

RESOLUTION NO. 20-61**BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO****RESOLUTION APPROVING GENERAL RELEASE AND AGREEMENT AND
MONETARY SETTLEMENT REGARDING SHARRATT V. EPC ET AL. 1:19-
CV-3647-RM-KMT**

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1), 30-11-103 and 30-11-107(1), the Board of County Commissioners of El Paso County, Colorado (hereinafter "Board"), has the legislative authority to make all contracts and to settle all accounts of the County and to exercise such other and further powers as are conferred by law; and

WHEREAS, there is a pending lawsuit against El Paso County, the El Paso County Sheriff Bill Elder and former Deputy David Kwiecien, filed with the United States District Court for the District of Colorado on or about December 23, 2019, by Plaintiff, Pamela Sharratt, in Case No. 1:19-cv-3647-RM-KMT; and

WHEREAS, the Plaintiff desires by means of a General Release and Agreement (hereinafter "Agreement"), to release El Paso County, the El Paso County Sheriff Bill Elder, former Deputy David Kwiecien, and any and all County departments, offices, employees, agents, and assigns (hereinafter "County"), for injuries of any kind regarding any matters associated with the above-noted lawsuit filed on or about December 23, 2019, and any subsequent concerns that may have occurred up to the date of this resolution, including any and all claims, demands, damages, costs, liabilities, expenses, compensation, reimbursement, and attorney's fees, which are known or unknown, foreseen or unforeseen, arising out of the action identified herein, in exchange for consideration in the amount of one hundred fifty thousand dollars and no cents (\$150,000.00) payable by check from El Paso County and other such consideration as more specifically detailed in the Agreement; and

WHEREAS, the Agreement and consideration herein between the Plaintiff and the County is the proper means to reach full and final settlement of all claims made by the Plaintiff, including any and all subrogation claims; and

WHEREAS, the monetary settlement of one hundred fifty thousand dollars and no cents (\$150,000.00) shall be dispersed to the Plaintiff as outlined in the Agreement for the sole purpose of avoiding the costs of litigation, to include hiring outside counsel for former Deputy Kwiecien as required under C.R.S. § 29-5-111, which will exceed the cost of this settlement agreement; this Agreement does not establish any admissions by parties; and

WHEREAS, it is necessary that this Agreement and payment of the monetary settlement be approved by the Board in order to effectuate the transaction described herein.

Chuck Broerman
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El Paso County, CO



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NOW, THEREFORE, BE IT RESOLVED, the Board of County Commissioners hereby approves the General Release (attached as Exhibit A) and Agreement pertaining to a lawsuit filed on or about December 23, 2019, in the United States District Court for the District of Colorado Case No. 1:19-cv-03647-RM-KMT, and the monetary settlement described herein, and that said funds are a full and final settlement.

BE IT FURTHER RESOLVED, that, Chair of the Board of County Commissioners, or, Vice Chair, be and is hereby appointed and authorized to execute all reasonable and necessary documents on behalf of the Board in order to complete the transaction described herein.

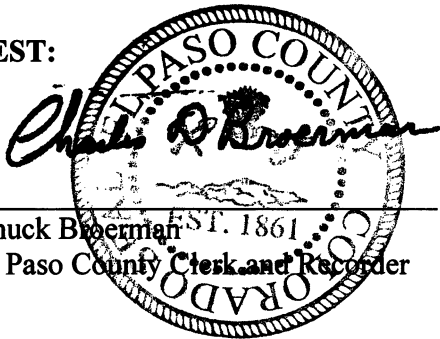
DONE THIS 18th day of February, 2020 at Colorado Springs, Colorado.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

By: _____

Chuck Braerman
El Paso County Clerk and Recorder



By: _____

Mark Waller, Chair

A handwritten signature, likely of Mark Waller, is written over a horizontal line.

GENERAL RELEASE

RECITALS

1. PAMELA SHARRATT, and any and all of her heirs, personal representatives, executors, administrators, attorneys, successors, and assigns, are hereinafter collectively referred to as "RELEASOR."

2. El Paso County, Colorado, and any and all of its current or former departments, affiliated entities (including the El Paso County Sheriff's Office), officials (including the El Paso County Sheriff), employers, successors, assigns, attorneys, employees (including former Deputy Defendant David Kwiecien), volunteers, agents, servants, insurers, self-insurers, and reinsurers, if any, are hereinafter collectively referred to as "RELEASEES."

