

1. Consideration of Settlement Agreement between the Estate of Daniel Foard, Sheriff Sean Smith and La Plata County



## Agenda Item Summary

**MEETING GROUP:** Board of County Commissioners

**STAFF RESOURCE:** Sheryl Rogers, County Attorney

**DEPARTMENT:** Attorney's Office

**TYPE:** Agreement

**SUBJECT:** Consideration of Settlement Agreement between the Estate of Daniel Foard, Sheriff Sean Smith and La Plata County

### BACKGROUND:

Daniel Foard died on August 16, 2023, while detained at the La Plata County Jail. The Estate of Daniel Foard filed a federal lawsuit in the District of Colorado asserting multiple claims against Sheriff Sean Smith, La Plata County and its officials, employees, agents, and medical providers under federal and Colorado law.

The Estate and the County wish to settle the matter, resolving all claims between them. The attached settlement agreement signed by the Estate is a compromise without any admission of liability by any party. Five Million Dollars (\$5,000,000) will be paid by the County's insurer to the Estate and its legal counsel.

Pursuant to the terms of the County's insurance policy, the County has paid \$100,000 to defend the claim. In exchange, the Estate provides a complete release of all claims against the Sheriff, La Plata County and all current and former officials, employees, agents, insurers, and attorneys for acts or omissions occurring before execution of the agreement and will dismiss the litigation against the Sheriff and the County.

The County contracts with Southern Health Partners for medical services at the Jail. The Estate has also brought claims against Southern Health Partners. The attached settlement agreement does not resolve claims between the Estate and Southern Health Partners. Under the settlement, the County will respond to the Estate's legitimate request in the continuing litigation against non-County defendants, including witness participation in Denver and one site visit by the Estate and/or their attorneys to the Jail under specified conditions such as appropriate scheduling and security conditions.

### FISCAL IMPACT:

The County has incurred \$100,000 in defending the claim under its self-insured retention portion of its liability insurance policy. The County's insurer will pay \$5,000,000 to the Estate and its attorneys.

**STRATEGIC PLAN ALIGNMENT:**

Pillar 1: Safety & Well-Being - La Plata County prioritizes preserving nature, providing essential services, and ensuring community safety.

**RECOMMENDED ACTION:**

Approve the Settlement Agreement and Release between the Estate of Daniel Foad, Sheriff Sean Smith and La Plata County with signature authority for the Chair.

**ATTACHMENTS:**

Settlement Agreement

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is entered into on this 16 day of April, 2026, by and between The Estate of Daniel Foard and Jim Foard (“Plaintiffs”) and the County of La Plata, by and through its Board of County Commissioners, and Sheriff Sean Smith, in his official capacity as Sheriff of La Plata County (collectively “La Plata County”). Plaintiffs and La Plata County are sometimes referred to collectively as the “parties.”

### **RECITALS**

Daniel Foard (“Mr. Foard”) was detained at the La Plata County Jail (“Jail”).

Mr. Foard died on August 16, 2023, while detained at the Jail.

Plaintiffs asserted multiple claims against La Plata County and its elected officials, employees and/or agents pursuant to federal and Colorado law in an action filed in the United States District Court for the District of Colorado, Civil Action No. 25-cv-02223-CNS-CYC (“the Litigation”).

The parties wish to avoid the expense and vagaries of continued litigation, and the parties are willing to settle their disputes on the terms set forth in this Agreement without any admissions of liability or wrongdoing by either party.

IN CONSIDERATION of the mutual and unilateral covenants, obligations and promises set out within this Agreement, the parties agree as follows:

### **OBLIGATIONS, PROMISES AND COVENANTS OF THE ESTATE OF DANIEL FOARD AND JIM FOARD**

1. **INTENT.** Plaintiffs intend this Agreement as a complete settlement and release of all actual and potential issues or claims between themselves and La Plata County and every present or former elected official, employee, agent, director, insurer, reinsurer and attorney of La Plata County that occurred or accrued prior to the signing of this Agreement. Through this Agreement, Plaintiffs express their intent on behalf of themselves and all of their successors, assigns and heirs to resolve all existing and potential disputes derived from Mr. Foard’s detention at the Jail and his death with any of the released parties prior to the date of this Agreement. This Agreement concludes every actual or potential dispute and claim between Plaintiffs and the released parties, whatever the nature of any such claim and dispute prior to the date of this Agreement, whether or not raised in the Litigation.

