerous. Trinity denies these allegations.

If you want to receive a payment from this settlement, *you must act now*. There are three different types of monetary and in-kind relief available under this settlement with different claim periods. Read this Notice carefully to understand your options.

To submit a claim, follow the instructions on the enclosed Claim Form.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
SUBMIT A CLAIM	<p>The only way to get payment and in-kind relief.</p> <p>If you are a Class Member and you submit a valid and timely claim form, you may be, subject to the terms and conditions set forth in the Settlement, entitled to monetary relief for the removal and replacement of undamaged 4-inch ET Plus devices that you have already removed and replaced, before February 18, 2022, on roads you own and maintain; the cost of locating undamaged 4-inch ET Plus devices on roads you own and maintain; a free MASH Type A tangent End Terminal for each undamaged 4-inch ET Plus existing, on or after February 18, 2022, on roads you own and maintain, and that you elect to replace; and a flat \$1,700 payment for each undamaged 4-inch ET Plus existing, on or after February 18, 2022, on roads you own and maintain, and that you elect to replace during the period set forth by this settlement.</p>
DO NOTHING	<p>Get no payment. Give up rights.</p> <p>By doing nothing, you will not receive any compensation made available through the proposed settlement. You will still give up your right to sue Trinity for claims released under the settlement.</p>

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

BASIC INFORMATION

1. Why did I get this Notice?

You previously received a Notice of Proposed Class Action Settlement that informed you of the terms of this Settlement. The Court has now considered and approved the class action settlement in this case, and you may be a Class Member.

You are either: a Missouri county with a population of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014; the independent city, the City of St. Louis; or the State of Missouri's transportation authority. The only other requirement to be a Class Member is that you have or had an ET Plus guardrail end terminal with 4-inch wide feeder chutes installed on roads you own and maintain.

If you did have a 4-inch ET Plus installed on roads you owned and maintained, this Notice explains how you can obtain monetary and other in-kind relief from the settlement.

2. What is this lawsuit about?

This lawsuit is about whether the 4-inch ET Plus was defective and unreasonably dangerous. Plaintiff sought the cost of removing and replacing these devices from all roadways owned and maintained by Class Members. You can read Plaintiff's Class Action Complaint at [\[class website\]](#). Trinity denies these allegations. The Court has now approved a class action settlement resolving the case.

THE SETTLEMENT BENEFITS

3. What benefits are available to Class Members under the settlement?

There are three types of relief available under the settlement, all of which are subject to the terms and conditions of the settlement.

You can read more about the specific types of relief available and how to claim them in the Settlement Agreement, which you have received.

Reimbursement for Prior ET Plus Replacement: Trinity Industries, Inc. will pay \$3,500,000 to reimburse Class Members for the costs incurred removing and replacing, before February 18, 2022, undamaged 4-inch ET Plus devices from roads owned and maintained by the respective Class Members. Class Members may submit a claim and, if approved, recover monetary relief based on the cost of undamaged 4-inch ET Plus devices the Class Member previously removed and replaced.

Reimbursement for Cost of Locating ET Plus Devices: Trinity Industries, Inc. will pay \$2,500,000 to reimburse Class Members for the cost of locating and identifying undamaged 4-inch ET Plus devices on roads owned and maintained by the respective Class Members. Class Members may submit a claim and, if approved, receive monetary relief based on the

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

cost of locating undamaged 4-inch ET Plus devices on roads owned and maintained by the Class Member.

Replace ET Plus Devices. During the six-year period following the date of the Final Judgment, Class Members will be able to make a claim for the replacement of any undamaged 4-inch ET Plus existing on roads, on or after February 18, 2022, owned and maintained by the Class Members. For each eligible, undamaged 4-inch ET Plus a Class Member identifies and obtains approval for, Trinity Industries, Inc. will provide, or pay for others to provide, one SoftStop end terminal or other Missouri Department of Transportation-approved Type A MASH tangent end terminal (at Trinity Industries, Inc.'s option) at no charge to the Class Member. For each eligible undamaged 4-inch ET Plus a Class Member identifies and obtains approval for, the Class Member will be entitled to \$1,700 from the Qualified Settlement Fund toward the costs associated with removal and replacement of the 4-inch ET Plus. Class Members may submit as many claims as necessary during the six-year period.

