

## SETTLEMENT AGREEMENT AND RELEASE

This Agreement (“Agreement”) by and among the County of El Dorado, a public entity and political subdivision of the State of California (“County”), James Applegate, an individual employed by the County (“Applegate”), and the El Dorado County Deputy Sheriffs’ Association, the recognized employee organization representing Applegate (“DSA”; together with Applegate, the “Claimants”), collectively referred to herein as “the Parties,” is a settlement agreement and release whereby, in exchange for the settlement payment and cessation of litigation, and other consideration provided herein, Claimants and the County extinguish all rights, claims and actions as against each other with respect to the subject matter of this Agreement.

### RECITALS

A. On or about July 6, 2018, a representative for the DSA contacted the County regarding alleged violations of the Fair Labor Standards Act and/or the Memorandum of Understanding between the DSA and the County (“MOU”). These alleged violations concerned Applegate’s care of a dog assigned to him on or about 2013 for work-related purposes, and the appropriate amount of compensation for such care, both historically and on a prospective basis (collectively, the “Claims”).

B. On July 24, 2018, the Parties entered into a tolling agreement whereby any relevant statutes of limitations or timelines within the MOU with respect to the Claims were tolled in order for the Parties to engage in settlement negotiations to resolve the Claims.

C. The Parties have since agreed to a settlement whereby the Claimants will provide a release with respect to the Claims in exchange for a one-time payment to Applegate and approval of a side letter establishing the appropriate compensation on a prospective basis for Applegate’s care of his assigned dog.

D. It is the intent of the Parties to resolve all issues raised by the Claims through this Agreement.

### AGREEMENT

Therefore, in consideration of the mutual covenants, conditions, and promises contained herein, the Parties acknowledge and agree as follows:

1. **General Release and Covenant Not To Sue.** In consideration of the promises set forth herein, each of the Parties, on behalf of themselves and their officers, directors, agents, employees, affiliates, and assigns, hereby releases and discharges the other party, its past, present and future officers, agents, employees, administrators and assigns, from and relinquishes any and all past, present or future claims, demands, obligations, liabilities or causes of action of any nature whatsoever arising from or in any way related to the Claims. Said release shall include, but shall not be limited to, claims, demands, obligations, liabilities or causes of action for

compensatory damages, punitive damages, interest, diminution in value, costs, losses, expenses, compensation and attorneys' fees whether based on tort, contract, equity, statute, breach of fiduciary duty, or other theories of recovery which the Parties have or which may later accrue to or be acquired by the Parties. Each of the Parties hereto further covenants to the other that it shall not sue, nor by its acts or omissions cause to be sued, the other party with respect to the subject matter of this settlement, including without limitation the subject matter of the Claims.

2. **Waiver of Civil Code § 1542.** The Parties hereby acknowledge that the basis, nature and extent of their respective released claims are not capable of being fully known, understood, anticipated, or appreciated at this time, but have nonetheless agreed to enter into this Settlement Agreement and Release to release all such claims. Accordingly, each of the Parties hereby waives and relinquishes any and all rights and benefits which it may have under the provisions of Civil Code section 1542, or any similar laws of any state or territory of the United States of America, or any other jurisdiction.

Civil Code section 1542 states as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

3. **Conditions Precedent.** As a condition precedent to the release contained herein, County shall, within thirty (30) days of the effective date of this Agreement, pay to Applegate the sum of \$6,000.00. As a further condition precedent to the release contained herein, County and the DSA shall enter into a side letter amending the MOU with respect to Applegate in the form attached hereto as Exhibit A. The Claimants shall accept said sum and side letter in full and final resolution of the Claims.

4. **No Admission of Liability.** The execution of this Agreement effects the settlement of claims which are contested and denied. The purpose of this Agreement is for the parties to buy their peace and avoid further litigation. Nothing contained herein shall be construed as an admission by any party of the truth of any allegation, claim, or contention against any other party. Nor shall this Agreement be construed as an admission of any party of any liability of any kind to any other party. Each party acknowledges that the other expressly denies that any of them is in any way liable or obligated to the other.

