

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Settlement Agreement**”) is entered into by and between the Elbert County Board of County Commissioners (the “**County**”) and the Elbert County Library District, d/b/a Pines and Plains Library District (the “**District**”). The County and the District are each a “**Party**” and collectively the “**Parties**” to this Settlement Agreement.

RECITALS

- A. The County and the District are involved in litigation concerning the BOCC’s Appointments Policy which was filed in the Elbert County District Court under Case No. 2018CV30009 (the “**District Court Action**”).
- B. The Parties wish to avoid the expense and uncertainty of further litigation without any admission of liability or wrongdoing and are willing to settle the District Court Action subject to the terms of this Settlement Agreement.

AGREEMENT

IN CONSIDERATION of the mutual and unilateral covenants, obligations, promises, and warranties contained within this Settlement Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Recitals are hereby incorporated into this Settlement Agreement.
2. IGA. This Settlement Agreement is contingent upon approval and execution of an Intergovernmental Agreement (“**IGA**”) in substantially the same form as attached hereto as Exhibit A by the Elbert County Board of County Commissioners and the District’s Board of Trustees on or before June 15, 2018. This Settlement Agreement, including any release or any other terms hereof, shall be void and of no further effect if the IGA is not approved by both Parties within that time frame. Should this Settlement Agreement become void for failure to comply with this paragraph 2, the District Court Action shall go forward as if this Settlement Agreement was never entered into. In the event the IGA is approved and executed as required by this paragraph 2, and to the extent there is any conflict between this Settlement Agreement and the IGA, the IGA will control.
3. Dismissal of District Court Action. In the event the IGA is approved and executed, as required in paragraph 2 hereof, the Parties’ attorneys will execute, and the District’s attorneys promptly file, a stipulated motion to dismiss the District Court Action with prejudice, each party to pay its own costs and attorneys fees.
4. District Release. In the event the IGA is approved and executed as required in paragraph 2 hereof, the District, as well as all trustees, departments, divisions, sub-agencies, affiliates and all current and former officers, directors, managers, members, employees, officials, agents and attorneys of each such entity, releases the County from all claims, including claims for

costs and attorney's fees that it could have or has asserted in the District Court Action; provided, however, that this release is not intended to release, and shall not be construed to release, any obligations, or any claims arising out of any obligations, set forth in this Settlement Agreement, the IGA, or any other contracts, agreements, or entitlements as between the Parties.

5. County Release. In the event the IGA is approved and executed as required in paragraph 2 hereof, the County, as well as all commissioners, departments, divisions, sub-agencies, affiliates and all current and former officers, directors, managers, members, employees, officials, agents and attorneys of each such entity, releases the District from all claims, including claims for costs and attorney's fees that it could have or has asserted in the District Court Action; provided, however, that this release is not intended to release, and shall not be construed to release, any obligations, or any claims arising out of any obligations, set forth in this Settlement Agreement, the IGA, or any other contracts, agreements, or entitlements as between the Parties.

6. Further Intent and Understanding. Each Party understands and acknowledges that no promise or inducement was offered except as expressly set forth herein; that this Settlement Agreement is executed without any reliance on any statement or representation by any person or Party released, or by their officers, employees, representatives or attorneys concerning the nature or extent of any legal liability for any such matter; that the Party and all representatives of the Party are of lawful age, legally competent, and duly authorized to execute this Settlement Agreement, and that the Party accepts full responsibility for the consequences of execution of this Settlement Agreement. For so long as the IGA remains in effect, no Party shall, under any circumstances, seek to reopen and present any prior, new, or further claim against any Party relating to or arising from the District Court Action or the BOCC's Appointments Policy.

7. Sole Owner of Claims. Each Party hereby represents that it is the sole owner of all claims released and purported to be released hereby, and that such Party has made no assignment or transfer of any claim released herein to any third party. Each Party hereby agrees to defend and indemnify all Parties and to hold each and every Party harmless against any claim of any assignee of such Party respecting any claim released hereby that may hereafter be asserted.

8. Open Records Law and Other Releases Provided by Law. Each of the Parties understands and agrees that, upon a valid request made pursuant to applicable public disclosure laws, including, without limitation, the provisions of C.R.S. § 24-72-101, *et seq.* (the "**Colorado Open Records Act**"), all as presently or subsequently amended, each of the Parties are or may be obligated to provide a requesting person a copy of this Settlement Agreement. Each of the Parties agrees that it shall make no attempt whatsoever to hold the other Party liable on any basis for any release of documentation or information released in compliance with any applicable law.

9. No Admission of Liability. Except as otherwise provided herein, each Party, by entering into this Settlement Agreement, does not admit any impropriety, wrongdoing or liability of any kind whatsoever in relation to the claims made in the District Court Action or related to the BOCC's Appointments Policy, as the Parties are entering into this Settlement Agreement to compromise and resolve the claims in the District Court Action and any other claims related to the BOCC's Appointments Policy. The Parties agree that this Settlement Agreement does not constitute evidence of, or an admission of any liability, omission or wrongdoing of any kind by

any Party. This Settlement Agreement shall not be offered or received into evidence or otherwise filed or lodged in any proceeding against any Party except as may be necessary to prove and enforce its terms.