OBTAINING SETTLEMENT BENEFITS

4. Do I have to do anything right now to obtain settlement benefits?

Yes. If you want to obtain benefits from the settlement, you need to submit a claim.

5. How do I submit a claim for reimbursement of prior 4-inch ET Pluses already replaced?

To submit a claim for reimbursement of prior ET Plus replacements, you must submit your claim on or before [date one year from Effective Date]. But these claims are paid on a rolling basis until the fund is exhausted, so submit your claims as soon as possible.

There is \$3,500,000 allocated to reimburse Class Members for the costs they have incurred to previously remove and replace undamaged 4-inch ET Plus devices prior to February 18, 2022 from roads the Class Members own and maintain. Class Members will be able to submit claims for a one-year period following the Final Judgment. Claims will be paid, if approved and subject to the terms and conditions of the proposed settlement, on a quarterly basis until the expiration of the one-year period or until the funds are exhausted, whichever is earlier.

Follow the instructions on the Claim Form to submit a claim. On the Claim Form, you will provide the number of undamaged 4-inch ET Plus devices that you have replaced on roads you own and maintain, when, where, and the cost to do so. Valid claims must be supported by reasonable supporting documentation showing the number of undamaged 4-inch ET Plus devices replaced, when they were replaced, where they were replaced, and the costs of removal and replacement.

Reasonable supporting documents include any documents sufficient to show the removal and replacement of an undamaged 4-inch ET Plus device, and the date, location, and cost of removal and replacement. These documents include, but are not limited to, contracts, bid documents, invoices, payments, change orders, and other project documents. These documents can also be accompanied by an attestation from the Class Member explaining the documentation submitted with the Claim Form and the basis for the claim. Subject to

Questions? visit [class website], or call [toll free number], or email [insert email]

the terms and conditions of the proposed settlement, the Settlement Administrator will approve any claim from a Class Member for the cost of removal and replacement that reasonably establishes that one or more undamaged 4-inch ET Plus devices were removed and replaced, on or before February 18, 2022, from roads owned and maintained by a Class Member and the location, date, and cost of each such removal and replacement. The costs eligible for reimbursement include costs reasonably related to the removal and replacement of an undamaged 4-inch ET Plus and charged by, and paid to, the contractor or entity removing and replacing the 4-inch ET Plus. These costs include, but are not limited to, locating the previously removed undamaged 4-inch ET Plus, the replacement end terminal, the removal and disposal of the 4-inch ET Plus, traffic control, as well as guardrail, transition sections, and grading for the replacement guardrail end terminal system and other costs that are reasonably related to the removal and replacement of an undamaged 4-inch ET Plus. The enclosed Claim Form explains what information must be provided with the Claim Form, what documents must be attached to the Claim Form, when the Claim Form must be submitted, and how you can submit the Claim Form.

In the event claims are submitted in excess of the \$3,500,000 fund, the Settlement Agreement explains how claims will be prioritized and treated. You have been provided the Settlement Agreement.

6. How do I submit a claim for the cost of locating 4-inch ET Plus devices on my roads?

To submit a claim for the cost of locating undamaged 4-inch ET Plus devices on your roads, you must submit your claim on or before [90 days from Effective Date].

\$2,500,000 has been allocated to reimburse Class Members for the cost of locating undamaged 4-inch ET Plus devices on roads owned and maintained by Class Members. Class Members will be able to submit claims for a 90-day period following the Final Judgment. Claims will be paid following the 90-day claim period.

