

## SETTLEMENT AGREEMENT AND RELEASE

This **SETTLEMENT AGREEMENT** (Agreement) is entered into among **TOOELE COUNTY** and the **TOOELE COUNTY COUNCIL** (collectively the "County"), and **SCOTT WARDLE** ("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 February 2021.

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).

For reasons unknown and unknowable, County failed to contribute an amount equivalent to the URS's Total Cost Rate as required under the Employee Manual.

URS Contribution Rates for the years of 2021 through 2024 are as follows:

7/2020-6/2021: 18.47%

7/2021-6/2022: 18.47%

7/2022-6/2023: 17.97%

7/2023-6/2024: 17.97%

Over the three (3) years of 2021 – 2024, where no contributions were made by County, Employee missed out on [REDACTED] in 401(k) contributions from County. This amount does not include any interest not accrued during these three (3) 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 2021, 2022, 2023, and the beginning of 2024.
2. 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.
3. In exchange for the payment to Employee of the consideration set forth in Section 1 and 2 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").
4. 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.

5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.

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

Dated: March 7, 2024

By   
County Manager

Dated: March 7, 2024

By   
Employee

APPROVED AS TO FORM:



Nathan Harris  
Deputy Tooele County Attorney