

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Attorney General**



In the Matter of  
Maryland Applicators, Inc.

**SETTLEMENT AGREEMENT**

The Attorney General for the District of Columbia, on behalf of the District of Columbia (“District”), and Maryland Applicators, Inc. (“Maryland Applicators”) (collectively, the “Parties”) hereby enter into this Settlement Agreement (“Agreement”), and agree as follows:

**I. THE PARTIES**

1. The District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the seat of the government of the United States. D.C. Code § 1-102. The Attorney General for the District of Columbia is the chief legal officer for the District of Columbia. Pursuant to D.C. Code § 32-1306, the Attorney General for the District of Columbia is authorized to bring civil actions seeking back wages, liquidated damages, civil penalties, costs, attorneys’ fees, and equitable relief for violations of the District’s Workplace Fraud Act, D.C. Code § 32-1331.01 *et seq.*, and Sick and Safe Leave Act (“SSLA”), D.C. Code § 32-531.01 *et seq.*, (hereinafter “wage-and-hour” laws).

2. Maryland Applicators, Inc. is a Maryland corporation, licensed and authorized to provide subcontracting services relating to drywall installation in the District of Columbia and neighboring states.

3. The District alleges that, beginning in 2019, Maryland Applicators completed construction projects in the District of Columbia by contracting directly with dozens of workers (hereinafter, “direct engagements”), and by entering into agreements with subcontractors, who in turn supplied Maryland Applicators with construction workers (hereinafter, “subcontracted workers”).

4. The District alleges that direct engagements and subcontracted workers were often misclassified as independent contractors when they should have been classified as employees, and that this misclassification violates District wage-and-hour laws.

5. The District alleges that Maryland Applicators exercised extensive supervision and control over both direct engagements and subcontracted workers and as a result, is liable for subcontractors’ misclassification violations of District wage-and-hour laws as a joint employer. In the alternative, the District alleges that Maryland Applicators is strictly liable for subcontractors’ misclassification violations of the wage-and-hour laws pursuant to D.C. Code § 32-1303(5).

6. Maryland Applicators denies the allegations in Paragraphs 3-5 and denies that its practices violated District law. Moreover, this Settlement Agreement does not constitute an express, implied or imputed admission by Maryland Applicators of the District’s allegations.

7. To avoid delay, uncertainty, inconvenience, and the expense of any protracted litigation or further investigation, subpoenas or other actions, the Parties have reached a full and final Settlement Agreement as set forth below.

8. The “Effective Date” of this Agreement shall be the last date upon which any party executes the Settlement Agreement.

## II. PAYMENT TERMS

9. Maryland Applicators agrees to pay, in the manner set forth below, a total of eight hundred thirty-five thousand dollars (\$835,000) (the “Total Settlement Amount”). The Total Settlement Amount consists of (a) a “Worker Share” equaling three hundred forty-six thousand dollars (\$346,000) to be paid to affected workers, and (b) a “Penalty Share” equaling four hundred eighty-nine thousand dollars (\$489,000) to be paid to the District. The Total Settlement Amount shall be paid out in the following manner:

- a. **Worker Share.** Each eligible direct engagement and subcontracted worker as identified by the District may recover up to \$1,000 (the “Restitution Payment”), to be paid out from the Worker Share and distributed in a manner consistent with this sub-section. Maryland Applicators shall pay the Worker Share as follows:
  - i. *Payment of Worker Share to the District.* Within sixty (60) days after the Effective Date, Maryland Applicators shall pay the District the Worker Share (\$346,000).
  - ii. *District to Administer Claims Distribution.* Following receipt of the Worker Share, the District shall be responsible for distributing the Worker Share to eligible direct engagements and subcontracted workers, and may retain a claims administrator to assist with such distribution. The District shall be responsible for paying any such claims administrator and shall provide copies of all amounts invoiced and paid to the claims administrator to Maryland Applicators.
  - iii. *Remaining Funds.* At the conclusion of the District administered claims process, any undistributed portion of the Worker Share shall remain with the District. Any funds remaining with the District pursuant to this term may be used by the District for any lawful purpose, including but not limited to payment in restitution to current and former workers who performed work for Maryland Applicators or payment applied to the District’s restitution fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; payment to the litigation support fund; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia. Maryland Applicators agrees to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District’s payment under this paragraph.