Follow the instructions on the Claim Form to submit a claim. On the Claim Form, you will provide the amount you are requesting to determine if there are any undamaged 4-inch ET Plus devices on roads you own and maintain. Valid claims must be supported by reasonable supporting documentation showing the claimed cost of locating undamaged 4-inch ET Plus devices on roads you own and maintain.

Reasonable supporting documentation includes any documents establishing the projected reasonable cost of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member. These documents include, but are not limited to, contracts for a survey or scan of Class Member roads, bid documents, invoices, payments, change orders, and other project documents. These documents can also be accompanied by an attestation from the Class Member explaining the Class Member's good faith estimate of the cost to locate 4-inch ET Plus devices on roads owned and maintained by the Class Member. Subject to the terms and conditions of the proposed settlement, the Settlement Administrator will approve any claim from a Class Member under this Section that reasonably establishes the reasonable projected costs of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member, although this does not preclude the Settlement Administrator, subject to Court oversight, from auditing any such request for accuracy and reasonableness.

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

The enclosed Claim Form explains what information must be provided with the Claim Form, what documents must be attached to the Claim Form, when the Claim Form must be submitted, and how you can submit the Claim Form.

In the event claims are submitted in excess of the \$2,500,000 fund, the Settlement Agreement explains how claims will be prioritized and treated.

7. How do I submit a claim for removing and replacing 4-inch ET Plus devices on my roads?

To submit a claim for removing and replacing undamaged 4-inch ET Plus devices that are currently on your roads, you may submit as many Claim Forms as necessary for a six-year period until [six years from Effective Date].

Follow the instructions on the Claim Form to submit a claim. On the Claim Form, you will provide the number of undamaged 4-inch ET Plus devices you have replaced or will promptly replace on roads you own and maintain.

Class Members must use the Claim Form, which shall contain the signature of a person authorized to bind the submitting Class Member, certifying the truth of the information contained in the Claim Form and the accompanying documentation. In addition, Class Members must submit with their Claim Form reasonable supporting documentation showing that the Class Member has identified and replaced, or will promptly replace, an undamaged 4-inch ET Plus on roads owned and maintained by the Class Member. With respect to the removed 4-inch ET Plus, the Class Member may either (1) attest that the removed 4-inch ET Plus will not be installed on any roads owned and maintained by the Class Member and that it will not be resold for installation or (2) that it will be sold for scrap metal. Alternatively, Trinity, at its option and expense, may arrange for the removed 4-inch ET Plus to be destroyed. However, Trinity must exercise this right within 30 days of the final approval of a Class Member claim and then promptly work with the Class Member to collect the removed 4-inch ET Plus at no cost to the Class Member.

Claims will be paid and the new end terminal will be ordered within 30 days of receipt of each report from the Settlement Administrator, identifying approved claims as described in the settlement agreement. Factors outside of Trinity's control, including supply or shipping constraints, may delay shipment or delivery of the new end terminal.

The enclosed Claim Form explains what information must be provided with the Claim Form, what documents must be attached to the Claim Form, when the Claim Form must be submitted, and how you can submit the Claim Form.

8. What happens if I do not submit a claim?

If any Class Member does not submit a claim, the Class Member will not recover anything under this settlement. But the Class Member will still be bound by the settlement.

9. Is there a downside to submitting a claim?

No. Because this Court previously certified this case as a class action and granted an opportunity to exclude yourself, all Class Members are part of the settlement. If you are a Class Member, you should submit a claim and obtain the benefits to which you are entitled. If you do not submit a claim, you will still release your claims but will not receive any of the benefits.

