

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This Settlement Agreement and Release (“Agreement”) is entered into by and between the County of Humboldt (“County”) and the American Federation of State and County Municipal Employees, Local 1684 (“AFSCME”) (collectively the “Parties”). This Agreement is effective on the Effective Date set forth below.

### **RECITALS**

A. Whereas, AFSCME is the designated exclusive bargaining representative of employees working in those job classifications listed in County Bargaining Units 1-4. and

B. Whereas, on June 2, 2016, the United States Court of Appeals for the Ninth Circuit issued the opinion, *Flores v. City of San Gabriel* (9th Cir. 2016) 824 F.3d 890, holding that cash payments to employees in lieu of providing health benefits (“cash in lieu”) constitute compensation that must be included in the regular rate of pay and thus in the calculation of overtime due employees under the FLSA; and

C. Whereas, upon receiving notice of the *Flores* decision, the County undertook an internal review of its contractual overtime policies and practices to ensure that those policies and practices were in compliance with applicable provisions of the Fair Labor Standards Act (“FLSA”) and Section 13 of the Parties’ Memorandum of Understanding (“MOU”);

D. Whereas, the County’s internal review determined that certain aspects of its contractual overtime policies and practices pertaining to the calculation of the overtime rate of pay did not strictly comply with particular requirements of the FLSA and that other aspects of its overtime policies and practices exceeded the requirements of the FLSA;

E. Whereas, the County and AFSCME entered into a tolling agreement to provide the parties an opportunity to work collaboratively to settle overtime disputes arising from the County’s contractual overtime practices pertaining to current and former members of the bargaining unit;

F. Whereas, in February of 2020, the County undertook an internal analysis to determine the amount of back overtime due the Represented Employees had their overtime been calculated in compliance with the FLSA and the MOU;

G. Whereas, beginning in March of 2020, the Parties began settlement discussions to address the County’s overtime compliance efforts and its calculations regarding back overtime due current and former members of the AFSCME represented bargaining units;

H. Whereas, effective the pay period beginning January 10, 2021, the County corrected its overtime practices to comply with requirements of the FLSA as incorporated into the MOU. The Parties also agreed to revise the overtime provisions in the MOU in a manner consistent with the corrections to the County’s overtime practices;

I. Whereas, the Parties wish to enter into a compromise and release related to any and all claims by the current and former employees in AFSCME bargaining units regarding the calculation of overtime under the MOU.

**NOW THEREFORE**, in consideration for the mutual promises and undertakings of the Parties as set forth below, the Parties enter into this Agreement and agree as follows:

## **TERMS**

### **1. Settlement**

#### **a. Settlement Period**

The Parties agree that this settlement will cover the time period from June 5, 2016 through January 9, 2021, hereafter referred to as the “Settlement Period”. Only individuals who were a member of the bargaining unit represented by AFSCME during the Settlement Period are covered by and subject to the terms of this Agreement. Those eligible individuals are listed in Attachments A and B to this Agreement. The Parties further agree that this settlement is designed to effect the payment of the settlement amounts in two parts. Part One will cover current bargaining unit members and provide for the payment of the settlement amounts listed in Attachment A. Part Two will cover those individuals listed in Attachment B, who left the bargaining unit during the Settlement Period. The payment of back overtime under Parts One and Two will be based on the calculation methodology agreed to by the Parties as described below.

#### **b. Settlement Calculation Methodology.**

The Parties agree that in determining the amount of back overtime owed pursuant to this settlement, the County will apply the following methodology:

- **Step One:** For each pay period in the Settlement Period, identify those former and current bargaining unit members who received cash overtime pursuant to County pay codes: 3030 – Overtime; 3032 – Overtime @ 1.5; and 3035 – Overtime for CTO Hours Over 80.
- **Step Two:** For those former and current bargaining unit employees identified by Step One, identify those who also received cash-in-lieu pursuant to Pay Code 1335, shift differential pursuant to Pay Code sections 3070, 3072 and 3073; and -bilingual pay, pursuant to Pay Code section 1332, in each pay period.
- **Step Three:** For each pay period within the Settlement Period, recalculate the cash overtime paid in those pay periods by including the additional pays listed in Step Two above.
- **Step Four:** For each pay period in the Settlement Period, determine the difference between the amount of contract overtime previously paid with the amount due after the recalculation under Step Three.