- b. **Penalty Share.** Maryland Applicators shall pay the Penalty Share as follows:
- i. Within sixty (60) days after the Effective Date, Maryland Applicators shall make a payment to the District in the amount of one hundred fifty-four thousand dollars (\$154,000).
  - ii. By August 31, 2023, Maryland Applicators shall make a payment to the District in the amount of three hundred thirty-five thousand dollars (\$335,000).
  - iii. Payments made pursuant to the Penalty Share may be used for any lawful purpose, including, but not limited to, deposit to the District's litigation support fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia. Maryland Applicators agrees to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District's payment under this paragraph.
- c. **Delivery.** Payments made by Maryland Applicators pursuant to this paragraph shall be in the form of a certified or cashier's check made payable to the "D.C. Treasurer" and mailed with tracking information requested, sent by overnight courier with tracking information requested, or hand delivered to Conny Tello, Staff Assistant, Public Advocacy Division, Office of the Attorney General for the District of Columbia, 400 Sixth Street, N.W., 10th Floor, Washington, D.C. 20001.

### III. INJUNCTIVE TERMS

10. **Certified Payroll.** Maryland Applicators will require all subcontractors retained for projects in the District to submit weekly certified payroll reports to Maryland Applicators that certify that the subcontractor is in compliance with the District's wage-and-hour laws. Maryland Applicators shall utilize a certified payroll form that requires the subcontractor to certify (a) identifying information pertaining to the subcontractor and project, (b) the names of their workers, (c) their classification as employees or independent contractors, (d) their hours worked each day, (e) their rate of pay, (f) their gross earnings, (g) tax deductions, (h) net earnings, and (i) a sworn certification that the subcontractor is in compliance with the District's wage-and-hour laws. Certified payroll records may be modeled on U.S. Department of Labor Form WH-347. Additionally, Maryland Applicators will require all subcontractors retained for projects in the

District to annually submit certifications with accompanying records to Maryland Applicators indicating their compliance with the SSLA. Maryland Applicators shall maintain the above-referenced certified payroll records for a period of at least five (5) years.

11. **Auditing.** For each subcontractor retained by Maryland Applicators to perform work on a construction project in the District, Maryland Applicators will also complete and include in the Annual Report referenced below in Section 12, at least one (1) random audit for the subcontractor for each District-located project on which the subcontractor is retained during the time period in which the subcontractor is completing the work. The audit shall compare the subcontractor's certified payroll records with a randomized sample of the subcontractor's payment and/or pay stub records to verify the subcontractor's compliance with the District's wage-and-hour laws.

12. **Reporting.** Maryland Applicators shall submit an Annual Report to the District for calendar years 2023 through 2025 that identifies all subcontractors who performed work for Maryland Applicators in the District during the calendar year and a signed certification from each identified subcontractor attesting to compliance with the District's wage-and-hour laws. Maryland Applicators shall submit each Annual Report containing this information to the District by February 28 of the following year, pursuant to Paragraph 24.

13. **Corrective Action.** If Maryland Applicators has knowledge, through an audit or other source, that a subcontractor is in violation of the District's wage-and-hour laws, Maryland Applicators shall take action within fourteen (14) days to ensure that the subcontractor comes into compliance and pays any applicable restitution to any affected worker to remedy the violation.

14. **Penalties in Future Actions.** In any future action, for a violation of the District's wage-and-hour laws by Maryland Applicators within two years of the Effective Date, the District

shall calculate penalties with respect to violations according to the framework of D.C. Code § 32-1331.07(e).

15. **Use of Certain Subcontractors.** Maryland Applicators shall terminate its existing relationships with subcontractor HAD Construction, LLC on all future bids and contracts in the District of Columbia, beginning on the Effective Date. Maryland Applicators shall not engage either GTJ Company LLC or Capital Commercial Drywall LLC on any future bids and contracts beginning on the Effective Date. These restrictions apply to any officers or owners of these subcontractors or their affiliated entities. Maryland Applicators may continue to use these subcontractors on existing projects and awarded subcontracts Maryland Applicators submitted prior to the Effective Date in the District.

16. **Debarment.** Maryland Applicators is prohibited from bidding on or providing work on contracts paid by the Government of the District of Columbia, in the District for a period of one (1) year as of the Effective Date.

17. **Notice of Settlement to Maryland Applicators Management.** Maryland Applicators shall deliver a copy of this Settlement Agreement to each of its current and future principals, officers, directors, and managers who have managerial authority with respect to the subject matter of this Settlement Agreement.

#### **IV. RELEASE**

18. Upon payment by Maryland Applicators of the Total Settlement Amount, the District releases Maryland Applicators from any and all civil claims that the Attorney General could have brought under the wage-and-hour laws, arising out of work performed by Maryland Applicators or by any of Maryland Applicators' subcontractors in the District before the Effective Date. The foregoing release shall not affect the District's right to take appropriate enforcement

action against Maryland Applicators with respect to the payment terms and injunctive terms set out in Sections II and III of this Settlement Agreement, nor shall it, or anything in this agreement, affect the District's right to bring any enforcement action for conduct that is not specifically released with respect to the District's allegations in this matter or for any conduct that post-dates the Effective Date of the Settlement Agreement.

#### **V. ADDITIONAL TERMS**

19. **Enforcement.** If the District has a good-faith belief that Maryland Applicators has violated the payment or injunctive terms of this Settlement Agreement, the District shall provide written notice (the "Notice") to Maryland Applicators, through counsel, by email at least fourteen (14) days prior to taking any enforcement action against Maryland Applicators with respect to the Settlement Agreement. The Notice shall describe the alleged violation in sufficient detail to allow Maryland Applicators to investigate and, if necessary, correct the alleged violation. To the extent the alleged violation involves a subcontractor of Maryland Applicators, the District will send a copy of the Notice to the relevant subcontractor. Following the issuance of the Notice, the Parties may attempt to resolve the dispute without enforcement action, provided that nothing in this paragraph prevents the District from taking enforcement action with respect to the Settlement Agreement or new conduct in violation of the Settlement Agreement following expiration of the fourteen-day period. Should a correction of the alleged violation take longer than fourteen days, then the District and Maryland Applicators will meet-and-confer in good faith in an attempt to agree upon a reasonable time period for Maryland Applicators to investigate and correct the violations, if any.

20. **No concession that claims were not well-founded.** The District's agreement to enter into this Settlement Agreement does not constitute, and shall not be construed as, a concession that its allegations were not well-founded.

21. **No admission of wrongdoing or liability.** Maryland Applicators' agreement to enter into this Settlement Agreement does not constitute, and shall not be construed as, an admission of any wrongdoing or liability.

22. **Full and complete terms.** This Settlement Agreement represents the full and complete terms of the settlement entered into by the Parties. In any action undertaken by the Parties, neither prior versions of this Settlement Agreement nor prior versions of any of its terms may be introduced for any purpose whatsoever.

23. This Settlement Agreement shall be considered effective and fully executed on the Effective Date. This Settlement Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature. Copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

24. All notices and reports sent pursuant to this Settlement Agreement shall be provided to the following addresses via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

James Graham Lake  
Chief, Workers' Rights and Antifraud Section  
Office of the Attorney General  
400 6th Street, N.W., 10th Floor  
Washington, D.C. 20001  
Graham.Lake@dc.gov

*Counsel for the District of Columbia*



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*Counsel for Maryland Applicators, Inc.*

25. If any clause, provision, or section of this Settlement Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

26. Nothing in this Settlement Agreement shall be construed as relieving Maryland Applicators of the obligation to comply with all state and federal laws, regulations, or rules, nor shall any of the provisions of this Settlement Agreement be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

27. Nothing in this Settlement Agreement may be deemed as creating rights in individual or entity third parties.

28. Any failure by any party to this Settlement Agreement to insist upon the strict performance by any other party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions of this Settlement Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement.

29. This Settlement Agreement, its interpretation and any enforcement of its provisions shall be governed by the laws of the District of Columbia.

BRIAN L. SCHWALB  
Attorney General for the District of Columbia

*James Graham Lake*  
James Graham Lake  
Chief, Workers' Rights and Antifraud Section  
Office of the Attorney General  
400 6th St., NW, 10<sup>th</sup> Floor  
Washington, D.C. 20001

Date: 3/6/23

*Counsel for the District of Columbia*

*Carol Pomerleau*  
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Date: 3/6/23