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

10. What claims are being released by the Settlement?

As part of the settlement, Class Members are completely and forever discharging and releasing any and all claims that were or could have been asserted against the Released Entities based on the facts alleged in the Plaintiff's Class Action Petition, which you can review on the settlement website at [\[link\]](#). This includes claims against Trinity for the cost of removing and replacing 4-inch ET Plus devices. However, the release does **not** include any claims arising out of personal injury or wrongful death claims or lawsuits against any Class Member. "Released Entities" means Defendants Trinity Industries, Inc. and Trinity Highway Products, LLC, including their past, present and future direct or indirect parent companies, affiliate companies, subsidiary companies, assigns, and successor entities and each of their affiliates, and the past, present and future direct or indirect officers, directors, shareholders, employees, predecessors, parents, subsidiaries, insurers, agents, attorneys, assigns, affiliates, stockholders, owners, controlling persons, members, managers, contractors, licensors, licensees, dealers, patent holders, manufacturers, servants, successors, trustees, representatives, heirs, executors, and assigns of all of the foregoing people and entities.

THE CLASS DEFINITION**11. How do I know if I am a Class Member?**

The Class includes: All Missouri counties with populations of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014, including the independent city, the City of St. Louis, and the State of Missouri's transportation authority, that have or had ET-Plus guardrail end terminal systems with 4-inch wide feeder chutes installed on roadways they own and maintain. You are receiving this notice because you have been identified as either: a Missouri county with a population of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014; the independent city, the City of St. Louis; or the State of Missouri's transportation authority. You are part of this Class if you are among those specified groups and have or had ET-Plus guardrail end terminals with 4-inch wide feeder chutes installed on roadways you own and maintain.

THE LAWYERS REPRESENTING YOU**12. Do I have a lawyer in this case?**

Yes. The Court appointed the following lawyers as "Class Counsel" to represent all the members of the Class:

Patrick J. Stueve
Bradley T. Wilders
Alexander T. Ricke
Stueve Siegel Hanson LLP
460 Nichols Road, Suite 200
Kansas City, MO 64113

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

13. How will the lawyers be paid?

This case has been pending since 2015 and the lawyers representing the Plaintiff and the Class have not been paid anything for their time. Nor have they been reimbursed for the expenses advanced on behalf of Class Members. After Class Counsel negotiated this settlement on behalf of the Class, Class Counsel and Trinity separately negotiated a reasonable attorneys' fee and reimbursement of advanced expenses. Trinity agreed to pay Class Counsel's attorneys' fees and expenses in the aggregate amount of \$11,400,000. The Court has awarded Class Counsel the requested fee and expense reimbursement. This amount does not reduce the benefits available to the Class described above.

DOING NOTHING

14. What happens if I do nothing at all?

If you do nothing in response to this Notice and do not submit a claim, you will receive nothing from this settlement. However, you will remain bound by the terms of the settlement.

GETTING MORE INFORMATION

15. What if I have questions about how to submit a claim?

Visit the website, [\[website\]](#), where you will find other documents relevant to the settlement. But if you have more questions about how to submit a claim, then you can also contact the Settlement Administrator and/or Class Counsel.

You may contact the Settlement Administrator at:

[Analytics Consulting LLC]
 [Trinity ET Plus Settlement PO Box]
 [Address]
 [City, State, Zip]
 [phone]
 [email]

You may also contact Class Counsel:

Patrick J. Stueve
 Bradley T. Wilders
 Alexander T. Ricke
Stueve Siegel Hanson LLP
 460 Nichols Road, Suite 200
 Kansas City, MO 64113
 [generic ssh email]
 [generic ssh VM box]

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

PLEASE DO NOT CONTACT THE COURT

Questions? visit [\[class website\]](#), or call **[toll free number]**, or email **[insert email]**

Exhibit C

CLAIM FORM

Jackson County, Missouri v. Trinity Industries, Inc., and Trinity Highway Products, LLC

Class Member ID Number: <Pre-Filled by Analytics>

Class Member Name: <Pre-Filled by Analytics>

Address: _____

City: _____

State: _____ Zip Code: _____

Class Member's Representative: _____

Title: _____

Contact Phone Number: _____

Contact Email Address: _____

Dear <<Class Member Pre-Filled by Analytics>>,

You have been sent this Claim Form along with the Notice of Class Action Settlement (the "Notice") because you might be a Class Member and entitled to relief from the class action settlement reached in *Jackson County, Missouri, et al. v. Trinity Industries, Inc., et al.*, in the Circuit Court of Jackson County, Missouri, Case No. 1516-CV23684 ("the Court").