3. RELEASOR and RELEASEES are collectively referred to as "the Parties."

4. RELEASOR filed a lawsuit in the U.S. District Court for the District of Colorado, Civil Action No. 19-cv-03647-RM-KMT (the "Lawsuit"). The Lawsuit pertains to incidents alleged to have occurred after RELEASOR's arrest for driving while intoxicated on December 24, 2018-December 25, 2018 (the "Incidents"). Allegations include subsequent communications and contact between RELEASOR and former Deputy Defendant David Kwiecien. The factual allegations and claims made by RELEASOR in the Lawsuit are denied and disputed by RELEASEES. Further, El Paso County and the El Paso County Sheriff's Office affirmatively state that former Deputy Kwiecien was off duty and arrived in his own vehicle when he returned to RELEASOR's home and allegedly engaged in prohibited off-duty conduct with RELEASOR, that was in violation of EL Paso County Sheriff's policy, training, protocol, and expectations. RELEASOR affirmatively states that former Deputy David Kwiecien was on duty when he returned to RELEASOR's home and engaged in unlawful conduct at RELEASOR'S home.

5. RELEASOR has decided to enter into this General Release on the terms set out in these RECITALS and the RELEASE below, and to reach a complete resolution of any claims arising out of, or related to, the Incidents, or alleged in or relating to the Lawsuit, as well as any and all claims of any kind RELEASOR may have against RELEASEES occurring up to the date of the execution by RELEASOR of this General Release for damages and/or injuries of any kind, known and unknown, foreseen and unforeseen. For the purpose of this General Release, all of the claims asserted in the Lawsuit, as well as any and all other actual or potential claims or disputes among the Parties, shall be referred to hereafter collectively as the "Claims."

6. In entering into this General Release, it is acknowledged that both RELEASOR and RELEASEES have incurred or will incur considerable costs and fees in pursuing and defending this litigation. RELEASEES assert they are entering into this agreement for the sole purpose of avoiding the costs of further litigation that would necessarily be paid with taxpayer funds to include hiring outside counsel for former Deputy David Kwiecien as required under C.R.S. § 29-5-111, and that would likely to exceed the costs of this General Release.

RELEASE

Release, Covenant Not to Sue, Hold Harmless, and Indemnification.

7. RELEASOR agrees irrevocably and unconditionally to release, discharge, and hold harmless and does release and forever discharge RELEASEES from any and all claims occurring up to the date of the execution by RELEASOR of this General Release for any and all damages, injuries, attorneys' fees, and/or costs pursuant to any federal or state statute, constitution, common law, or contract, or otherwise, known and unknown, foreseen and unforeseen, occurring up to the date of this General Release, including but not limited to any claims for economic damages, non-economic damages, punitive damages, and/or those which may now or hereafter arise out of, or result in any way from, the Incidents and Claims described in the recitals and/or any Notices of Claims, and/or any other claims that have or could have been made, as well as any and all matters relating thereto, and any and all consequences thereof.

8. RELEASOR understands and agrees that this General Release prevents any further Claims against RELEASEES of any kind, whether arising from the Incidents and Claims alleged in the Lawsuit, Notices of Claims, or other incidents, through the date of execution of this Settlement Agreement.

9. RELEASOR represents and warrants that, other than that which is set forth in the Recitals to this General Release, she has not filed or caused to be filed, or asserted or caused to be asserted, any claim or charge against RELEASEES, in or with any court or agency, based on or related to the Incidents or the Claims or any other potential claim against RELEASEES, and agrees that she will not file any claim or charge against RELEASEES in or with any court or agency based on or related to the Incidents or the Claims or any other potential claim against RELEASEE, through the date of execution of this General Release.

10. RELEASOR hereby declares and represents that, except as may be expressed in this General Release, no other person, firm, or corporation has received any assignment, subrogation, or lien, including but not limited to, medical lien, attorney lien, levy, or right of substitution arising out of alleged injuries or damages incurred from the Incidents and/or the Claims or money constituting consideration in this General Release. In the event RELEASEES are subjected to claims by any person, firm, corporation, or

entity under any actual or purported assignment, subrogation, or lien, including, but not limited to, medical lien, medical billing or obligation, attorney lien, levy, tax levy, or right of substitution arising out of alleged injuries or damages incurred from the Incidents and/or the Claims or money constituting consideration in this Settlement Agreement, RELEASOR will defend, indemnify and hold RELEASEES harmless from any such claims or demands.

