

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into by and between John Q. Public (Employee) and the West Virginia Department of Widgets (Employer).

WHEREAS, Employee is employed by Employer as a Senior Widget Technician, Pay Grade 5, with a salary of \$1,546.00 per month. Employee was assigned the responsibilities of Widget Technician Supervisor, Pay Grade 7, on February 1, 2013, due to the absence of the regular supervisor. The period of absence was unexpectedly extended causing Employee to be eligible for a temporary upgrade in accordance with the West Virginia Division of Personnel *Temporary Classification Upgrades* policy (DOP-P13). The required personnel transaction was processed with the earliest possible effective date of April 1, 2013.

WHEREAS, Employee and Employer are desirous of entering into this Settlement Agreement and Release to resolve all matters relating to this issue; and

NOW THEREFORE, for good and valuable consideration and the mutual covenants contained herein, Employee and Employer agree as follows:

1. Employer agrees to temporarily upgrade Employee to the classification of Widget Technician Supervisor, Pay Grade 7, at \$1701.00 per month, effective April 1, 2013, retroactive to February 1, 2013.

2. Considering any applicable personnel transactions (salary advancements, salary adjustments, leaves of absence, and/or overtime differences) that may have occurred between February 1, 2013, and April 1, 2013, Employee will receive \$310.00 back pay, plus \$13.80 interest, for a total gross amount of \$323.80. Employee agrees that any liability for federal or state tax payments upon the amount paid to Employee pursuant to this Settlement Agreement and Release shall be the sole responsibility of Employee. Provided, that Employer will be responsible for the applicable standard employer payroll tax liability. It is the intent of all parties that the whole amount of these back wages be pensionable.

3. Employee does hereby waive, release, acquit and discharge Employer from any and all liabilities, attorney fees, claims, demands, controversies, damages, actions and causes of action of every kind and character, arising from the facts and circumstances of this issue, which he or she may now have or may have in the future concerning the subject matter of this release, including but not limited to, any rights brought under the West Virginia Human Rights Act, Americans with Disabilities Act, Workers' Compensation Act or Title VII of the Civil Rights Act as well as any complaints filed and/or proceedings pending with the Public Employees Grievance Board, West Virginia Human Rights Commission, West Virginia Equal Employment Opportunity Office, West Virginia Division of Labor, United States Equal Employment Opportunity Commission, and United States Department of Labor.

4. This Settlement Agreement and Release shall be binding on Employee and Employer hereto and their assigns.

5. Employee acknowledges that he or she has read this Settlement Agreement and Release and has had a reasonable period of time to consider this Settlement Agreement and Release and to consult an attorney, if desired. Employee further acknowledges that he or she understands all the terms

of the Settlement Agreement and Release and has knowingly and voluntarily agreed to those terms, which may not be changed.

6. Employee and Employer expressly acknowledge that the entire agreement is contained in this Settlement Agreement and Release and no representations, promises, or inducements have been made by or to Employee other than as appear in this Settlement Agreement and Release. The parties understand and agree that this Settlement Agreement and Release may not be changed orally. This Settlement Agreement and Release supersedes all prior agreements and understandings concerning the subject matter hereof, including, but not limited to, Employee's employment with Employer.

7. Employee and his representative agree that he or she will keep the settlement negotiations and the terms of this Settlement Agreement and Release completely confidential. Although Employer will not unilaterally distribute, disseminate or otherwise release this Settlement Agreement and Release, Employee acknowledges and understands that Employer is a public agency of State government and may be obligated to release this Settlement Agreement and Release pursuant to West Virginia Supreme Court case precedent, the West Virginia Freedom of Information Act, West Virginia Code §§ 29B-1-1 *et seq.*, or other applicable law. Further, Employee and Employer may share with their respective accountants or other paid tax preparers the amount of monies received pursuant to this Settlement Agreement and Release for the sole purpose of complying with duties and obligations owed to the United States Internal Revenue Service and/or any and all state or local tax authorities.

THE PARTIES UNDERSTAND AND AGREE that this Settlement Agreement and Release and the settlement it represents are entered into solely for the purpose of avoiding further expenses of litigation. This Settlement Agreement and Release and the settlement it represents in no way constitutes an admission by Employer of any violation of any federal, state or local law, whether statutory or common, and Employer denies that a violation of any such law has occurred with respect to Employee's employment with Employer or the cessation of that employment with Employer.

IT IS FURTHER UNDERSTOOD that this Settlement Agreement and Release is a preliminary document and requires the review and approval of the Division of Personnel. If the Division of Personnel determines that any of the terms are not compliant with the Division of Personnel's law, rules and policies, then this Settlement Agreement and Release is null and void.

Settlement Agreement and Release
John Q. Public
Department of Widgets
April 22, 2013
Page 3

IN WITNESS WHEREOF, Employee and Employer execute this Settlement Agreement and Release, effective the latest of dates set forth below.

Date

John Q. Public
Employee

Date

Jane Q. Taxpayer
Employee's Representative

Date

Joan Q. Citizen, Director
Department of Widgets
Employer

Date

Joe Q. Attorney, Counsel
Department of Widgets

**Approved as to compliance with the
Division of Personnel's law, rules and policies:**

Date

Sara P. Walker, Director
Division of Personnel