If you are a Class Member and you submit a valid Claim Form, you are, subject to the terms and conditions set forth in the Settlement, entitled to monetary relief for the removal and replacement of undamaged 4-inch ET Plus devices that you previously removed and replaced, prior to February 18, 2022, on roads you own and maintain; the cost of locating undamaged 4-inch ET Plus devices on your roadways as of February 18, 2022; a free MASH Type A tangent End Terminal for each undamaged 4-inch ET Plus existing, on or after February 18, 2022, on roads you own and maintain, and that you elect to replace during the period set forth by this settlement; and a flat \$1,700 payment for each undamaged 4-inch ET Plus existing, on or after February 18, 2022, on roads you own and maintain, and that you elect to replace during the period set forth by this settlement.

The only way you can recover money or in-kind benefits from this settlement is to submit a claim. Different types of benefits under the settlement have different requirements (explained in the Notice) and deadlines to submit a Claim Form.

Please review the Notice before completing the Claim Form.

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

INSTRUCTIONS

Please read the entire Notice. Once you have read the Notice, you should begin to complete the Claim Form for each of the types of relief for which you are eligible. You do not have to pick between the three types of relief. You can submit a Claim Form for each type of relief for which you are eligible as explained in the Notice.

Deadlines to Submit: Each of the three types of relief has a different deadline to submit a Claim Form. The deadline to submit a Claim Form for each type of relief is addressed in the section of the Claim Form about each type of relief.

Supporting Documents: Each of the three types of relief must be supported by different types of documents and materials that must be submitted with this Claim Form. These documents and materials are explained in the Notice you received with this Claim Form.

Signing the Claim Form: Once you have completed a section of the Claim Form, the Class Member's authorized representative needs to sign on behalf of the Class Member attesting that it is true and correct to the best of the Class Member's knowledge.

Submitting the Claim Form: Once you have completed the Claim Form and compiled your supporting documents and materials you can submit them in one of three ways:

Email: You can email your completed Claim Form and supporting materials/documents to the Settlement Administrator at [email].

Upload: You can upload your completed Claim Form and supporting materials/documents to the Settlement Administrator at this link available on the Settlement website: [link].

U.S. Mail/Ship – This Is Not Preferred: You can mail or ship your completed Claim Form and supporting materials/documents to the Settlement Administrator at the address below. However, given that the Claim Forms are time sensitive, you should submit them electronically by email or uploading them through the Settlement website if possible. If you do choose the mail/ship option, your claim must be postmarked by the deadlines identified below.

[Analytics Consulting LLC]
[Trinity ET Plus Settlement PO Box]
[Address]
[City, State, Zip]

Questions? visit [class website], or call [toll free number], or email [insert email]

QUESTIONS

If you have questions about how to fill out this Claim Form, visit the website, [\[website\]](#), where you will find other documents relevant to the settlement. But if you have more questions about how to submit a claim after reviewing the settlement website, then you can also contact the Settlement Administrator and/or Class Counsel.

You may contact the Settlement Administrator at:

[Analytics Consulting LLC]
[Trinity ET Plus Settlement PO Box]
[Address]
[City, State, Zip]
[phone]
[email]

You may also contact Class Counsel:

Patrick J. Stueve
Bradley T. Wilders
Alexander T. Ricke
Stueve Siegel Hanson LLP
460 Nichols Road, Suite 200
Kansas City, MO 64113
[generic ssh email]
[generic ssh VM box]

PROCESSING CLAIMS

Please refer to the Settlement Agreement you received with the original Notice for an explanation of when Class Members can expect to receive payment or other relief for the three types of claims available through the settlement.

