



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

October 4, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Settlement Agreement in the Case of
Davis v. Roberts, et al.

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
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Assistants

Purpose/Outcomes	Authorize settlement of lawsuit brought by Jeff Davis against Sheriff Craig Roberts, Undersheriff Matt Ellington, and Clackamas County
Dollar Amount and Fiscal Impact	\$82,500 plus PERS contributions
Funding Source	County Risk Fund
Duration	Full and Final Release and Settlement
Previous Board Action	The Board has been apprised of various developments in this case over the course of the litigation, the most recent being on September 25, 2018.
Strategic Plan Alignment	Build public trust through good government
Contact Person	Stephen L. Madkour, County Counsel at smadkour@clackamas.us or 503/655-8362
Contract No.	N/A

BACKGROUND:

Jeff Davis was a Lieutenant with the Clackamas County Sheriff's Office. Davis was on a medical layoff. Davis filed suit in federal court against Sheriff Roberts, Undersheriff Ellington, and Clackamas County. In that lawsuit he alleged claims of civil rights violations, wrongful discharge, emotional distress, and whistleblower retaliation.

The Risk Manager, County Counsel, and the County Administrator have settlement authority up to \$100,000. The Board of County Commissioners has exclusive settlement authority of those settlements in excess of \$100,000.

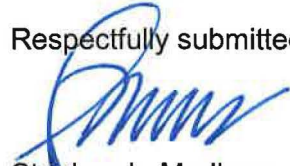
The proposed settlement reached by the parties in this case is \$82,500. Board approval is required because the terms of the settlement call for the County to make PERS contributions for a specific period when Davis was on medical layoff. Those PERS contributions are estimated to be approximately \$24,000. The agreed settlement amount plus the PERS contributions exceed the \$100,000 and, therefore, requires Board approval.

The terms of the proposed settlement are set forth in the attached draft Release and Settlement Agreement. Once settled, plaintiff will dismiss all claims alleged in the suit.

RECOMMENDATION:

Staff respectfully requests that the Board of County Commissioners authorize the settlement as proposed and as set forth in the Release and Settlement Agreement.

Respectfully submitted,



Stephen L. Madkour
County Counsel

Attachment:
Release and Settlement Agreement

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement is entered into between Jeffrey Davis (“Davis” or “Plaintiff”), Sheriff Craig Roberts (“Roberts”), Undersheriff Matt Ellington (“Ellington”), hereinafter referred to collectively as “County Defendants” and Clackamas County (“County”)

1. Meaning of Terms.

(a) As used in this Agreement, “Davis” or “Plaintiff” shall mean Jeffrey Davis, his spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through him.

(b) As used in this Agreement, “County Defendants” shall mean Roberts and Ellington, their spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through him.

(c) As used in this Agreement, “County” shall mean Clackamas County, its current and former commissioners, current and former managers, current and former County Counsel, current and former County Administrators, current and former employees (in their individual and representative capacities), attorneys, insurers, and current and former agents.

(d) As used in this Agreement, “Defendants” shall mean County Defendants and County as defined above.

(e) As used in this Agreement, “parties” shall mean Davis, County Defendants, and County as defined above.

2. Consideration.

The parties agree and acknowledge that this agreement is entered into in consideration of the mutual promises and covenants contained herein:

- (a) County will pay Davis \$82,500 (Eighty-Two Thousand and Five Hundred Dollars) as full and final settlement of all claims;
- (b) County will report this \$82,500 to PERS as lost wages for the period of April 8, 2017-September 27, 2018;
- (c) Davis will return to duty on September 28, 2018 and formally retire on September 30, 2018;
- (d) County will assume responsibility for Davis’ PERS contribution;
- (e) The County and County Defendants will file an amended F4 Form with the Department of Public Safety Standards and Training to state that Davis retired pursuant to a settlement agreement;
- (f) The County and County Defendants will suspend the Professional Standards Unit (PSU) investigation;
- (g) The PSU investigation will be subject to a judicial seal enforced by Hon. Papak. County and County Defendants further agree to keep that file exempted from disclosure to the extent provided by law;

- (h) The County and County Defendants will provide Davis with a retiree badge and a retired commission card indicating he retired in good standing which will allow him to carry concealed national;
- (i) The County and County Defendants will prepare and circulate an email to all Clackamas County Sheriff's Office employees stating that Lt. Davis retired effective October 1, 2018, or proximate date;
- (j) The County and County Defendants will provide Davis a neutral job reference to future employers;
- (k) The County will complete the necessary paperwork necessary to initiate Davis' retiree medical benefits eligibility; and
- (l) County Defendants also agree to provide any back contributions to the Retiree Medical Trust, if the Trust so requires, to make Mr. Davis eligible for Retiree Medical coverage.

