

## SETTLEMENT AGREEMENT AND RELEASE

This **SETTLEMENT AGREEMENT** (Agreement) is entered into among **TOOELE COUNTY** and the **TOOELE COUNTY COUNCIL** (collectively the "County"), and **JERRY HOUGHTON** ("Employee"); each individually as a "Party" or collectively "Parties".

### **PURPOSE**

While transitioning from an older computer system during 2023, the County Manager, Andy Welch, discovered that there were discrepancies in the amounts that County was contributing to Employee's 401k retirement plan through Utah Retirement Systems ("URS").

Employee is an Elected Official for County who signed URS Form "Request for Exemption-MERQ-3" in December 2010.

In the 2015 Employee Manual, it provides that:

- "1. The Utah State Retirement program laws and regulations determine which retirement plan an employee is enrolled in. In summary, the plans are:
- a. Tier 1 (for employees enrolled in the Utah State Retirement System prior to July 1, 2011):  
(1) Public Employees' Contributory Retirement Plan, (2) Public Employees' Non-Contributory Retirement Plan, and (3) Public Safety Employees' Non-Contributory Retirement Plan.
- (1) Tier 1 plans include a benefits protection contract between the Utah State Retirement Office and Tooele County that provides for continued service accrual in the event of a period of leave that is covered by group long-term disability insurance, when approved for applicable benefit coverage.
- (2) Exemption from participation. *Elected officials, appointed employees, or others allowed to exempt out of participation in the Tier 1 Utah State Retirement System may file a formal request for exemption from membership in the retirement plan. In such cases, Tooele County will contribute to the employee's 401(k) plan, an amount equivalent to the Utah Retirement System's Total Cost Rate (URS normal cost + URS amortization of unfunded actuarial accrued liability - UAAL) for the respective plan applicable to the employee had he/she not exempted from participation. This amount is subject to change each year and is based on the rates established by the Utah Retirement System. This contribution must be included with any other Employer's 401(k) contributions in meeting the Internal Revenue Service (IRS) contribution limitations and therefore, may be limited if IRS limitations apply"* (Emphasis Added).

From 2011 through 2019, County contributed an amount equivalent to the URS's Total Cost Rate in accordance with the Employee Manual.

For reasons unknown and unknowable, in 2020, County stopped contributing an amount equivalent to the URS's Total Cost Rate. County continued to match 3% that Employee contributed but failed to add the other contributions required under the Employee Manual.

URS Contribution Rates for the years of 2019 through 2025 are as follows:

7/2019-6/2020: 18.47%  
7/2020-6/2021: 18.47%  
7/2021-6/2022: 18.47%  
7/2022-6/2023: 17.97%  
7/2023-6/2024: 17.97%  
7/2024-6/2025: 16.97%

Over the four (4) years of 2020 – 2024, where no contributions were made by County, except for the 3% match, Employee missed out on \$ [REDACTED] in 401(k) contributions from County. This amount does not include any interest not accrued during these four (4) years.

County and Employee conducted individual audits of the accounts and had multiple conversations with each other to come to a resolution.

County and Employee have since reached an agreement that resolves the claims between them regarding the contributions into Employee's URS 401(k) retirement account. The terms and conditions of that agreement are as follows:

#### AGREEMENT

1. County shall pay to Employee's retirement a total of \$ [REDACTED] dollars for contributions and missed interest during 2020, 2021, 2022, and 2023.
2. County shall pay to employee's retirement an amount equal to 17.97% of Employee's gross salary for 2024 in January 2025 towards the allowed County contribution limit of 2025.
3. If, due to contribution limits, there are any other missed payments, County shall make those payments in 2027.
4. Due to IRS maximum contribution limits, the payments shall be as follows:
  - a. First Payment, [REDACTED] was sent, in the amount of \$ [REDACTED] on January 30, 2024 to max out County's allowed contributions for 2023. This payment covers payments missed for 2020, 2021, and \$ [REDACTED] of amounts owed in 2022.
  - b. Second Payment shall occur in February 2024, in the amount of \$ [REDACTED]. This will not max out County's allowed contributions for 2024, but is the prudent amount to allow for County's 3% match and employer contributions throughout the year. This payment covers payments missed for the remaining

\$ [REDACTED] of 2022, all contributions owed in 2023, and \$ [REDACTED] of amounts owed in 2024.