**c. Settlement Part One**

Based on the calculation methodology summarized above, the County will pay a total amount of **\$386,200.88** to the AFSCME represented employees hereafter referred to as the Part One Settlement Amount”. The allocation of the Part One Settlement Amount to the current bargaining unit members will be as set forth in Attachment A. (“Part One Settlement Payments.”) Although the Parties do not agree as to the actual amount of back overtime due the bargaining unit, the Part One Settlement Amount represents agreed upon and negotiated consideration for any and all overtime compensation allegedly owed to the current members of the bargaining unit under the FLSA as incorporated into the MOU, using a four year statute of limitations for contract claims. By executing this agreement and accepting the payments set forth in Attachment A, AFSCME, on behalf of the bargaining unit members and each of them, expressly waives the bargaining unit’s claims for any and all further recovery, including, but not limited to, back pay due to the County’s alleged underpayment of overtime compensation under the FLSA and the MOU

Payment of the amounts listed in Attachment A shall occur within ninety (90) days of the County Board’s approval of this Agreement.

**d. Settlement Part Two**

Within ninety (90) days of the effective date of this Agreement, the County will send written notice to each of the former bargaining unit members listed in Attachment B informing them of this settlement agreement and of the terms agreed to by and between the County and AFSCME for resolution of this dispute. The notice will advise the former bargaining unit member of the parties’ disputed claims and issues pertaining to the County’s overtime compliance efforts and of their right to opt into the negotiated settlement. Each former bargaining unit member will be provided ninety (90) calendar days from the date of the notice to notify the County in writing that they wish exercise their right to opt into the settlement and to have the County do the overtime calculation specified in section 1.b. The notice will specify that failure to notify the County within the ninety (90) day opt in period will preclude the former bargaining unit member from joining the parties’ settlement agreement. The County will have ninety (90) days from the date it receives an opt-in request to conduct the overtime calculation under section 1.b. above and notify the former bargaining unit member of the result. The County and the former bargaining unit member will then have another ninety (90) days from the date the County notifies the former bargaining unit member of the back overtime pay owed to accept the overtime payment and execute the individual release under Attachment D to this Agreement.

**e. Revision of Overtime Section in MOU**

As part of this settlement, the Parties agree to revise section 13 of the Parties’ MOU to distinguish between statutory and contract overtime. A copy of the agreed upon revisions to section 13 is included as Attachment C to this agreement.

**f. Bona Fide Dispute**

The Parties agree that this settlement resolves a “bona fide” contractual dispute over the amount of back overtime compensation that the County may owe to Employees under FLSA as incorporated into the MOU. Specifically, the Parties, by this agreement, are settling a dispute regarding the County’s method of calculating the regular rate of pay and measuring overtime compensation due bargaining unit members per the terms of MOU. The Settlement Payments are paid as full and complete consideration for the resolution of that dispute.

**g. Method of Payment**

The parties understand and agree that the payments under settlement Part One will issued as part of the Employees’ regular pay check, itemized as a “non-pensionable gross adjustment”. Payments under settlement Part Two will be issued as a separate check to the former bargaining unit members, described as a “non-pensionable gross adjustment”. The parties further understand and agree that the payments issued under Settlement Part One and Part Two are subject to the standard, applicable tax withholding amounts and that neither Party has offered or received tax advice from the other as to the necessary reporting of income pursuant to this settlement.

**h. Acceptance of Terms and Conditions of Settlement**

By accepting the payments provided by this Agreement, each current and former bargaining unit member, takes subject to the terms and conditions of settlement set forth in this Agreement.

**2. General Release.**

Each current and former bargaining unit member listed in Attachments A and B, by accepting his/her respective settlement amount, understands and agrees that their acceptance of that amount constitutes a full and complete settlement of all contractual claims against the County for overtime under the FLSA as incorporated into the MOU that may exist or have existed for services rendered during the Settlement Period. Further, each current and former bargaining unit member listed in Attachment A and B, by accepting his/her respective settlement amount, hereby fully, finally and completely releases, waives and discharges the County and its officers, agents, employees, successors and assigns from any further claims for overtime for services rendered during the settlement period. The current and former bargaining unit employees reserve the right to pursue any non-contractual claims for back overtime not paid pursuant to this Agreement.