3. **Releases.**

- (a) Davis' Release to County and County Defendants. Davis hereby waives any legal rights and releases and forever discharges County and County Defendants as defined above from any and all liability, demands, claims, suits, actions, charges, damages, judgments, levies or executions, whether known or unknown, liquidated, fixed, contingent, direct or indirect, which have been or could have been raised against County and County Defendants which relate in any way to Davis's employment by County or County Defendants or separation of that employment, or for any act or thing done or omitted to be done up to the date of execution of this Agreement, except for his right to enforce the Agreement according to its terms.
- (b) Davis agrees to dismissal with prejudice of any and all claims against County and County Defendants.
- (c) Davis also agrees to a full and final waiver and release of all such claims which Davis has or may have against County and County Defendants specifically including, but not limited to, all claims for relief or remedy of any type under any state or federal laws, including but not limited to claims based upon ORS 659A.112, et seq, ORS 659A.118, et seq, ORS 659A.109, et seq, ORS 659A.133, et seq, ORS 659A.136, et seq, ORS 659A.203, ORS 659A.030, et seq, (including Oregon statutory claims for discrimination, retaliation, and aiding and abetting discrimination), 42 USC § 1983 - deprivation of name clearing hearing, deprivation of due process required by the Fourteenth Amendment to the United States Constitution, Title VII of the Civil Rights Act of 1964, the Post-Civil War Civil Rights Acts, the Civil Rights Act of 1991, the Equal Pay Act, the Workers Adjustment and Retraining Notification Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act (ADEA), the Vietnam Era Veterans Readjustment Assistance Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act, Executive Order 11246, as amended, the civil rights, employment and labor laws of any state or the United States, all as amended, and any regulations under such authorities; claims based on alleged breach of employment contract or any other contract or tort or other common law theories, claims for wrongful termination, claims for intentional interference with economic relations or prospective economic advantage; and including but not limited to any claims for additional compensation, back pay or benefits of any type, claims for attorney fees or costs, claims for

retaliation, claims for reinstatement to active employment or reemployment, or for compensatory or punitive damages under any applicable statutes or common law theories. In addition to the foregoing, Davis acknowledges that he has received all wages, compensation and benefits owing to him from his employment and that he has no claim that he has not been paid in full and in a timely manner.

4. No Reinstatement or Reemployment Rights.

Davis acknowledges and agrees that other than the terms set forth under Section 2(C) above, he shall have no reinstatement or reemployment rights with County and shall not seek reinstatement or reemployment rights with County as defined above.

5. No Representations and Acknowledgements.

Davis acknowledges that the County and County Defendants have made no promises or representations concerning the County's responsibility to provide, or Davis' entitlement or eligibility to receive any of the following benefits or coverages:

- (a) Any benefits under the Independent Retiree Medical Trust;
- (b) County Medical, Dental, Employee Assistance Program, Life (Group Term Life and Group Universal Life), and Disability;
- (c) COBRA Medical benefits;
- (d) County 457 Deferred compensation;
- (e) HRA VEBA;
- (f) Sick time accumulation;
- (g) Vacation time accumulation;
- (h) PERS (other than the considerations set forth in Section 2 above); and
- (i) Lookback requirements under the Affordable Care Act.

Davis acknowledges that there may be taxable consequences and other financial penalties associated with the terms of this Release and Settlement Agreement and agrees that he will remain responsible for any payments or penalties resulting from acts or events contemplated or authorized by this Release and Settlement Agreement.

6. Dismissal of Litigation.

This release is given in full compromise and settlement of Civil Case No. 3:18-CV-00346-YY in the United States District Court for the District of Oregon wherein Jeffrey Davis appears as Plaintiff and Roberts and Ellington and Clackamas County appear as Defendants. In consideration of the foregoing, Davis, County Defendants, and County direct entry of a judgment of dismissal with prejudice and without costs or attorneys' fees as to all claims in Case No. 3:18-CV-00346-YY that certain action in a form set forth as Exhibit 1 attached hereto and incorporated herein by reference. The parties further agree to execute such other documents as may reasonably be necessary to dismiss the referenced lawsuit.

7. Indemnity and Hold Harmless.

Employee agrees to indemnify and hold harmless County and County Defendants, its insurers, employees, officers, directors, and agents for any and all claims and liabilities associated

with any benefits paid to or on behalf of plaintiff as a result of the incidents alleged in the Litigation, including but not limited to any liens, unpaid bills for medical or other treatments, insurance benefits, COBRA payments, insurance subrogation claims, recovery of costs, and claims for attorney fees, including any attorney fee liens.