2. **RELEASE.** Plaintiffs, on behalf of themselves and all of their successors, agents, representatives and heirs and any other person or entity that could or might act on behalf of any or all of them, hereby releases La Plata County including every present or former elected official, employee, agent, representative, insurer and attorney of La Plata County (all of whom are

individually and collectively sometimes referred to as “La Plata County”) (herein, the “released parties”) from any and all claims, causes of action, liabilities, expenses and for damages that were or may be asserted against any of them as a result of any acts of La Plata County that occurred prior to the date this Agreement is executed, as well as respecting any and all omissions by La Plata County to perform acts that were to be performed prior to the date of this Agreement, including, without limiting the generality of the foregoing, any act or omission by La Plata County relating to Mr. Foard’s detention at the Jail and Mr. Foard’s death whether raised in the Litigation or not. Specifically, but not by way of limitation, this release includes any and all claims pursuant to federal law, the common law of any state, any federal statute, any state statute, and local law, any federal or state constitutional provision, and any claim for attorney’s fees under 42 U.S.C. § 1988 or any other state or federal statute or law prior to the date of this Agreement.

3. CLAIMS AGAINST OTHERS. Nothing in this Agreement releases any claims in the Litigation against Southern Health Partners, Inc. or any employee or agent of Southern Health Partners, Inc. Further, as stated in C.R.S. § 13-50.5-105 and described in *Smith v. Zufelt*, 880 P.2d 1178 (Colo. 1994), this is a good faith release and covenant not to sue given to one of two or more persons liable in tort for the same injury or wrongful death. This good faith release does not discharge any other tortfeasors other than La Plata County and the released parties from liability for their several pro rata shares of liability for the injuries and death of Mr. Foard complained of in the Litigation. Nothing in this Agreement is intended to benefit other tortfeasors, or reduce their shares of liability.

4. COVENANT TO DISMISS LITIGATION AND NOT TO SUE. Plaintiffs agree and covenant they will authorize their counsel to enter into an appropriate stipulation and voluntary dismissal to dismiss the proceedings before the United States District Court for the District of Colorado in the form of voluntary motions to dismiss the individual Defendants with prejudice followed by a stipulated motion to dismiss the remaining claims against the Board of County Commissioners of the County of La Plata and Sheriff Sean Smith in his official capacity. Plaintiffs further agree and covenant they will not sue or assert any federal or state cause of action, at law or in equity, whether before a court of law or an administrative agency, against any present or former elected official, employee, agent, representative, director, insurer, reinsurer and attorney of La Plata County for any claims, causes of action, liabilities, expenses or damages arising out of any acts or omissions by such person or entity that occurred prior to the date this Agreement is executed, including without limiting the generality of the foregoing, any act or omission arising out of, or related to Mr. Foard’s detention at the Jail and Mr. Foard’s death whether raised in the Litigation or not. Plaintiffs expressly waive any claims they may possess under any state or federal law of any kind or type, again without limiting the generality of the foregoing, prior to the date of this Agreement.

5. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT. Plaintiffs represent and warrant that, to the best of their knowledge, no other person has or has had any interest to the claims, demands, obligations, or causes of action referred to in this Agreement and

they have the sole right and exclusive authority to execute this Agreement, and they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action released or referred to in this Agreement. In the event a third party seeks to assert claims under a transferred or subrogated interest, Plaintiffs represent and warrant that they will defend, indemnify and hold harmless the released parties for any such claim.

6. AGREEMENT RESPECTING TAXES. Plaintiffs agree that, in the event any part of any money they receive in settlement of any claim resolved by this Agreement is determined to be taxable by any taxing authority, Plaintiffs will be solely responsible for any tax liability arising therefrom. If any entity or person released pursuant to this Agreement is ever found responsible for any tax liability arising from any failure to satisfy any tax liability on any payment described herein, Plaintiffs agree to defend, indemnify and hold the released parties harmless for any tax, interest or penalty on a tax liability. The parties understand and intend that this settlement resolves the alleged compensatory damages claims relating to alleged personal injury and physical sickness of Mr. Foard, including wrongful death, which Plaintiffs assert are not taxable under Section 104 of the Internal Revenue Code. No portion of this payment is for punitive damages.

7. NO ASSIGNMENT AND HOLD HARMLESS AGREEMENT. Plaintiffs declare and represent no other person, firm, corporation, or government entity received any assignment, subrogation or other right of substitution to any claim or claims made or asserted in connection with this matter and subject to the Litigation or the release provided by this Agreement. Plaintiffs agree in the event any of the released parties is subjected to any other or further claims of any type by any person or entity under any actual or purported right of substitution, Plaintiffs will defend, indemnify and hold such released party harmless from any and all such claim(s).