11. RELEASOR understands and agrees that she is solely responsible for all tax obligations, including all reporting and payment obligations she may have, that may arise as a consequence of this General Release and the monetary consideration provided to her pursuant to it. RELEASOR agrees that RELEASEES have provided no representation or advice as to how this consideration is to be characterized or allocated or as to the tax treatment or tax reporting or payment obligations for the monetary consideration set out herein. RELEASEES will report the payment as settlement of a lawsuit involving physical injury allegations.

12. RELEASOR further warrants that she fully realizes that she may have sustained unknown and unforeseen losses; costs; expenses; damages; liabilities; claims; bodily, personal, or psychological injuries; damage to property; or business losses, and the consequences thereof which may be at this time, heretofore, and hereafter unknown, unrecognized, and not contemplated by RELEASOR, which resulted or may/will result from the Lawsuit, related and unrelated Notices of Claims, and all other incidents or matters through the date of execution of this General Release, and that no promise or inducement has been offered except as herein set forth and that all agreements and understandings between the Parties are expressed herein and that this General Release was executed without reliance upon any statement or representation by RELEASEES, and that RELEASOR is legally competent to execute this General release. RELEASOR accepts full responsibility and assumes the risk of any mistake of fact or law as to any damages, losses, or injuries, whether disclosed or undisclosed, including any mistake in medical diagnosis or prognosis for any injuries, known or unknown, sustained as a result of the above-mentioned Incidents and/or Claims and all matters incident and related thereto applicable to the Claims and any potential claims RELEASOR has or may have against RELEASEES.

13. RELEASOR expressly understands that this Settlement Agreement constitutes a public record as defined at C.R.S. § 24-72-202 (a)(1), and as such is open for inspection by any person in accord with the laws of the State of Colorado.

14. RELEASOR and RELEASEES will not make in public, on social media, or to the press any negative, defamatory or disparaging remarks about each other, EPSO, or any Released Party, regarding the above-mentioned Incidents and Claims, this Settlement Agreement and any negotiations related thereto. RELEASOR agrees to keep the substance of negotiations and/or conditions, and the terms or substance of this Agreement, strictly confidential; and agrees to make no inference or statement to third

parties regarding the merit of her Lawsuit as it relates to the settlement amount. RELEASOR and RELEASEES agree not to communicate (orally, through social media, or in writing) or in any way disclose the substance of negotiations and/or conditions of the settlement, and the terms or substance of this Agreement to any person, judicial or administrative agency or body, business entity or association, news media, or anyone else, other than their respective spouses, if applicable, attorneys, tax advisors and governmental taxing authorities, for any reason whatsoever, without the prior express written consent of the other Party, unless required to do so by law. Spouses and others identified herein shall also be bound by these confidentiality commitments. If compelled by law pursuant to a subpoena or court order, RELEASOR and RELEASEES shall give the other Party notice and opportunity to object prior to such disclosure.

15. RELEASOR and RELEASEES agree that both will abide by applicable laws and regulations in any future interactions.

Consideration.

16. RELEASEES agree to pay RELEASOR the amount of **ONE HUNDRED FIFTY THOUSAND DOLLARS and NO CENTS (\$150,000.00)** by tendering a check in that amount to RELEASOR payable to BUSSEY LAW FIRM TRUST ACCOUNT ("Settlement Funds") within fourteen (14) calendar days of the receipt of this General Release fully executed by the RELEASOR.

17. Upon receipt of Settlement Funds RELEASOR agrees to execute a Joint Stipulation and Order for Dismissal of the Lawsuit With Prejudice, in consideration of this negotiated Settlement Agreement executed by them, each party to bear its own fees and costs, as agreed to by RELEASOR ("Joint Stipulation").

18. RELEASOR further agrees to acknowledge receipt of the Settlement Funds and file the Joint Stipulation, within three (3) business days of the receipt of the Settlement Funds.

19. The Parties agree that Consideration for this Settlement Agreement is as set forth herein, and includes the above monetary Consideration which shall be full and final payment for all Claims released herein and all Claims that might have been asserted in any state or federal judicial or administrative forum up to the date of execution of this General Release, including any claims for attorneys' fees and costs. It is further understood that payment of said Consideration is not to be construed in any way as an admission of liability on the part of the RELEASEES. **The RELEASEES herein expressly deny legal liability for any alleged economic and non-economic damages, and affirmatively assert that this Settlement Agreement is entered for the sole purpose of avoiding extraordinary costs of litigation, as described in paragraph 6., above.**

Voluntariness, Denial of Liability, Entire Agreement.