5. **Attorneys' Fees and Costs.** Each party to this Agreement shall bear its own attorneys' fees and costs. However, in the event that any party hereto institutes any action or proceeding to enforce, construe, or interpret any rights granted under this Agreement, the prevailing party in such action or proceeding shall be entitled, in addition to any other relief

granted by the court, to recover its reasonable attorneys' fees and other expenses incurred in such litigation.

6. **Entire Agreement**. This Agreement contains the entire understanding of the Parties. There are no representations, covenants or undertakings other than those expressed, implied, or referred to herein. The Parties acknowledge that no other party or any agent or attorney of any other party has made any promise, representation, or warranty whatsoever, expressed or implied or statutory, not contained or referred to herein, concerning the subject matter hereof, to induce either party to execute this Agreement in reliance on any such promise, representation, or warranty not specifically contained or referred to herein. The Parties fully understand that if the facts with respect to which they have executed this Agreement are found hereafter to be different from the facts now believed by them to be true, they each expressly accept and assume the risk of such possible differences in facts and agree that this Agreement shall remain effective notwithstanding such differences.

7. **Advice of Counsel**. The Parties hereby acknowledge and state that they have read this Agreement in its entirety, that they understand the contents thereof, that their execution of this Agreement is voluntary and not the subject of duress or undue influence, that this Agreement is intended to resolve disputed claims and the consideration provided herein is fair and reasonable, and that the Parties have relied upon and had the opportunity to seek the legal advice of the attorneys of their own choice and such other persons as they may have deemed appropriate, prior to executing this Agreement.

8. **Construction**. This Agreement has been arrived at through negotiations. Each party and counsel for each party, if any, has participated in the drafting of this Agreement and, accordingly, normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

9. **Severability**. If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by the court to be void and unenforceable, the same shall in no way affect the validity and enforceability of any other provision or of the Agreement as a whole.

10. **Waiver, Modification, and Amendment**. No provision herein may be waived unless in writing and signed by the party or parties whose rights are thereby waived. Waiver of one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by written agreement of the Parties.

11. **Specific Performance**. The terms of this Agreement are contractual in nature and not mere recitals and the obligations of the Parties are acknowledged to be capable of performance through specific performance. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted concerning the Claims.

12. **Representations; No Assignment or Undisclosed Claims.** Each of the Parties to this Agreement represents to the other Parties that it has not assigned, transferred or purported to assign or transfer to any person, corporation or other legal entity, either voluntarily or involuntarily, any claims, cause of action or right based on or arising out of or in connection with any matter, fact or thing as to which this Agreement is given. Each of the Parties further represents that it has the sole right and exclusive authority to execute this Agreement. Each of the parties further represents and warrants to the other Parties that it is not aware of and does not now possess any undisclosed claims against the other, including without limitation any claims, cause of action or right based on or arising out of or in connection with any matter, fact or thing whether or not related to that as to which this Agreement is given.

13. **Binding Effect.** This Agreement is not intended to and shall not confer upon any other person any rights or remedies hereunder or otherwise with respect to the subject matter hereof. Notwithstanding any other term set forth herein, this Agreement shall be binding upon and inure to the benefit of the Parties' present and future parent companies, holding companies, subsidiaries, affiliates, officers, agents, successors, representatives, heirs and assigns.

14. **Governing Law.** This Agreement shall be construed and interpreted under and according to the laws of the State of California. Any action arising out of this Agreement shall be brought in the Superior Court for El Dorado County.

15. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the Agreement.

16. **Enforcement.** The Parties hereby acknowledge, agree, and stipulate that each has the right to enforce any provision of this Agreement by filing any appropriate action, proceeding, or motion, including, but not limited to, a motion pursuant to Code of Civil Procedure section 664.6.

17. **Additional Documents.** The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed the effective date of this Agreement.

