

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is effective as of March 6, 2020, the date of a signed Rule 11 Agreement, by and between Asplundh Tree Expert, LLC (f/k/a Asplundh Tree Expert Co.) (hereinafter "Settling Defendant" or "ATE"); Texas Parks and Wildlife Department and State of Texas (hereinafter, "Settling Plaintiff"); and the Texas Office of the Attorney General (hereinafter "Plaintiff's Counsel"):

This Agreement formally resolves any and all claims of Settling Plaintiff against Settling Defendant for damages relating to the litigation entitled *In Re: Bastrop County Complex Fire Litigation*, No. 2012-MCF-01, including the lawsuit bearing Cause No. 423-5475, styled *Texas Parks and Wildlife Department v. Asplundh Tree Expert Company*, pending in the District Court of Bastrop County, Texas, 21<sup>st</sup> Judicial District (hereinafter "The Action").

### PARTIES

This Agreement is made and entered into by and between Settling Plaintiff and Settling Defendant (hereinafter, collectively, "Settling Parties" or "the Parties").

### RECITALS

A. This matter arises from fires that occurred on September 4, 2011, in Bastrop County, near and in the City of Bastrop, Texas, known as the 2011 Bastrop County Complex Fire (hereinafter called "the Fire," in the singular, for ease of reference in this agreement, although the parties recognize that there was more than one fire). The Settling Plaintiff alleged property losses and other damages due to the Fire. Settling Plaintiff filed the Action alleging that ATE caused or contributed to the cause of the Fire,

and other allegations as to the negligence and other alleged conduct of ATE.

B. ATE denies all material allegations made by Settling Plaintiff or any party past or present; and ATE denies any and all liability for the Fire.

C. This Agreement is entered into solely for purposes of compromise. The Parties expressly agree and acknowledge that neither this Agreement nor any act performed hereunder is, or may be deemed, an admission or evidence of the validity or invalidity of any allegations or claims of the Settling Plaintiff or ATE, nor is this Agreement or any act performed hereunder to be construed as an admission or evidence of any wrongdoing, fault, omission or liability. This is a settlement of a disputed matter and ATE specifically and expressly denies any fault or liability to the Settling Plaintiff and to all others with respect to the Fire.

D. Settling Parties intend that this Agreement resolve any and all claims and disputes between them and provide for consideration in full settlement and discharge of all disputes, rights, claims, and causes of action that are, or might have been, the subject matter of the Actions as held by Settling Plaintiff.

NOW, THEREFORE, in consideration of the Recitals and the mutual promises, covenants, and agreements set forth herein, and in full compromise, release and settlement, accord and satisfaction, and discharge of the claims or causes of action released herein, in the manner described herein, the Parties covenant and agree as follows:

## AGREEMENT

1. INCORPORATION OF RECITALS. Each of the Recitals set forth above is incorporated by reference into this Agreement.
  
2. PAYMENT. In consideration for the release set forth herein, and in consideration of the rights and obligations created by this Agreement, ATE shall pay Settling Plaintiff the total settlement sum of Twenty Million Dollars (\$20,000,000.00) ("Settlement Amount"). Payments of the Settlement Amounts shall be made within thirty (30) calendar days after Settling Plaintiff provides to counsel for Settling Defendant a copy of this Settlement Agreement executed by Settling Plaintiff and after Settling Plaintiff has complied with all other conditions contained in this Agreement. Settling Plaintiff's Counsel shall also provide, by electronic mail to counsel for Settling Defendant, the executed dismissal provided in Paragraph 4 below. Plaintiff's Counsel shall, within five (5) days thereafter, provide executed originals of the same to counsel for Settling Defendant, so that counsel for Settling Defendant may file the original, executed dismissal with the court immediately upon delivery of all payments required in this Settlement Agreement. Counsel for Settling Defendant shall not file the dismissal until after payments have been made to counsel for Settling Plaintiff.
  
3. RESPONSIBILITY FOR PAYMENT TO SETTLING PLAINTIFF. The obligation of Settling Defendant to make the payments required in this Settlement Agreement will be fully and completely discharged upon delivery of those payments to Settling Plaintiff as specified in this agreement.
  
4. DISMISSAL OF ACTIONS. At the time of execution of this Agreement Settling Plaintiff will provide to counsel for Settling Defendant a form of dismissal with prejudice of the above-described Actions as to ATE or any ATE related entity.

5. LEGAL FEES AND COSTS. Settling Parties acknowledge and agree that each will bear its own costs, expenses and attorneys' fees arising out of and/or connected with the Action, any related investigations and litigation, the negotiation, drafting of and execution of this Agreement, and all matters arising out of or connected therewith.

6. MUTUAL RELEASE OF CLAIMS.

A. In consideration of the full and timely performance of all terms and conditions as set forth in this Agreement, Settling Plaintiff and its successors, assigns, agents, representatives, departments, divisions, branches, shareholders, officers, directors, partners, managers, employees, former employees, sureties, administrators, trustees, members, principals, and beneficiaries hereby *FULLY AND FOREVER WAIVE, RELINQUISH, RELEASE AND DISCHARGE* ATE and its past, and current subsidiaries, parent corporations or affiliated companies or entities, including their respective successors, assigns, agents, representatives, shareholders, officers, directors, partners, managers, employees, former employees, sureties, insurers and their respective adjusters and representatives, administrators, trustees, members, principals, beneficiaries, and all persons, firms, associations, subsidiaries, and/or corporations connected with them, and each of them, from any and all claims, demands, controversies, losses, damages, actions, causes of action, debts, liabilities, costs and expenses (including, without limitation, attorneys' fees, experts' fees, consultant's fees and court costs), liens and obligations of every kind or nature whatsoever, in law or equity, in contract, tort or otherwise,

anticipated or unanticipated, direct or indirect, fixed or contingent, which may presently exist or may hereinafter arise or become known arising out of, caused by, incurred in connection with or in any way pertaining to the Fire or the claims in the Actions, including, without limitation, any claims that have been or could have been asserted in the pending Actions with respect to any insured or insurer of Settling Plaintiff. This Release is binding on and shall inure to the benefit of officers, directors, shareholders, employees, agents, representatives, insurers, successors, assigns, partners and members of the Settling Parties to the Agreement.