10. Integration. The Parties understand, acknowledge and agree that this Settlement Agreement constitutes the entire agreement of the Parties regarding the subject matter and transactions referred to herein, and that the terms of this Settlement Agreement are contractual in nature and not mere recitals. As such, the Parties understand, acknowledge and agree that this Settlement Agreement is fully integrated and supersedes all previous oral or written agreements of the Parties.

11. Binding Effect. This Settlement Agreement shall inure to the benefit of, and be binding upon, all of the successors, assigns, and transferees of the Parties.

12. Governing Law. This Settlement Agreement is entered into in the State of Colorado, and shall be governed by the laws of the State of Colorado and shall be enforceable in accordance with its terms only in the state courts of Colorado.

13. Headings. The headings used in this Settlement Agreement are used only for the convenience of the Parties. As such, these headings shall not possess any legal effect whatsoever or in any other way alter or modify the meaning or interpretation of this Settlement Agreement.

14. Additional Assurances. This Settlement Agreement is intended to be self-operative. Notwithstanding the foregoing, the Parties agree that, at the reasonable request of the other Party, they shall execute any further documents or instruments reasonably necessary to effectuate the transactions contemplated by this Settlement Agreement.

15. Severability. If any provision of this Settlement Agreement should be declared unenforceable, then the remainder of this Settlement Agreement shall continue to be binding upon the Parties to the extent not manifestly inequitable to the Parties under the facts and circumstances then pertaining.

16. Execution in Counterparts, by Facsimile or Electronically. This Settlement Agreement may be executed in counterparts or with signatures obtained via facsimile or other electronic transmission, each of which shall have full force and effect upon execution by all Parties to this Settlement Agreement.

17. Warranties. The Parties expressly warrant that they have carefully and completely read the terms of this Settlement Agreement and Release. The Parties expressly warrant that they were afforded the opportunity to consult with counsel prior to executing this Settlement Agreement, that they fully understand the terms of this Settlement Agreement, and that they enter into this Settlement Agreement knowingly and voluntarily, and without coercion, duress or undue influence. The Parties expressly acknowledge that they believe the terms of this Settlement Agreement are appropriate to reach a full and final settlement of the District Court Action. Except as otherwise provided herein, the Parties expressly understand and agree that the signing of this Settlement Agreement shall be forever binding, and no rescission, modification or release of the Parties from

the terms of this Settlement Agreement will be made for mistake or any other reasons. The Parties represent that they are legally competent to execute this Settlement Agreement and accept full responsibility and assume the risk of any mistake of fact as to any damages, losses, or injuries that could have been brought, or any other matter between the Parties related to the District Court Action or the water requirements and approvals for the Subdivision.

18. Amendment. This Settlement Agreement may not be amended except in writing setting forth such amendment and executed by all Parties.

CAUTION: THIS IS A RELEASE. READ BEFORE SIGNING.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective June 13, 2018.

ELBERT COUNTY, COLORADO

BY: Willea
TITLE: BOCC Chair
DATE: 6/13/18

**ELBERT COUNTY LIBRARY DISTRICT
D/B/A Pines and Plains Library District**

BY: [Signature]
TITLE: PRESIDENT
DATE: 6/15/2018

EXHIBIT A

Intergovernmental Agreement Concerning the Board of County Commissioner's Appointments
Policy as it Applies to Library District Trustees

**INTERGOVERNMENTAL AGREEMENT CONCERNING THE BOARD OF COUNTY
COMMISSIONER'S APPOINTMENTS POLICY AS IT APPLIES TO LIBRARY
DISTRICT TRUSTEES**

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter the "Agreement") is made and entered among the **ELBERT COUNTY BOARD OF COUNTY COMMISSIONERS** (hereinafter the "County" or "BOCC"), and the **ELBERT COUNTY LIBRARY DISTRICT, D/B/A Pines and Plains Library District**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), acting through its Board of Trustees (hereinafter "Trustees" or "Library Board"); (hereinafter collectively the "Parties").

WITNESSETH

WHEREAS, the BOCC established the District pursuant to C.R.S., § 24-90-101, *et. seq.* in November of 2000; and,

WHEREAS, the BOCC adopted an Appointments Policy on December 20, 2017 (the "Appointments Policy") which purports to apply to all boards and commissions within the County, including the District;

WHEREAS, the BOCC and Library Board desire to clarify the processes, procedures, and mutual expectations of the BOCC's Appointments Policy given the statutory framework provided by C.R.S. § 24-90-108; and,

WHEREAS, the BOCC delegated the authority to the Library Board to recommend Trustees through the resolution establishing the District as provided in C.R.S., § 24-90-108 and therefore did not establish a continuing selection committee; and,

WHEREAS, C.R.S., § 24-90-108 defines the process for selecting and removing candidates;

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the parties have entered into this Intergovernmental Agreement Concerning the Board of County Commissioner's Appointments Policy as it Applies to Library District Trustees, and agree as follows:

AGREEMENT

1. This Agreement supersedes the Appointments Policy. The Appointments Policy shall not apply to the District. In the event of any inconsistency or conflict between the Agreement and the District's Bylaws, this Agreement shall control.
2. The BOCC and the Library Board agree that the Trustees are solely responsible for and entrusted with the authority to develop the process by which candidates are recommended by the Library Board to the BOCC for ratification or rejection. The BOCC shall not be involved in the recommendation process for Trustees or members of the Library Board other than to ratify or reject a recommendation.