The Parties to this settlement understand that this Release extends to all grievances, disputes or claims of every nature and kind, known or unknown, suspected or unsuspected, arising from or attributable to the County’s underpayment of statutory and contractual overtime up through and including the Effective Date of this Agreement. The Parties understand that this release does not include claims relating to conduct or activity which does not arise from or is not attributable to any conduct or activity occurring after the Effective Date of this Agreement. The

Parties understand that this is a compromise settlement of disputed claims, and that nothing herein shall be deemed or construed at any time or for any purpose as an admission of the merits of any claim or defense.

The Parties further acknowledge that any and all rights granted them under section 1542 of the California Civil Code are hereby expressly waived regarding the Represented Employees' FLSA and contract overtime claims occurring up to and including the Effective Date of this Agreement. Section 1542 of the California Civil Code provides as follows:

SECTION 1542. CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. 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. Knowledge of Parties.**

The Parties understand and agree to the settlement, this Agreement, and the terms and conditions contained herein, and enter into this Agreement knowingly and voluntarily. The Parties have investigated the facts pertaining to this settlement and Agreement and all matters pertaining thereto as deemed necessary. The Parties have relied upon their judgment, belief, knowledge, understanding, and expertise after consultation with their designated legal representatives concerning the legal effect of the settlement and its terms. By signing this Agreement, the Parties signify their full understanding, agreement, and acceptance of the Agreement.

**4. Governing Law and Venue.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California and, if necessary, federal law. To the extent that any Party brings an action to enforce the terms of this Agreement, such action shall be filed and prosecuted in the Superior Court for the County of Humboldt.

**5. Entire Agreement.**

This Agreement and Attachments A, B, C and D constitute the entire agreement between the Parties regarding this matter. No other promise or inducement has been offered for this Agreement. Any amendments to this Agreement must be in writing, signed by duly authorized representatives of the County and Employees, and must state that the Parties intend to amend the Agreement.

**6. Duty to Act in Good Faith**

The Parties shall act in good faith and use their reasonable good faith efforts after the execution of this Agreement to ensure that their respective obligations hereunder are fully and punctually performed. The Parties shall promptly perform any further acts and execute and deliver any other documents or instruments that may be reasonably necessary to carry out the provisions of the Agreement.

**7. Interpretation and Construction**

Any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this document or the documents referred to herein, on the understanding that the Parties participated equally in the negotiation and preparation of the Agreement and the documents referred to herein, or have had equal opportunity to do so. The headings used herein are for reference only and shall not affect the construction of this Agreement.

**8. Breach, Waiver, and Amendment**

No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. The Agreement may be amended, altered, modified, or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives that specifically states it is a modification of this Agreement.

**9. Partial Invalidity.**

The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.

**10. Mutual Drafting.**

This Agreement shall be deemed to have been jointly drafted by the Parties and shall be governed by and construed in accordance with the laws of the State of California. Each Party shall bear the Party's own associated costs of preparing this Agreement, including attorneys' fees.

**11. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one-in-the-same document.

**12. Execution**

This Agreement and any document referred to herein, may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument. The Parties acknowledge and agree that a condition precedent to the County executing this Agreement is that all Employees agree to settle their claims pursuant to the terms in this Agreement.

**13. Agreement does not Establish Precedent**

The parties agree that the terms of this Agreement will not establish any precedent, nor will this Agreement be used as a basis by the Parties or anyone else to seek or justify similar terms in any subsequent disputes.

**14. Effective Date.**

This Agreement shall become effective following execution by all of the Parties, the undersigned counsel for the Parties, and the approval of the Board of Supervisors.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Settlement Agreement and Release.

FOR THE COUNTY ----- DATE-----

APPROVED AS TO FORM----- DATE-----

Richard Bolanos, Counsel for County of Humboldt

FOR AFSCME -----DATE-----