If your claim is denied or not adequately supported, the Settlement Administrator will contact you within 30 days to advise you of the basis for denial, how to cure the deficiency, and if necessary, how to challenge the Settlement Administrator's decision.

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SUBMIT A CLAIM FOR REIMBURSEMENT OF PREVIOUSLY REPLACED

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

UNDAMAGED 4-INCH ET PLUS DEVICES

The deadline to submit a claim for reimbursement of previously replaced undamaged 4-inch ET Plus devices from the \$3,500,000 fund is [date one year from Effective Date]. These claims are paid on a rolling basis until the fund is exhausted, so submit your Claim Form as soon as possible.

Every field must be completed.

Identify the number of undamaged 4-inch ET Plus devices the Class Member removed and replaced, on roads owned and maintained by the Class Member, prior to February 18, 2022, including location, date, and cost. These are the undamaged 4-inch ET Plus devices a Class Member previously removed and replaced from roadways it owns and maintains:

Number of removed and replaced **undamaged** 4-inch ET Plus devices: _____

Location of replaced devices on roads the Class Member owns and maintains (specify for each device): _____

Date devices were replaced (specify for each device): _____

Cost of removal and replacement of each undamaged 4-inch ET Plus device (specify for each device): _____

Identify the entity that removed and replaced the undamaged 4-inch ET Plus devices: _____

Identify each of the supporting documents you are submitting with your Claim Form. These are the supporting documents and materials discussed in the Notice you received with this Claim Form. You must provide supporting documents showing the number of undamaged 4-inch ET Plus devices you removed and replaced, where they were located, when they were removed and replaced, that they were undamaged devices, and the cost of removal and replacement of each undamaged 4-inch ET Plus device on roads the Class Member owns and maintains.

Supporting documents: _____

Questions? visit [class website], or call [toll free number], or email [insert email]

The Class Member may also accompany this documentation with an attestation from the Class Member describing the documentation submitted with the Claim Form and the basis for the claim.

If Class Members have voluminous submissions, they can use additional pages.

In lieu of submitting this Claim Form, the Class Member can submit a signed letter containing the same information required by this Claim Form. The Class Member must still submit supporting documents and materials discussed in the Notice that support the Class Member's claimed cost for the removal and replacement of undamaged 4-inch ET Plus devices on roads the Class Member owned and maintained prior to February 18, 2022.

I certify that this information and the attached documents and materials are true and correct and that I am authorized to bind the submitting Class Member.

Class Member: _____

Signature: _____

Title: _____

Date: _____

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Questions? visit [\[class website\]](#), or call **[toll free number]**, or email **[insert email]**

**SUBMIT A CLAIM FOR
THE COST OF LOCATING 4-INCH ET PLUS DEVICES ON MY ROADS**

The deadline to submit a claim for the cost of locating undamaged 4-inch ET Plus devices currently on roads owned and maintained by a Class Member from the \$2,500,000 fund is [90 days from Effective Date].

Every field must be completed.

For locating 4-inch ET Plus devices currently on roads the Class Member owns and maintains, state the Class Member’s claimed cost of locating, the actions taken to locate, the entity that performed these actions, when these actions were performed, and the location of the undamaged 4-inch ET Plus devices located:

Identify each of the supporting documents you are submitting with your Claim Form. These are the supporting documents and materials discussed in the Notice you received with this Claim Form and that support your claimed cost of locating 4-inch ET Plus devices on roads owned and maintained by you. These documents include any documents establishing the projected reasonable cost of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member.

Supporting documents:

Your supporting documents can also be accompanied by an attestation from the Class Member explaining the Class Member’s good faith estimate of the cost to locate 4-inch ET Plus devices on roads owned and maintained by the Class Member.

If Class Members have voluminous submissions, they can use additional pages.

In lieu of submitting this Claim Form, the Class Member can submit a signed letter containing the same information required in this Claim Form, including the certification in the following paragraph, as explained in further detail in the Notice. The Class Member must still submit supporting documents and materials discussed in the Notice that support your claimed cost of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member.

