

**FULL AND FINAL  
RELEASE AND SETTLEMENT AGREEMENT**

This Full and Final Release and Settlement Agreement (“Agreement”) is entered into by and between H & S Maintenance, Inc. (“H & S”) and the Arkansas Department of Finance and Administration (“Department”), by their respective authorized representatives:

**RECITALS**

**WITNESSETH:**

**WHEREAS**, H & S has instituted an action against the Department in the Pulaski County Circuit Court, Fifth Division, styled **H & S Maintenance, Inc v. Larry Walther, Director of the Arkansas Department of Finance & Administration; Tim Leathers, Commissioner of Revenue of the State of Arkansas**, Pulaski County Circuit Court, Fifth Division, Case No. 60CV-15-2379 (“Action”); AND

**WHEREAS**, the Action by H & S concerns allegations regarding the assessment of taxes, penalties, and interest relating to the service of initial installation and repair of lawn irrigation sprinkler systems and asserts a cause of action pursuant to the Arkansas Tax Procedure Act, Ark. Code Ann. § 26-18-101 through 1006 (Repl. 2012 and Supp. 2013); AND

**WHEREAS**, the Department has denied the allegations set forth in the Action and denied that the Department is liable for the damages and amounts claimed by H & S; AND

**WHEREAS**, the parties wish to resolve and settle all of their past, present, and any future claims, disputes, and controversies, including but not limited to, any and all claims asserted or that could have been asserted relating to the subject matter of the Action;

**NOW, THEREFORE**, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## TERMS AND CONDITIONS

1. **Recitals.** The foregoing recitals are incorporated into and constitute a part of this Agreement.
2. **No Admission of Liability.** This Agreement is entered into as an expedient and effective alternative to litigation in the Action. Neither H & S nor the Department make any admission of liability, express or implied, by entering into this Agreement, both expressly deny any such liability, and both enter into this Agreement with the purpose to obtain and preserve their peace.
3. **Payment to H & S.** The Department, in exchange for the full and final release set forth below and in full and final settlement of the Action, agrees to pay to H & S the total sum of ONE HUNDRED THIRTY FIVE THOUSAND FOUR HUNDRED FOURTEEN AND 21/100 DOLLARS (\$135,414.21), payable within thirty (30) days after:
  - (a) Review and approval of the Agreement by the Litigation Reports Oversight Subcommittee of the Arkansas General Assembly; Dismissal of the Action with prejudice; and
  - (b) Dismissal of the Action with prejudice.Should the approvals or actions specified in paragraphs 3(a)-(b) not occur, this Agreement is null and void.
4. **H & S Release of the Department.** For and in consideration of the foregoing consideration, and upon full execution of this Agreement and payment of the amount agreed, H & S, on behalf of itself, its officers, shareholders, agents, heirs, administrators, attorneys, successors and assigns, do hereby fully and finally dismiss,

release, and hold harmless the Department, its employees, agents, insurers, attorneys, predecessors, successors, and assigns, from and of any and all matters, debts, dues, sums of money, covenants, controversies, agreements, promises, trespasses, damages, losses, expenses, costs, liabilities, obligations, claims, demands, grievances, suits, causes of action, complaints, judgments, decrees, executions, and garnishments of whatever kind, in law or in equity, absolute, contingent, likely or unlikely, known or unknown, which have existed from the beginning of time to the date of this Agreement, including but not limited to all claims asserted or which could have been asserted in the Action. H & S further agrees that upon receipt of the settlement payment from the Department, H & S will take all steps necessary to cause the full and final dismissal of the Action with prejudice under the law.