8. NO THIRD-PARTY BENEFICIARIES. Plaintiffs declare and represent no other person, firm, corporation or government entity is a third-party beneficiary to any claim or claims made or asserted in connection with this matter and subject to the Litigation or the release provided by this Agreement. Plaintiffs agree in the event any of the released parties is subjected to any other or further claim of any type by any person or entity claiming the actual or purported status as a third-party beneficiary of Plaintiffs, Plaintiffs will defend, indemnify and hold such released party harmless from any and all such claims.

9. REPRESENTATIONS CONCERNING MEDICARE. Plaintiffs hereby warrant and represent Mr. Foard has never been enrolled in Medicare. If necessary, Plaintiffs will provide any and all information required by La Plata County or its insurer to verify Mr. Foard's Medicare eligibility status and to facilitate and meet its reporting obligations under 42 U.S.C. § 1395y(b)(8). Such information may include, but is not limited to his full name, Social Security Number, Medicare Health Insurance Claim Number, if any, gender, date of birth, and information regarding any alleged accident(s), injury(ies) or illness(es).

Notwithstanding any other provision of this Agreement, any prior confidentiality agreement between or among the parties, or any confidentiality or protective order entered by any Court, any party may use protected and confidential information for purposes of complying with reporting and reimbursement obligations under the Medicare Secondary Payer statute and the Medicare, Medicaid, and SCHIP Extension Act of 2007 or for addressing any allegation or claim asserting any reporting violations, penalties, or reimbursement liabilities, and may disclose protected and confidential information to the Department of Health and Human Services, the Centers for Medicare and Medicaid Services, and their representatives and contractors, for such purposes. To the extent the permission of any Court or a modification of any confidentiality order or protective order is needed to implement the purposes of this provision, each party agrees to cooperate in seeking such permission or modification.

Plaintiffs represent and warrant to the best of their knowledge, Medicare has not made any conditional payments for medical services or products received by Mr. Foard (pursuant to 42 U.S.C. § 1395y(b) and the corresponding regulations) and related to the accident(s), injury(ies), or illness(es) that give rise to this Agreement. Further, Plaintiffs represent and warrant if any conditional payments related to the accident(s), injury(ies), or illness(es) giving rise to this Agreement are or have been made by Medicare, then Plaintiffs shall immediately reimburse Medicare for such conditional payments as required by Medicare Secondary Payer law, including Medicare regulations at 42 C.F.R. § 411.24(g) and (h). The parties agree that all representations and warranties made in this paragraph shall survive settlement.

Plaintiffs agree to indemnify, hold harmless, and defend La Plata County and its insurers against any loss, cost, expense, or liability imposed upon or incurred by them arising from, relating to or concerning Medicare or Medicaid conditional payments related to the accident, injury, or illness giving rise to this Agreement.

Each party has been advised by counsel before signing this Agreement and has relied upon advice of such counsel with respect to all aspects of this Agreement, including but not limited to the parties' respective obligations (if any) to reimburse Medicare or Medicaid for conditional payments related to the accident(s), injury(ies), or illness(es) giving rise to this Agreement. It is understood and agreed that no mistake of law or mistake of fact made by any party, including but not limited to any mistake with respect to any obligation to reimburse Medicare or Medicaid for conditional payments, shall constitute a basis for rescission or reformation or render portion of this Agreement void or voidable.

While it is impossible to accurately predict the need for medical treatment, this Agreement is based upon a good faith determination of the parties in order to resolve a disputed claim. The parties have attempted to resolve this matter in compliance with both state and federal law and it is believed that the settlement terms adequately consider and protect Medicare and Medicaid's interest and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. § 1395y(b). The parties acknowledge and understand that any present or future action

or decision by CMS, Medicare or Medicaid on this settlement, or Mr. Foard's eligibility or entitlement to Medicare, Medicare payments or Medicaid, will not render this release void or ineffective, or in any way affect the finality of this liability settlement and this Agreement.

10. **USE OF TRUST OR STRUCTURE.** Plaintiffs agree and understand if any trust or structure is used related to the settlement and payment of the settlement payment pursuant to this Agreement, Plaintiffs are solely responsible for any financial obligations of any kind related to the use of a trust or structure.

### **OBLIGATIONS, PROMISES AND COVENANTS OF LA PLATA COUNTY**

11. **SETTLEMENT PAYMENT.** In consideration of this Agreement, including all terms, covenants and conditions, the insurer of La Plata County will pay to Plaintiffs and their counsel Five Million Dollars and No Cents (\$5,000,000.00). This settlement payment will be paid in a bank wire transfer payable to HHEG, LLC Client Trust Fund – Foard. Holland, Holland Edwards & Grossman, L.L.C. will provide its taxpayer identification number to counsel for La Plata County in conjunction with the settlement payment by executing an appropriate W-9 Form. The party responsible for wiring funds will call and personally verify the wiring instructions verbally with Anna Holland Edwards. The released parties understand Plaintiffs and their counsel will divide the settlement to account for attorney's fees and costs. None of the released parties participated in any allocation of the settlement payments to Plaintiffs and their attorneys. No withholding of any amount for federal, state or local taxes from the settlement payment will be made. All withholding or other tax requirements shall be made by, and be sole responsibility of the Plaintiffs. The settlement payment will be made within twenty-one (21) days after counsel for La Plata County has received the appropriate signatures on the agreement from Plaintiffs and their counsel, an executed W-9 for the payment, and appropriate wiring instructions. A 1099 will be issued for the settlement payment to HHEG, LLC. La Plata County agrees to direct its insurer to check Box 10 on the 1099 form issued. Upon receipt of the wire transfer of funds, Plaintiffs and La Plata County, through their respective counsel, shall execute and cause to be filed a stipulation for dismissal of all claims brought or that could have been brought in the pending Litigation against La Plata County, with all parties responsible for their respective fees and costs.

12. **COOPERATION WITH LITIGATION.** La Plata County agrees to cooperate with the Plaintiffs' continued litigation against the remaining non-La Plata County Defendants in the Litigation including employees of La Plata County participating as witnesses at trial, in person in Denver, and facilitating a site visit.

The parties acknowledge and agree any current or former employees of La Plata County who are required to participate in a trial or related proceedings in the Litigation—whether as witnesses, custodians of records, or in any other capacity compelled or requested by legal process—shall be entitled to all costs as provided by applicable law in connection with such preparation. Nothing in this provision shall be construed to waive, limit, or impair any statutory or

rule-based entitlement to payment or reimbursement of costs for such participation, including without limitation witness fees, mileage or other lawfully recoverable costs.

One site visit to the La Plata County Detention Center will be permitted for counsel for the Plaintiffs subject to: (a) at least ten (10) business days' advance written notice identifying attendees, equipment proposed to be used, proposed activities and areas where access is being requested; (b) mutually agreeable scheduling; (c) adherence to all La Plata County safety, security, and confidentiality requirements; and (d) reasonable limits on duration, attendees, equipment, and activities to prevent an undue burden on detention staff and the operations of the La Plata County Detention Center.

### **GENERAL PROVISIONS**

13. **NO ADMISSION OF LIABILITY.** This settlement is the compromise of disputed claims, and the consideration paid hereunder shall not be construed as an admission of liability on the part of released parties and the parties herein deny any liability therefor.

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

15. **BINDING EFFECT** This Agreement shall inure to the benefit of, and be binding upon, all the successors, assigns, personal representatives, heirs, and successors in interest of the parties.

16. **GOVERNING LAW.** This Agreement is entered into in Colorado, and shall be governed by the laws of the State of Colorado.

17. **HEADINGS.** The headings used in this Agreement are for the convenience of the parties only. As such, these headings shall not have any legal effect whatsoever or, in any other way alter or modify the meaning or interpretation of this Agreement.

18. **ADDITIONAL ASSURANCES.** This Agreement is intended to be self-operative. Notwithstanding the foregoing, both 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 Agreement.

19. **SEVERABILITY.** If any provision of this Agreement should ever be declared to be unenforceable, with the exception of the release of any and all claims of Plaintiffs against the

released parties as set forth in this Agreement, then the remainder of this Agreement shall continue to be binding upon the parties. The release of any and all claims as set forth in this Agreement is an integral part of this Agreement and is not severable.

20. **FEES AND COSTS.** Except to the extent provided for payment of fees under this Agreement, all parties to this Agreement shall bear all of their own costs and fees, including all attorney fees, incurred prior to the date this Agreement takes effect, whether or not such fees or costs were incurred in connection with reaching this Agreement.

21. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall have full force and effect upon execution by all parties to this Agreement.