3. The Library Board will provide a copy of the Library Board's current bylaws as an addendum to the annual report to the BOCC (as required by C.R.S. 24-90-109), and will provide notice to the BOCC as a member of the Sunshine List that it will be considering changes to the Bylaws before such changes are made by the Library Board.
4. The Library Board will provide its annual report to the BOCC by the last day of February of the year following the year for which the annual report is due, and the BOCC shall provide the Library Board an opportunity on the next scheduled BOCC meeting to present such annual report.
5. When a vacancy occurs, the Library Board shall notify the BOCC of the vacancy as soon as possible after a vacancy occurs. Upon notification from the Library Board that there is a vacancy or anticipated vacancy on the Library Board, the Library Board may at its own discretion request that the BOCC advertise the open position at the County expense on County media sites, in an effort to maximize the potential exposure and notification of such vacancy to potentially eligible candidates within the County.
6. The length of the terms of Trustees shall be determined by the District bylaws, pursuant to C.R.S. § 24-90-108 (3)(a).
7. All recommended candidates, including incumbents completing a term must be presented for ratification or rejection by the BOCC.
8. The Library Board will provide recommendations for any vacancy as soon as possible as required by C.R.S. § 24-90-108 (3)(b).
9. In addition to the Library Board's list of recommended candidates, the Library Board shall also provide the BOCC with the following:
 - a. A recommendation of a new trustee shall include a written explanation of the rationale for the selection of the recommended candidate.
 - b. A recommendation for the re-appointment of an incumbent shall include a letter of recommendation from the Library Board describing the incumbent trustee's contributions to the Library Board during his or her previous term.
 - c. For an incumbent who is seeking a third or fourth term, the Library Board shall provide a written explanation justifying the desire for and benefit of the nominee continuing to serve as a Trustee for an additional term.
10. The BOCC shall advise the Library Board of its rejection or ratification of the candidate within sixty (60) days after the Library Board notifies the BOCC of a recommendation. Failure by the BOCC to act within 60 days after the Library Board notifies the BOCC of a recommendation shall be considered a ratification by the BOCC.
11. Upon the BOCC's rejection of a nominee, the Library Board will submit a new nominee within sixty (60) days after the BOCC notifies the Library Board that a nominee was rejected, if possible.

12. Each candidate nominated shall be individually considered and voted on for ratification or rejection by the BOCC.
13. Once the initial appointment process is complete, a trustee shall not be subject to annual ratification of his/her appointment by the BOCC, but shall be subject to appointment by the BOCC upon the conclusion of each term.
14. Trustees may be removed by the BOCC only upon a finding of good cause as required by C.R.S. 24-90-108(5) during a public meeting that complies with the Colorado Open Meetings Law. Per C.R.S. § 24-90-108(5) and Colorado case law, "good cause" shall be defined by the Library Board's bylaws, but can be supplemented by Colorado law.
15. This Agreement constitutes the entire agreement of the Parties.
16. Nothing in this Agreement shall constitute a waiver of the available immunities and/or limitations found in the Colorado Governmental Immunity Act.
17. With its signature below, each party represents that it has the authority to enter into this Agreement and has gone through the appropriate process for approval of this Agreement.
18. No portion of this Agreement shall be deemed to create a cause of action with respect to anyone not a party to this Agreement, nor is this Agreement intended to waive any privileges, immunities to the parties, their officers or employees may possess, except as expressly stated in this Agreement.
19. In the event of a dispute over the terms of this Agreement, the parties agree that their exclusive remedy is limited to an action for specific performance. Neither party shall have a right to seek monetary damages for any breach of this Agreement.
20. This Agreement shall remain in effect for a term of six (6) years, unless the BOCC or Library Board shall give written notice of termination in writing to the other party.
21. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. Either party by notice so given may change the address to which future notices shall be sent.

a. Notice to the Library District:

Executive Director
651 W. Beverly Street
Elizabeth, CO 80107

With copy to:
Kim J. Seter, Esq.
7400 E. Orchard Road
Greenwood Village, CO 80111

b. Notice to the County:

Elbert County Board of County Commissioners
215 Comanche St.
PO Box 7
Kiowa, CO 80117

With copy to:
Elbert County Attorney
215 Comanche St.
PO Box 7
Kiowa, CO 80117

WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective June 1, 2018.

ELBERT COUNTY, COLORADO

BY: _____
TITLE: _____
DATE: _____

**ELBERT COUNTY LIBRARY DISTRICT
D/B/A Pines and Plains Library District**

BY: _____
TITLE: _____
DATE: _____