20. RELEASOR has carefully read the above and foregoing Settlement Agreement and knows the contents thereof and has signed the same as her own free and voluntary act and after having the opportunity to have the same explained by counsel. RELEASOR expressly states that she has been advised of her right to consult additional professionals of her choice, including physicians, lawyers, and accountants, regarding any and all known and unknown, foreseen and unforeseen, damages, losses, injuries, costs, losses of services, expenses, liabilities, claims, and the consequences thereof, of whatsoever kind and nature, that RELEASOR may have incurred or will incur, whether suspected or unsuspected. RELEASOR further expressly understands and agrees that the signing of this Settlement Agreement shall be forever binding and no rescission, modification, or release of RELEASOR from the terms of this Settlement Agreement will be made for any mistake.

21. It is expressly understood and agreed that the acceptance of the above-mentioned Consideration is in full accord and satisfaction of the disputed Claims and that payment of said sum is not to be construed in any way as an admission of liability on the part of RELEASEES, but, on the contrary, RELEASEES specifically deny any wrongdoing, misconduct or liability on account of the Incidents or the Claims or any matters related or incidental thereto, or otherwise.

22. RELEASOR understands and agrees that all agreements and understandings between the Parties, including the RECITALS AND RELEASE and other sub-parts set forth herein, constitute this General Release, and that the terms of this General Release are contractual and not mere recitals.

23. This General Release shall be construed and interpreted in accordance with the laws of the State of Colorado.

24. RELEASOR agrees 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 basic terms and intent of this General Release.

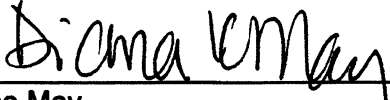
25. RELEASOR certifies that she has fully read and understands the foregoing Settlement Agreement and hereby affixes her signature as her own free and voluntary act.

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IN WITNESS THEREOF on behalf of **RELEASEES**,

Date: 2/12/2020

Office of the El Paso County Attorney
El Paso County, Colorado



Diana May
El Paso County Attorney
On behalf of Releasee El Paso County

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David Kwiecien certifies that he has fully read and understands the foregoing GENERAL RELEASE and consulted with counsel and agrees to be bound by the non-disclosure and non-disparagement obligations of Paragraph 14 of the GENERAL RELEASE and hereby affixes his hand and seal this 10th day of February, 2020, as his own free and voluntary act.



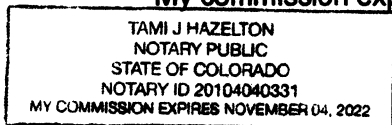
DAVID KWIECIEN

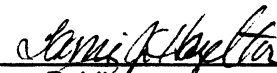
STATE OF COLORADO)
) ss
COUNTY OF)

SWORN TO AND SUBSCRIBED by DAVID KWIECIEN, this 10th day of February, 2020.

WITNESS my hand and official seal.

My commission expires: 11-04-22.

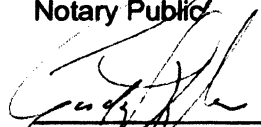




Notary Public

Approved as to form:

Date: 2-10-2020



Gordon Vaughn, Esq.
Attorney for Releasee David Kwiecien

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IN WITNESS THEREOF on behalf of **RELEASOR**,

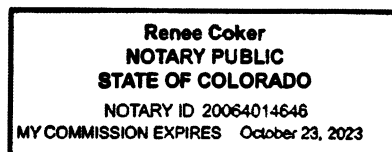
Pamela Sharratt
PAMELA SHARRATT

STATE OF COLORADO)
COUNTY OF El Paso) ss.

12th SWORN TO AND SUBSCRIBED by PAMELA SHARRATT, RELEASOR, this
day of February.

WITNESS my hand and official seal.

My commission expires: 10/23/23



[SEAL]

Renee Coker
Notary Public

We, Timothy Bussey and Sarah Jay Schielke, as attorneys for PAMELA SHARRATT, have reviewed the within General Release with our client and have explained each and every term, condition, limitation, and obligation set forth herein to PAMELA SHARRATT and believe that she is competent and understands the same, and we further signify our approval of and agreement with the form of the within General Release by our signatures below.

Date: 2/12/2020 [Signature]
TIMOTHY BUSSEY, ESQ.
Date: 2/11/20 [Signature]
SARAH JAY SCHIELKE, ESQ.