

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (“Agreement”) is made by and between the Board of County Commissioners of Archuleta County (the “County”) and Dave Brackhahn (“Brackhahn”), whose address is 3000 Hwy 84, Unit C, Pagosa Springs, CO 81147. The County and Brackhahn may collectively be referred to as the “Parties” or individually as “Party.” This Agreement is effective on the date of the last signature of the Parties on this Agreement.

EXPLANATORY STATEMENT

This Agreement is made in contemplation of the following facts and circumstances:

- I. Brackhahn is a Plaintiff amongst other individuals, who filed a lawsuit against former County Commissioners and the former County Attorney – Case Number 2016CV4 (the “Lawsuit”). In the Lawsuit, on October 17, 2017, the District Court awarded attorney’s fees to the County in the amount of \$18,565.50 jointly and severally against all the Plaintiffs except Pat Alley. The District Court has also set a hearing for December 4, 2019 to determine the amount of attorney’s fees to be awarded to the County for the Plaintiffs’ appeal of the Lawsuit to the Colorado Court of Appeals.
- II. The Parties desire to settle and resolve all issues between them by entering into this Agreement pursuant to the terms set forth herein.

AGREEMENT

Now therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and Brackhahn agree as follows:

1. **Consideration:** By this Agreement, Brackhahn shall pay to the County the amount of one thousand, three hundred, twenty-six and 11/100 dollars (\$1,326.11). Brackhahn agrees that he shall not participate further in the Lawsuit or any other lawsuit in any jurisdiction regarding, arising from or related to the subject matter of the Lawsuit. Upon payment by Brackhahn of the amount set forth herein, the County shall not pursue and shall release Brackhahn from any liability for the attorney’s fees awarded to date and any additional attorney’s fees that may be awarded in the future in the Lawsuit. In addition, Brackhahn will not be required to complete and submit the judgment interrogatories served on them by the County nor will the County file any motion to compel Brackhahn to complete and submit said judgment interrogatories. The Parties further agree to fully cooperate to execute any documents to effectuate this Agreement.

2. **Release of Brackhahn:** Upon execution of this Agreement, the County for itself, and any elected officials (current and former), employees (current and former), partners, agents, heirs, representatives, successors, and assigns, releases and forever discharges Brackhahn, his family members, agents, employees, attorneys, shareholders, officers, directors, heirs, representatives, successors, assigns, and insurers from any and all claims, demands, obligations, damages and causes of action, in law or equity, known or unknown, that the County may now have or that might

subsequently accrue regarding, relating to or arising from the subject matter of the Lawsuit.

3. **Release of County:** Upon execution of this Agreement, Brackhahn for himself, and any family members, partners, agents, heirs, representatives, successors, and assigns, releases and forever discharges the County, its elected officials (current and former), agents, employees (current and former), attorneys (current and former), shareholders, officers, directors, heirs, representatives, successors, assigns, and insurers from any and all claims, demands, obligations, damages and causes of action, in law or equity, known or unknown, that Brackhahn may now have or that might subsequently accrue regarding, related to or arising from the subject matter of the Lawsuit.

4. **Accord and Satisfaction:** The Parties expressly agree that this Agreement is a full accord and satisfaction of any and all claims the Parties might have against each other regarding, related to or arising from the subject matter of the Lawsuit.

5. **No Admission of Liability:** It is understood and agreed by the parties to this Agreement that this Agreement is not to be construed as an admission of liability, wrongdoing, or improper conduct on the part of any person or entity released. Any and all liability and wrongful or improper conduct is hereby expressly denied, and no Party shall represent or suggest the contrary to any other person.

6. **Authority:** Each Party to this Agreement expressly represents and warrants, each to the other, that each Party has authority to enter into this Agreement, and that no Party has sold, assigned, subrogated, granted or transferred to any other person, any claim, action, demand or cause of action encompassed by this Agreement. The warranties contained in this paragraph are contractual, and not mere recitals, and shall survive the closing of this Agreement.

7. **Breach:** This Agreement shall be deemed breached, and a cause of action accrued thereon immediately upon the commencement of any action or administrative proceeding or assertion of any such claim as a defense to an action, based upon any claim, counterclaim, demand, action, or cause of action settled or released by this Agreement. In any such action or administrative proceeding, this Agreement may be pled as a defense, or by way of counterclaim or cross-claim, and shall be admissible in evidence without any foundation testimony. This Agreement shall also be deemed breached in the event of failure to comply with any other term, condition or covenant contained in this Agreement.

8. **Attorney Fees in the Event of Breach:** Any non-breaching Party to this Agreement shall be entitled to recover from the breaching Party all attorneys' fees and costs incurred as a result of any breach of this Agreement.

9. **Acceptance of Terms of This Agreement:** The Parties have read this Agreement, and their signatures below indicate their acceptance of the terms of this Agreement. The Parties each acknowledge that: (i) they are executing this Agreement in reliance solely upon their own judgment, belief and knowledge and upon the advice of their legal counsel, if sought; (ii) no promise, inducement or agreement not contained herein has been made to any party by any other party, or person acting on his, her or its behalf; (iii) the terms and conditions contained herein are contractual and not mere recitals; and (iv) this Agreement contains the entire agreement between the Parties hereto, replacing

any and all prior agreements relating to the subject matter hereof.

10. **Modification:** This Agreement may be changed, amended, or terminated, only by a similar written instrument executed by all Parties to be bound thereby.

11. **Governing Law:** This Agreement and any subsequent changes to it shall be construed under and governed by the laws of the State of Colorado.

12. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Parties' heirs, personal representatives, executors, trustees, agents, successors and assigns.

13. **Severability:** If any provision of this Agreement is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable, and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such unlawful, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible and legal, valid and enforceable. This Agreement shall be broadly construed to reflect the intent of the Parties hereto.

14. **Counterparts:** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same written instrument. Signatures transmitted by facsimile or scanned electronic copy shall also be deemed the same as an original signature.

15. **Drafting:** This Agreement shall not be construed against either party because their attorney acted as scrivener in drafting this Agreement.

“COUNTY”

BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY,
STATE OF COLORADO

By: Ronnie Maez
Its: Chair

Dated: _____

ATTEST:

Kristy Archuleta
Archuleta County Clerk & Recorder