I certify that this information and the attached documents and materials are true and correct, that I am authorized to bind the submitting Class Member, and that the funds I request will be used for the sole purpose of paying the costs of locating 4-inch ET Plus devices on roads owned and maintained by the Class Member and that the Class Member will return, within two years of the Class Member’s receipt of any funds for locating 4-

Questions? visit [class website], or call [toll free number], or email [insert email]

inch ET Plus devices, to the Settlement Administrator for deposit in the Common Fund any funds paid to the Class Member for locating 4-inch ET Plus devices that have not been used for the purpose of locating 4-inch ET Plus devices.

Class Member: _____

Signature: _____

Title: _____

Date: _____

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SUBMIT A CLAIM FOR

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)

**REMOVING AND REPLACING
UNDAMAGED 4-INCH ET PLUS DEVICES ON MY ROADS**

To submit a claim for removing and replacing undamaged 4-inch ET Plus devices that are currently on your roads, you may submit as many Claim Forms as necessary for a six-year period until [six years from Effective Date]. For each undamaged 4-inch ET Plus on roads you own and maintain for which you submit a valid Claim Form that is approved by the Settlement Administrator, you are entitled to a new MoDOT-approved Type A MASH tangent end terminal plus a flat payment of \$1,700, subject to all of the terms and conditions set forth in the settlement agreement.

Every field must be completed.

Identify the undamaged 4-inch ET Plus devices existing, on or after February 18, 2022, on roads you own and maintain, that you already have removed and replaced, or will promptly replace.

Number of undamaged 4-inch ET Plus devices: _____

Specific location of each device: _____

Have each of the devices already been replaced (Yes or No): _____

If yes, state the date of each replacement and what entity performed each replacement: _____

If no, state the anticipated replacement date and what entity is scheduled to perform each replacement: _____

Identify each of the supporting documents you are submitting with your Claim Form.

These are the supporting documents and materials discussed in the Notice you received with this Claim Form. Specifically, the documents you submit must include documents sufficient to show that (a) the Class Member has replaced, or will promptly replace, an undamaged 4-inch ET Plus; (b) the location of the 4-inch ET Plus on roads owned and maintained by the Class Member; (c) the date on which the replacement was made or is reasonably expected to be made; (d) that the 4-inch ET Plus involved in the claim has or had 4-inch wide guide channels; and (e) that the 4-inch ET Plus involved in the claim is undamaged, or if already replaced, was undamaged at the time of replacement. **Each submission for each end terminal must include photographs, videos, or lidar scan**

Questions? visit [class website], or call [toll free number], or email [insert email]

imaging and data sufficient to identify the end terminal as an undamaged ET Plus with 4-inch guide channels.

Your supporting documents must be accompanied by an attestation from the Class Member explaining the Class Member's good faith basis for entitlement to a claim for ET Plus Replacement.

Your supporting documents must also be accompanied by an attestation stating, for each removed 4-inch ET Plus, that (1) the removed 4-inch ET Plus will not be installed on any roads owned and maintained by the Class Member and that it will not be resold for installation or (2) the removed 4-inch ET Plus will be sold for scrap metal.

Supporting documents: _____

State where your replacement Mo-DOT approved Type A MASH tangent end terminal should be shipped. If your replacement devices should be shipped to multiple locations, please attach a list of how many devices should be shipped to which locations:

Shipping address within the State of Missouri: _____

The Class Member may submit a signed letter providing any further information relevant to the Class Member's claim.

I certify that this information and the attached documents and materials are true and correct and that I am authorized to bind the submitting Class Member.

Class Member: _____

Signature: _____

Title: _____

Date: _____

[Remainder of Page Intentionally Left Blank]

Questions? visit [\[class website\]](#), or call [\[toll free number\]](#), or email [\[insert email\]](#)