22. **WARRANTIES.** Plaintiffs expressly warrant they have carefully read the terms of this Agreement. Plaintiffs expressly warrant they were afforded the opportunity to consult with counsel prior to executing this Agreement, that they fully understand the terms of this Agreement, and that they enter into this Agreement knowingly and voluntarily, and without coercion, duress or undue influence. Plaintiffs expressly acknowledge they believe the terms of this Agreement are appropriate to reach a full and final settlement of these matters. Plaintiffs expressly understand and agree their signatures on this Agreement shall be forever binding, and no rescission, modification or release of the parties from the terms of this Agreement will be made for mistake or any other reason. Plaintiffs represent they are legally competent to understand, enter into and execute this Agreement and to accept full responsibility and assume the risk of any mistake of fact as to any damages, losses, or injuries, whether disclosed or undisclosed, sustained as a result of any claim brought or that could be brought, or any other matter between the parties occurring up to the date of signing this Agreement. Plaintiffs further warrant and acknowledge no promise or inducement was offered except as set forth herein and this Agreement was executed by them without reliance upon any statement or representation by any persons or released parties or any representatives of such persons or parties concerning the nature or extent of any damages or any legal liability therefor. Plaintiffs acknowledge entering into this Agreement is not an admission by any entity or person of any wrongful or improper actions, but rather reflects the parties' desire to resolve this matter amicably without additional expense or litigation.

23. **REPRESENTATION OF COMPREHENSION OF DOCUMENT** In entering into this Agreement, Plaintiffs represent they have relied upon the legal advice of their attorneys, who were the attorneys of their own choice, and the terms of the Agreement have been completely explained to them by their attorneys, and are fully understood and voluntarily accepted by them, and they have signed the Agreement as their own free act. Except as specifically provided herein, Plaintiffs warrant they have not relied upon any statements or representations made by any of the released parties or any of their agents, attorneys, employees or other persons representing them in entering into this Agreement.

24. AMENDMENT This Agreement may not be amended except in a writing setting forth such amendment and executed by all parties.

25. ENFORCEABILITY, CONSTRUCTION, INTERPRETATION The parties expressly acknowledge this Agreement shall be governed by the laws of the State of Colorado and shall be enforceable in accordance with its terms in the District Court, County of La Plata, State of Colorado. All parties, by and through counsel, participated in the preparation of this Agreement, and no rules of construction or interpretation based upon which party drafted any portion of the Agreement shall be applicable or invoked.

26. COOPERATION. Plaintiffs agree they will execute and deliver to La Plata County copies of all documents or agreements and do such further acts and things as may reasonably requested when necessary to effectuate the purposes of the Agreement. Should any person or entity not a party hereto challenge the validity of this Agreement, or any term thereof, pursue recovery of monies from La Plata County or bring a claim or claims against La Plata County related to the injuries claimed, or that could have been claimed, Plaintiffs agree they will provide La Plata County such cooperation and assistance as may reasonably requested in order to resist such challenge or defend such claim.

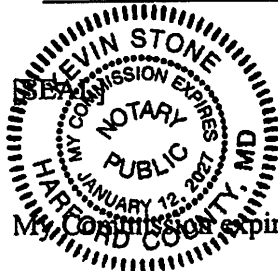
AGREED AND ACCEPTED this 16 day of April, 2026.

**READ CAREFULLY BEFORE SIGNING:**



Jim Foard, individually, and as co-personal representative of the Estate of Daniel Foard

Subscribed and sworn to before me by the person known to me as Jim Foard in the County of Harford, State of Maryland, this 16<sup>th</sup> day of April, 2026.



My Commission expires: 01/12/2027

  
\_\_\_\_\_  
Notary Public

**Settlement Agreement and Release**  
**The Estate of Daniel Foard et. al. v. La Plata County et. al.**  
**Page 9**

**ATTEST:**


**LA PLATA COUNTY COLORADO**

**By:** \_\_\_\_\_  
**Clerk of the Board**

\_\_\_\_\_  
**By: Matt Salka**  
**Chair, Board of County Commissioners**

\_\_\_\_\_  
**By: Sean Smith,**  
**Sheriff of La Plata County**

**APPROVED AS TO FORM:**

BY:   
\_\_\_\_\_  
Anna Holland Edwards, Esq.  
Dan Weiss, Esq.  
Holland, Holland Edwards & Grossman, P.C.  
1437 High Street  
Denver, Colorado 80218  
(303) 860-1331

**ATTORNEYS FOR THE ESTATE OF DANIEL FORD,  
AND JIM FOARD**

BY: \_\_\_\_\_  
Andrew D. Ringel, Esq.  
Hall & Evans, L.L.C.  
1001 17<sup>th</sup> Street, Suite 300  
Denver, Colorado 80202  
(303) 628-3300

**ATTORNEYS FOR THE BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF LA PLATA, COLORADO AND  
SHERIFF SEAN SMITH**