8. Compliance With Older Workers Protection Act.

This Agreement is subject to the terms of the Older Workers Benefit Protection Act of 1990 ("OWBPA"). The OWBPA provides that an individual cannot waive a right or claim under the Age Discrimination in Employment Act ("ADEA") unless the waiver is knowing and voluntary. Pursuant to the terms of the OWBPA, Davis acknowledges and agrees that he has executed this Agreement voluntarily, and with full knowledge of its consequences. In addition, Davis hereby acknowledges and agrees as follows:

- (a) This Agreement has been written in a manner that is calculated to be understood, and is understood by Davis.
- (b) The release provisions of this Agreement apply to any rights Davis may have under the ADEA.
- (c) The release provisions of this Agreement do not apply to any rights or claims Davis may have under the ADEA that arise after the date he executes this Agreement.
- (d) County and County Defendants hereby advise Davis to consult with an attorney prior to executing this Agreement.
- (e) County and County Defendants are giving Davis a period of twenty-one (21) days to consider this Agreement. Davis may accept and sign this Agreement before the expiration of the twenty-one (21) day time period, but he is not required to do so by County or County Defendants (see attached Waiver of 21-Day Review form).
- (f) For a period of seven (7) days following the signing of this Agreement, Davis may revoke this Agreement. Davis will provide written notice of any such revocation to County and County Defendants. This Agreement shall become effective on the eighth day after Davis signs it, if it has not been revoked during the revocation period.

9. Integration.

The parties agree that this Agreement states the entire agreement of the parties and supersedes all prior and contemporaneous negotiations and agreements, oral or written. Each party expressly acknowledges that the other party did not, directly or indirectly, make any promises, representations, or warranties whatsoever, express or implied, other than those contained in this Agreement. The parties further agree that this Agreement may be amended only by a subsequent writing signed by the parties.

10. Severability and Governing Law.

The parties agree that any provision of this Agreement that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid, and enforceable shall be automatically added to this Agreement in lieu of the illegal, invalid, or unenforceable provision. The parties also agree that Oregon law shall govern the validity and enforceability of this Agreement.

11. No Admission.

The parties agree that, by entering into this Agreement, neither party admits, and specifically denies, any violation of any local, state, or federal law, common or statutory. The parties recognize that this Agreement has been entered into in order to achieve an orderly separation and nothing contained herein shall be construed to be an admission of liability or a concession of any kind.

12. Deny Liability.

This settlement is made to settle and compromise doubtful and disputed claims, to avoid protracted litigation, and to minimize the incurring of additional attorney fees. Neither this Agreement, the final settlement documents, or the negotiation, execution, or performance of the foregoing is, or shall be construed as, an admission of liability or wrongdoing by the parties. The parties, and each of them, deny absolutely any and all liability whatsoever in connection with the claims asserted in the litigation or any other claims between them.

13. No Assignment, Subrogation, or Transfer.

The parties represent and warrant that there has not been and there will be no assignment, subrogation or other transfer of any interest in any of the released claims. The parties agree to indemnify and hold the released parties, and each of them, harmless from any liability, claims, demands, costs, expenses and attorneys' fees incurred by the released parties, or any of them, as a result of any person asserting any such assignment or transfer or any rights to claims under any such assignment or transfer.

14. Attorney Fees and Costs.

Each party to this Agreement shall bear its own attorney fees and costs incurred before and through the date of this Agreement.

15. Execution of this Agreement.

This Agreement may be executed in one or more identical counterparts, including facsimile and scanned and electronically transmitted counterparts, each of which shall be deemed an

original. All counterparts shall constitute one Agreement, binding on all the parties, notwithstanding that all of the parties have not signed the same counterpart.

16. Review by Counsel.

Counsel for the parties have reviewed these terms with their respective clients and have advised their clients accordingly.

17. Dispute Resolution.

In the event a dispute arises between the parties in connection with this Agreement, the dispute shall be submitted to Hon. Paul Papak, who shall act as the sole arbitrator. Any decision rendered by Judge Papak shall be final and binding. If Judge Papak is not available, the Settling Parties shall mutually agree on an alternative arbitrator. This agreement, and all disputes arising out of or relating thereto, shall be governed by the law of the State of Oregon. The Settling Parties hereto agree that any arbitration, suit, or action arising out of or relating to this Agreement shall be conducted in Portland, Oregon.

APPROVED AS TO FORM:

Daniel E. Thenell
Attorney for Jeffrey Davis

Jeffrey Davis
Dated: _____, 2018

APPROVED AS TO FORM:

Stephen L. Madkour
Attorney for Clackamas County

CLACKAMAS COUNTY
By: _____
Dated: _____, 2018

COUNTY DEFENDANTS

Craig Roberts
Dated: _____, 2018

Matt Ellington
Dated: _____, 2018

WAIVER OF 21-DAY REVIEW

I, Jeffrey Davis, understand that I may take up to 21 days from receipt of the Release and Settlement Agreement to review the document and determine whether to accept it. I hereby knowingly and voluntarily waive the 21-day review provision of the Agreement. I acknowledge and understand that this Waiver is part of the Release and Settlement Agreement between myself, Clackamas County, and County Defendants as such includes all rights and claims arising prior to or on the effective date of the Release and Settlement Agreement including, but not limited to, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, and any public policies of the State of Oregon.

Prior to executing this Waiver and the Release and Settlement Agreement, I acknowledge that I have had an opportunity to consult with an attorney and I fully understand the terms of this Waiver and the Agreement. I have not been compelled into signing it by the County or County Defendants or anyone associated with Clackamas County and have entered into the Agreement and Waiver voluntarily and of my own free will.

Jeffrey Davis

_____, 2018
Date