- 5. Extent of Release.** The full and final release set forth in paragraph 4 of this Agreement is intended to have the broadest possible application and includes, but is not limited to, any tort, contract, common law, constitutional, or other statutory claims arising out of any and all federal, state, or local laws. The full and final release set forth herein shall apply to the past, present, and future officers, directors, stockholders/shareholders, attorneys, agents, insurers, servants, members, representatives, employees, subsidiaries, subcontractors, contractors, affiliates, partners, family members, predecessors, successors in interest, and assigns of the parties hereto.
- 6. Attorney's Fees, Costs, and Expenses.** The parties hereto shall be responsible for their respective attorney's fees, costs, and expenses incurred in the Action.

- 7. Voluntary Agreement.** The parties hereto acknowledge that each has read this Agreement, that each has had the opportunity to consult with legal counsel of their choosing concerning the advisability, meaning, and effect of this Agreement, and that each has signed this Agreement voluntarily and without duress of any nature.
- 8. No Rescission for Mistake.** The parties hereto acknowledge that each has had the opportunity to investigate the facts and law relating to the claims raised or that could have been raised in the Action to the extent each deemed necessary and appropriate. The parties assume the risk of any mistake of fact or law and agree that any mistake of fact or law shall not be grounds for rescission or modification of any part of this Agreement.
- 9. Controlling Law/Choice of Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arkansas.
- 10. Entire Agreement.** The parties acknowledge and agree that this Agreement constitutes the full, complete, and entire agreement of the parties and that there are no other representations, covenants, warranties, or other agreements binding on the parties that are not expressly set forth herein.
- 11. Modification.** The parties hereto agree that this Agreement may not be modified, amended, or altered except by a written agreement executed by the parties hereto.
- 12. Rule of Construction.** The parties acknowledge and agree that they each have had the opportunity to have this Agreement reviewed by counsel of their choosing. Therefore, the normal rule that ambiguities are construed against the drafter shall not apply in connection with the interpretation and construction of this Agreement.

**13. Validity of Agreement.** The parties represent and agree that the persons executing this Agreement on behalf of the parties have the full and complete permission and authority of the entity for which he or she is executing this Agreement, and have the full right and authority to commit and fully bind themselves, their representatives, agents, principals, predecessors, successors, and privies according to the provisions hereof. This Agreement is a legally valid, binding, and enforceable obligation of the parties in accordance with its terms.

**14. Counterparts.** This Agreement may be executed in one or more counterparts, including by facsimile or other electronic form, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

**WITNESS** our hands and seals as of the date set forth below.

**H & S MAINTENANCE, INC.**

By: \_\_\_\_\_  
John Hackney, President

Date: \_\_\_\_\_

APPROVED BY:

\_\_\_\_\_  
Brian A. Brown, Attorney for H & S Maintenance, Inc.

Date: \_\_\_\_\_

**LARRY WALTHER, DIRECTOR OF THE ARKANSAS DEPARTMENT OF FINANCE & ADMINISTRATION; TIM LEATHERS, COMMISSIONER OF REVENUE FOR THE STATE OF ARKANSAS**

By: \_\_\_\_\_  
Tim E. Howell, Attorney  
Revenue Legal Counsel  
Arkansas Department of Finance and Administration

Date: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
COUNTY OF \_\_\_\_\_ ) SS

On this day before me, the undersigned, a Notary Public, duly commissioned, qualified, and acting within and for the County and State aforesaid, personally appeared JOHN HACKNEY, President of H & S MAINTENANCE, INC. and BRIAN A. BROWN, its Attorney, satisfactorily proven to be the persons whose names appear in the foregoing instrument, and stated that they have executed the same for the consideration, uses, and purposes therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal on this \_\_ day of October, 2015.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
COUNTY OF PULASKI    ) SS.

On this day before me, the undersigned, a notary public, duly commissioned, qualified, and acting, within and for said County and State aforesaid, personally appeared TIM E. HOWELL, who stated that he is the Attorney for Larry Walther, Director of the Arkansas Department of Finance and Administration and Tim Leathers, Commissioner of Revenue for the State of Arkansas, duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said persons in their representative capacity for the State of Arkansas, and further stated and acknowledged that he had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_ day of October, 2015.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC