AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Settlement Agreement

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Mark Mykol, Gunnison County Sheriff's Office, Gunnison County Sheriff, Board of County Commissioners

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Full and Final Release and Settlement Agreement

Fiscal Impact:

Submitted by: Lauren Hibbard **Submitter's Email Address:** lhibbard@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Will be paid from the Risk Management fund. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 9/26/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 9/25/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 9/25/2019 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 9/27/2019

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 10/1/2019

Revised April 2015

FULL AND FINAL RELEASE AND SETTLEMENT AGREEMENT

1.0 Parties and Controversy.

1.1 The parties to this Full and Final Release and Settlement Agreement ("Agreement)" are as follows:

A. Mark Mykol ("Claimant");

B. The Gunnison County Sheriff's Office (the "Sheriff's Office"), the Gunnison County Sheriff John Gallowich in his individual and official capacities (the "Sheriff"), and their divisions, insurers, principals, attorneys, agents, employees, successors, servants, elected officials, and officers, past and present (except for Claimant); and

C. The Board of County Commissioners of Gunnison County, Gunnison County, Colorado, and their divisions, insurers, principals, attorneys, agents, employees, successors, servants, elected officials, officers, and directors, past and present (collectively, the "County"). The Sheriff's Office, the Sheriff and the County shall hereinafter be collectively referred to as "Respondents."

1.2 The case or controversy giving rise to this Agreement stems from the revocation of Claimant's appointment as Undersheriff on January 8, 2019 in Gunnison County, Colorado (the "Incident"), which is the subject of the charge filed with the United States Equal Employment Opportunity Commission Denver Field Office, Charge Number 541-2019-02065, (the "EEOC Charge"), wherein Claimant asserts claims pursuant to the United States Constitution, including 42 U.S.C.A. § 12112, based on alleged violations of his civil rights, as well as any potential civil claims, known and unknown, arising out of or that could arise out of the Incident.

2.0 Release.

2.1 For the good and valuable consideration set forth in this Agreement, which Claimant hereby expressly acknowledges, Claimant hereby releases, acquits, and forever discharges the Respondents as well as all other related persons and entities, both past and present, including, but not limited to, the Respondents' departments, divisions, insurers, principals, attorneys, agents, employees, successors, servants, elected officials, officers, and directors, of and from any and all liabilities, claims, demands, rights, controversies, agreements, damages, actions, causes of action, expenses, attorney's fees, costs, interest, compensation, judgment, and any and all consequential and punitive damages, of whatever kind or nature, either in law or equity, which exist or might exist with regard to any and all claims in any way related to or arising from the facts and circumstances alleged in the Incident or the EEOC Charge, including but not limited to all claims that arise by assignment, lien, subrogation or otherwise.

2.2 In the event that Claimant has filed any charge or complaint with any local, state, or federal agency or court against Respondents or any of its employees, officers, officials, agents, servants or insurers, with the exception of the workers' compensation claim(s) of record that Claimant has filed against respondents that are either resolved or in the process of resolution, Claimant shall indemnify and hold harmless Respondents from the imposition of any fees, costs, charges, judgment or penalties resulting from Claimant's filing of charges or complaint.

2.3 For the good and valuable consideration set forth in this Agreement, which Claimant hereby expressly acknowledges, Claimant hereby assigns to Respondents any and all claims associated with or related to the Incident or the EEOC Charge, whether against Respondent or any third person.

2.4 The parties hereby acknowledge and agree that this Agreement, and the terms thereof, shall be binding on their agents, attorneys, servants, employers, employees, principals, heirs, executors, administrators, insurers, successors, assigns, subrogees, subrogors, lienholders, and any and all other persons or entities which have or may have any claim on behalf of the parties, related to or arising from the Incident or the EEOC Charge, or which are or may be entitled to share in any settlement related to or arising from the Incident or the EEOC Charge.

2.5 Claimant hereby acknowledges that a portion of the consideration given for this Agreement is being given for the full and final release of any and all unknown losses, claims, injuries, costs, expenses, and damages which either may have occurred in the past and are not yet known, or which may occur in the future and are not presently known, of whatsoever kind and nature, either in law or in equity, which might exist with regard to any matter related to or arising from the Incident or the EEOC Charge, including those stemming from his employment with the Sheriff's Office or his separation from that employment. Claimant agrees to voluntarily and knowingly assume the risk of any mistake of fact, either mutual or unilateral, with respect to said losses, claims, injuries, costs, expenses and damages, and shall not, under any circumstances, seek to present further claims of any kind or in any forum whatsoever (including in any court, or before any administrative or investigative body or agency whether public, quasi-public or private) either himself, on behalf of or as a member of any group or class, or by, through or on behalf of his agents, attorneys, servants, employers, employees, heirs, executors, administrators, insurers, successors, assigns, subrogees, subrogors, and lienholders (including but not limited to Medicaid or any medical lienholder) related to or arising from the Incident or the EEOC Charge as against the persons and entities herein released.

2.6 Claimant specifically agrees that he is solely responsible for payment of any and all of his lienholders and/or any other entity that may be entitled to share in any settlement proceeds related to his complaint which alleged damages, including any and all liens, taxes, subrogated interests or assignments for same, as well as any expenses incurred subsequent to this Agreement. Claimant agrees to indemnify Respondents against any claims brought by third parties seeking contribution, indemnification, reimbursement, subrogation, or payment for any claim, lien or

judgment recovered or asserted related to the allegations that were or could have been asserted against the Respondent related to the Incident or the EEOC Charge.

2.7 Every provision of this Release is intended to be severable unless otherwise noted. In the event that any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

2.8 It is understood and agreed that the payment and consideration set forth in Section 3.1 of this Agreement is in full settlement and compromise of Claimant's disputed claims; that the payment and consideration made under this Agreement are not to be construed as an admission of liability on the part of the persons and entities hereby released; and that any and all liability is by said persons and entities hereby expressly denied.

2.9 In consideration of the covenants and promises above, the receipt and sufficiency of which are hereby acknowledged, Claimant reciprocates and also knowingly and voluntarily waives, releases and discharges Respondents, from any and all liabilities, claims, demands, rights, controversies, agreements, damages, actions, causes of actions, expenses, attorney fees, interest, compensation, judgment, and any and all consequential and punitive damages, of whatsoever kind and nature, either in law or in equity, which might exist with regard to all claims arising out of Claimant's employment and the separation of that employment, or pursuant to any federal or state employment or discrimination laws, regulations or other requirements.

3.0 Terms.

3.1 In consideration of the releases set forth at Section 2.0 above, the Sheriff's Office, on behalf of the remaining Respondents and through the County, shall pay Claimant a total amount of One-Hundred Twenty-Five Thousand Dollars ($125,000.00), made payable directly to Mark Mykol at 164 Bevington Road, Gunnison, Colorado 81230. The obligation to make the payment shall be enforceable by Mr. Mykol against Respondents.

3.2 Claimant and Respondents agree that each shall bear his/its own attorney's fees and costs associated with the Incident and the EEOC Charge. This Agreement is further intended to and does release, acquit, and forever discharge any and all of Claimant's claims for attorneys' fees or other litigation expenses which might exist with regard to the referenced dispute or in connection with this Agreement.

3.3 Contemporaneous with the execution of this Agreement, if not before, the Parties agree to execute any "Negotiated Agreement" drafted by the U.S. Equal Employment Opportunity Commission and agree and understand that an express term of that agreement, and consideration for this Agreement, includes withdrawal of and request for closure of the EEOC Charge, effective

upon execution of this Agreement. To the extent any term in such Negotiated Agreement conflicts with the terms of this Agreement, this Agreement shall control.

3.4 Claimant acknowledges and agrees that by entering into this Agreement, Claimant (a) understands the language used in this Agreement and the Agreement's legal effect; (b) relinquishes the right to sue Respondents or file a charge of discrimination against Respondents for any claim related to his employment; (c) will receive compensation in consideration under this Agreement; (d) has been informed to consult with an attorney before signing this Agreement; and (e) that this Agreement shall become final and binding and shall be irrevocable upon signing.

3.5 In the event Claimant applies for reemployment with Respondents and Respondents do not select Claimant for reemployment as a result of Claimant's application, for the consideration set forth in this Agreement, the sufficiency of which is acknowledged, Claimant hereby waives any and all known and unknown claims, and the right to pursue such claims, related in any way to his request for reemployment with Respondents, whether arising from tort, contract, Federal or state law, or any other law or in equity. For the avoidance of doubt, and to the extent Claimant applies for reemployment, Respondents are not required to give any consideration to his application.

4.0 Confidentiality.

4.1 It is understood that this Agreement is a public record and is not confidential.

4.2 It is further agreed that, except to the extent required by law, and except for this Agreement, henceforth no documents, statements, acknowledgments, or interviews will be given to any news organization or entity of any type by the Parties or their attorneys related to the settlement. In response to an inquiry by a news organization regarding the settlement, a Party may state that "this was a settlement of a personnel matter involving the Sheriff and the former Undersheriff. The matter was resolved to the parties' mutual satisfaction, and the Sheriff, the Sheriff's Office and the County have no and have not admitted any fault or liability in relation to this matter."

5.0 Lien Satisfaction.

5.1 Claimant agrees that he is solely responsible for the satisfaction of any liens or taxes that exist with regard to his separation of employment from the Sheriff's Office allegedly stemming from the Incident or the EEOC Charge. Claimant agrees to provide the Respondents with notice of satisfaction of any lien within twenty (20) days of the receipt of the settlement monies identified above in paragraph 3.1

5.2 If applicable, Claimant agrees to provide the Respondents with the official documentation from any lienholder confirming that the lien was reimbursed and satisfied.

6.0 Representation of Comprehension of Document.

In entering into this Agreement, the parties represent that the terms of this Agreement have been completely read and explained; and that the terms of this Agreement are fully understood and accepted by the parties. The Parties further declare that each party participated in drafting this Agreement. Accordingly, no party shall be deemed the "drafting party" and the doctrine of law interpreting ambiguities against the drafting party shall not be applicable to or utilized in resolving any dispute regarding the meaning or intent of this Agreement.

7.0 Warranty of Capacity to Execute Release.

7.1 Claimant represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, and causes of action referred to in this Agreement, except as otherwise set forth herein; that he has the sole right and exclusive authority to execute this Agreement and receive the consideration specified in it; and that he has not sold, assigned, transferred, subrogated, liened or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement. Claimant hereby agrees to fully indemnify and defend the Respondents against any claims which might be asserted by any person or entity asserting any such derivative right.

8.0 Tax Liability Clause.

8.1 It is understood between the parties to this Agreement that Claimant has not relied upon any representations, express or implied, made by the Respondents or any of their representatives, as to the tax consequences of this Agreement and that Claimant releases the Respondents from any and all liability in connection with any such tax consequences. Claimant has asserted throughout the EEOC Charge that his claim was for damages arising from his separation from employment and the alleged revocation of his appointment as Undersheriff which Claimant contends violated his civil rights and the United States Constitution, including claims under the federal Americans with Disabilities Act. The parties agree that no portion of the settlement amount is being paid is for exemplary or punitive damages.

8.2 Claimant agrees to indemnify and hold the Respondents harmless from any claims, demands, liens, and/or lawsuits by the Internal Revenue Service, any other governmental agency, or any other creditor against Claimant which may arise out of the settlement payment of this EEOC Charge.

9.0 Governing Law and Forum.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for the interpretation or enforcement of this Agreement shall be in the State of Colorado District Court, Gunnison County, Colorado.

10.0 Entire Agreement and Successors in Interest.

This Agreement contains the entire Agreement between Claimant and the Respondents with regard to the matters set forth in it. This Agreement may not be changed orally. This Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each.

11.0 Counterparts/Facsimile Signatures.

This Agreement may be executed in two or more counterparts and shall be fully effective when executed by all parties. This Agreement may also be executed on multiple copies via facsimile or electronic scan and shall be effective as if all signatures were affixed to one copy.

12.0 Effectiveness.

An electronically stored and executed copy of this Agreement has the same force and effect as the original.

MADELEINE K. HAMBLEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID# 20194016061
MY COMMISSION EXPIRES 04/25/2023

Mark Mykol

STATE OF COLORADO)
) ss.
COUNTY OF Gunnison)

SUBSCRIBED AND SWORN to before me this 24th day of September, 2019, by Mark Mykol.

My Commission expires: 04/25/2023

Notary Public

GUNNISON COUNTY SHERIFF'S OFFICE

John Gallowich, on behalf of the Gunnison County Sheriff's Office

STATE OF COLORADO)
) ss.
COUNTY OF Gunnison)

SUBSCRIBED AND SWORN to before me this 25th day of September, 2019, by John Gallowich, on behalf of the Gunnison County Sherriff's Office.

My Commission expires: 6/14/2023

LAUREN HIBBARD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20194022379
My Commission Expires June 14, 2023

Notary Public

GUNNISON COUNTY BOARD OF
COUNTY COMMISSIONERS

_____
Jonathan Houck, Chairperson

_____
John Messner, Vice Chairperson

_____
Roland Mason, Commissioner

ATTEST:

_____
Deputy County Clerk