**COUNTY OF EL DORADO**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sue Novasel, Chair  
Board of Supervisors

Attest:

\_\_\_\_\_  
Clerk of the Board of Supervisors

**CLAIMANTS**

Dated: \_\_\_\_\_

\_\_\_\_\_  
James Applegate

Dated: \_\_\_\_\_

El Dorado County Deputy Sheriff's  
Association

By: \_\_\_\_\_  
Todd Crawford  
President

**EXHIBIT A**

**Form of Letter Agreement**

[See attached]

**Letter of Agreement  
Between the County of El Dorado  
And The  
El Dorado County Deputy Sheriffs' Association**

Whereas, El Dorado County ("County") and the El Dorado County Deputy Sheriffs' Association ("DSA") (collectively "the Parties) have previously executed a Memorandum of Understanding ("MOU") governing the terms and conditions of employment between the County and employees in the Deputy Sheriffs' Association bargaining unit; and

Whereas, the language in Article 5, Section 12 of the MOU sets forth the conditions for eligible employees to receive additional compensation for care of their assigned canines; and

Whereas, as part of negotiations for a successor Memorandum of Understanding, the Parties have exchanged proposals that clarify who is eligible to receive compensation pursuant to Article 5, Section 12; and

Whereas, negotiations for a successor Memorandum of Understanding are ongoing, but the Parties have agreed that the County's proposed revision to Article 5, Section 12 should be immediately effective with respect to members of the DSA within the District Attorney's Office that are, as of the effective date of this Agreement, assigned a canine for work-related purposes and who are responsible for providing care for such canine;

It is therefore agreed by the Parties that:

1. Effective the first full pay period following final execution of this Letter of Agreement ("Agreement") by the Parties, members of the DSA within the District Attorney's Office that are assigned, as of the effective date of this Agreement, a canine for work-related purposes and who are responsible for providing care for such canine shall not be subject to Article 5, Section 12 of the current MOU, but shall instead be subject to the following provision in its stead:

Employees available and assigned by the Appointing Authority to the Canine Officer Program shall receive an additional \$70 per pay period. The County shall pay, on a claim basis, incurred expenses, for the dogs, directly to the appropriate providers. Employees available and assigned by the Appointing Authority to this Program shall receive 3.5 hours per week, paid at overtime rates, for the off duty care and training of the dog. The County shall pay such employees only when assigned to this program. This program shall be limited to nine (9) Canine Officer Dog Handlers.

Required qualifications and assignment as a Canine Officer shall be made at the sole discretion of the Appointing Authority. The duties and responsibilities of Canine Officer and the activities that constitute "dog handling" shall also be at the sole discretion of the Appointing Authority. When such assignment is

terminated at the discretion of the Appointing Authority for non-disciplinary reasons, and the employee is no longer entitled to Canine Officer pay, such loss of Canine Officer pay shall not be considered a "punitive action" under the Public Safety Officers Procedural Bill of Rights Act (Government Code Section 3300 et. seq.), and is not subject to appeal or grievance.

2. All members of the DSA other than those subject to Paragraph 1 of this Agreement shall remain subject to Article 5, Section 12 of the current MOU in its entirety. This shall include any members of the DSA within the District Attorney's Office that are assigned a canine for work-related purposes after the effective date of this Agreement but before the effective date of any successor Memorandum of Understanding between the County and the DSA.
3. This Agreement shall terminate upon the effective date of a successor Memorandum of Understanding between the County and the DSA, the terms of which shall then be applicable to all DSA members.
4. Except as explicitly set forth above, all other terms and conditions of the MOU remain in full force and effect.

FOR THE COUNTY

FOR THE UNION

\_\_\_\_\_  
Tameka Usher  
Director of Human Resources

\_\_\_\_\_  
Todd Crawford  
President, El Dorado County  
Deputy Sheriff's Association

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Board of Supervisors

ATTEST: James Mitistrin  
Clerk of the Board of Supervisor

\_\_\_\_\_  
Sue Novasel, Chair

\_\_\_\_\_  
By: Deputy Clerk

Date: \_\_\_\_\_

Date: \_\_\_\_\_