B. Settling Defendant, in consideration for the execution of the Agreement, forever releases, acquits, and discharges Settling Plaintiff, together with Plaintiff's officials, employees, agents, agencies, legal representatives, subsidiary organizations, parent organizations, successor entities, insurers and assigns, and all other persons, agencies, firms, or corporations who might be liable, from all claims, demands, charges, and costs of court, including but not limited to attorney's fees and causes of action of whatever nature, on any legal theory pertaining to the Fire or the claims in the Action and from all liability and damages of any kind, known or unknown, arising from the Action or the events that gave rise to The Action.

7. GOOD FAITH. Settling Parties agree that the settlement embodied in this Agreement is made in good faith, is the subject of arm's length negotiations, and the consideration supporting the Agreement is fair and appropriate.

8. COMPROMISE. Settling Parties agree that this Agreement represents a resolution of disputed liability and neither the terms of this Agreement nor any payments described will be used or construed as an admission of liability as to the matters described herein.

9. ENFORCEABILITY OF AGREEMENT. This Agreement is intended by the Parties to be a settlement agreement binding and enforceable by the Settling Parties, and any other dispute arising out of the effect or enforcement of this Agreement can be pursued in a court of law.

10. BINDING EFFECT. The terms of this Agreement are binding upon the heirs, representatives, successors and assigns of the undersigned Parties.

11. ENTIRE AGREEMENT; AMENDMENT. This Agreement represents and contains the entire understanding of the Settling Parties. There are no representations, covenants, or undertakings other than those expressly set forth in this Agreement. The Settling Parties and each of them acknowledge that they have not executed this Agreement in reliance on any promise, representation, or warranty not specifically contained in this Agreement. Each of the Settling Parties further represents and declares that it, acting through its representatives, has carefully read this Agreement and knows its contents, and has signed this Agreement freely and voluntarily. This Agreement supersedes any and all prior oral or written agreements, representations and understandings concerning the subject matter of this Agreement. No representation, warranty, condition, understanding or agreement of any kind concerning the subject matter of this Agreement shall be relied upon unless set forth in this Agreement. This Agreement may not be modified or amended except by an express

written agreement signed by the Parties hereto that are affected by the change.

12. PREPARATION OF AGREEMENT. This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. This Agreement shall not be deemed prepared or drafted by one Party or another, or its attorneys, and will be construed accordingly.

13. AUTHORITY. Each signatory hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she signs. This Agreement is freely and voluntarily entered into and executed upon the advice of each Settling Party's respective counsel.

14. SEVERABILITY. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the Parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

15. COUNTERPARTS AND EXECUTION BY ELECTRONIC MEANS. This Agreement may be executed in separate original counterparts that together shall form one binding Agreement. The Parties agree that facsimile or scanned signatures shall suffice and be binding on them with respect to the execution of this Agreement, and original or "wet" signatures will not be necessary or required.

16. NO FURTHER FILINGS. Settling Plaintiff agrees that it will not initiate or pursue any further suit or action against ATE and its past and current subsidiaries, parent corporations or affiliated companies or entities, including their respective officers,

directors, employees, agents, representatives, insurers and attorneys, past and present, before any federal, state or local judicial or administrative/regulatory forum in any jurisdiction, either in the United States or any other country, with respect to any matter or claim arising out of or in any way related to the Fire and the filing and prosecution of the Action, except with respect to the enforcement of the terms and conditions of this Agreement.

17. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of Texas without reference to conflict of laws principles. Any disputes under this Agreement, shall be brought in the District Courts of Bastrop County, Texas, and the Parties hereby consent to the personal jurisdiction and venue of these courts.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT AND EXPRESSLY CONSENT THERETO. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE HAD THE OPPORTUNITY TO SEEK ADVICE OF COUNSEL AND ENTER INTO THIS AGREEMENT HAVING RECEIVED SUCH ADVICE.

SIGNATURES OF THE SETTLING DEFENDANT:

DATED 06/09/2020 On behalf of and as an Authorized Representative of ASPLUNDH TREE EXPERT, LLC

By: Ann P. Ercolani

Name: Ann Ercolani

Title: Director, Risk Management



SIGNATURES OF THE SETTLING PLAINTIFF:

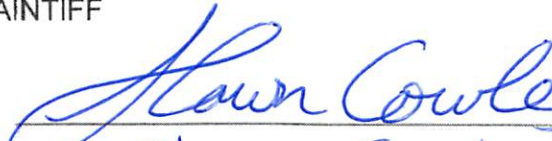
DATED 11 June 2020 On behalf of Settling Plaintiff and as an  
Authorized Representative of TEXAS PARKS  
AND WILDLIFE DEPARTMENT

By: 

Name: Carter Smith

Title: Executive Director

DATED August 6, 2020 On behalf of and as an Authorized  
Representative of TEXAS OFFICE OF THE  
ATTORNEY GENERAL, COUNSEL FOR  
PLAINTIFF

By: 

Name: Shawn Cowles

Title: Assistant Attorney General