- c. Third Payment shall occur in January 2025, in the amount of \$ [REDACTED]. This will not max out County's allowed contributions for 2025, but is the prudent amount to allow for County's 3% match and employer contributions through the year. This payment covers payments missed for the remaining \$ [REDACTED] owed in 2024, \$ [REDACTED] towards amounts owed in 2025.
  - d. Fourth Payment shall occur in January 2026, in the amount of \$ [REDACTED]. This will not max out County's allowed contributions for 2026, but is the prudent amount to allow for County's 3% match and employer contributions through the year. This payment covers payments missed for the remaining \$ [REDACTED] owed in 2025, \$ [REDACTED] in lost interest for amounts not contributed in '20-'23, and \$ [REDACTED] towards contributions owed in 2026.
  - e. The amount listed above, while there are a few estimations made, will satisfy Employee and no further amounts will be owed for calendar years 2020 – 2026 once all payments have been made as listed above and as outlined in Appendix A.
5. In January 2027, County shall revert to the appropriate contributions as outlined for Tier 1 employees who have exempted out of URS retirement, but who are entitled to contributions from the County.
  6. During the first full week of January of each year of 2025 and 2026 or before, County will meet with Employee to review payments and terms of agreement before contributing to the Employee's retirement. This will serve to remind and update any existing and/or new parties charged with fulfilling this agreement.
  7. In exchange for the payment to Employee of the consideration set forth in Section 1 through 4 of this Agreement, Employee, on behalf of him/herself, his/her marital community, if any, and his/her heirs, executors, assigns, and personal representatives, expressly hereby fully, forever, irrevocably and unconditionally releases and discharges the County, including its past, present and future officers, agents, directors, employees, investors, stockholders, administrators, attorneys, affiliates, divisions, subsidiaries, parents, predecessor and successor corporations, and assigns (hereinafter collectively referred to as "Releasees"), from, and agrees not to sue or otherwise institute or cause to be instituted any legal or administrative proceedings concerning any claim, duty, obligation or cause of action relating to this matter, whether presently known or unknown, suspected or unsuspected, that Employee may possess arising from any omissions, acts or facts that have occurred up until and including the date of signing ("Execution Date").
  8. Employee represents that he/she has no lawsuits, claims, or actions pending in her name, or on behalf of any other person or entity, against the County or any other person or entity referred to herein, and further represents that he/she does not intend to bring any claims on his/her own behalf or on behalf of any other person or entity


against the County or any other person or entity referred to herein. Employee represents and warrants that there has been no assignment or other transfer of any claims Employee has or may have as against the County.

9. The Parties understand and acknowledge that this Agreement constitutes a compromise of potential claims. No action taken by the Parties hereto, or either of them, either previously or in connection with this Agreement shall be deemed or construed to be (a) an admission of the truth or falsity of any claims heretofore made or (b) an acknowledgment or admission by either party of any fault or liability whatsoever to the other party or to any third party.
10. The County represents and warrants that the undersigned has the authority to act on behalf of the County and to bind the County and all who may claim through it to the terms and conditions of this Agreement. Employee represents and warrants that (s)he has the capacity to act on his/her own behalf and on behalf of all who might claim through him/her to bind them to the terms and conditions of this Agreement.
11. Employee represents that (s)he has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.
12. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted and the validity and enforceability of the remaining provisions shall not be affected thereby.
13. Except as otherwise noted herein, this Agreement, and any agreements referenced herein, represent the entire agreement and understanding between the County and Employee concerning his/her claim, and supersede and replace any and all prior agreements and understandings concerning his/her claim with the County and his/her compensation by the County, except as specifically exempted herein.
14. This Agreement shall be deemed to have been executed and delivered within the State of Utah, and it shall be construed, interpreted, governed, and enforced in accordance with the laws of the State of Utah, without regard to choice of law principles.
15. In the event that either Party brings an action to enforce or effect its rights under this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including the costs of any mediation, arbitration, litigation, court fees, plus reasonable attorneys' fees, incurred in connection with such an action.
16. This Agreement may be executed in separate counterparts (including by means of facsimile or by electronic transmission in portable document format (pdf) or comparable electronic transmission), each of which is deemed to be an original and all of which taken together constitute one and the same agreement.
17. If Employee passes away or terminates his employment before the fulfillment of the obligations of this Agreement, County shall make one final lump-sum payment of any amounts due for prior and/or current years that haven't been made in accordance with

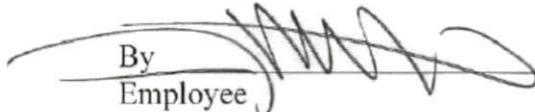
this agreement and any lost interest not paid as indicated in 4(d) to Employee, if still living, or to [REDACTED] No payment for future years or unaccrued contributions shall be paid.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Dated: February 20, 2024

By   
County Manager

Dated: February 7, 2024

By   
Employee

APPROVED AS TO FORM:



Nathan Harris  
Deputy Tooele County Attorney

Appendix A

Year	2020	2021	2022	2023	2024	2025	2026
401(k) contribution owed	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED] (estimated Y + A from below)	??* -- \$ [REDACTED]
					FY23/24 \$ [REDACTED] @ 17.97% = \$ [REDACTED]	FY24/25 \$XX,XXX @ 16.97% = \$Y	
					FY24/25 \$ [REDACTED] @ 16.97% = \$ [REDACTED]	FY25/26 \$XX,XXX @ ZZ.ZZ% = \$A	
Payment made for calendar year				Payment #1 = \$ [REDACTED] (already contributed)	Payment #2 = \$ [REDACTED]**	Payment #3 = \$ [REDACTED]**	Payment #4 = \$ [REDACTED]**
Amount toward contribution owed	Covered in Payment #1	Covered in Payment #1	\$ [REDACTED] covered in Payment #1, \$ [REDACTED] in Payment #2	Covered in Payment #2	\$ [REDACTED] covered in Payment #2, \$ [REDACTED] covered in Payment #3	\$ [REDACTED] covered in Payment #3, \$ [REDACTED] covered in Payment #4	\$ [REDACTED] in lost interest for '20 - '23 covered in Payment #4, \$ [REDACTED] of '26 contributions owed covered in Payment #4

\* Will settle dispute if payment of \$ [REDACTED] is contributed in January towards '26 calendar year - likely more would be owed based upon prior years amounts

\*\* it is anticipated that contrution limits will not decrease from '24 onward ('24 employer contribution limit is \$46K, 3% match included in that amount)