



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
 2051 KAEN ROAD OREGON CITY, OR 97045

September 27, 2018

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of a Resolution Appointing the Board of County Commissioners
As the Local Board of Health

Stephen L. Madkour
 County Counsel

Kathleen Rastetter
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Jeff Heinrich
 Assistants

Purpose/Outcomes	Approve a resolution forming a Local Board of Health to oversee and develop policy and ordinances for oversight of the Local Public Health Administrator and the Public Health Division of H3S.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Permanent
Previous Board Action	Policy session on September 18, 2018
Strategic Plan Alignment	Ensure safe, healthy and secure communities
Contact Person	Kathleen Rastetter
Contract No.	N/A

BACKGROUND:

A Local Board of Health aligns with Oregon’s Public Health Modernization standards that encourages the Public Health Division to boldly expand the scope and reach of public health and public policy to address all factors that promote health and well-being, including those related to economic development, education, transportation, food, environment and housing. A Local Board of Health helps to ensure safe, healthy and secure communities for its citizens by developing health and safety policies and ordinances to guide Public Health in fulfilling its mission.

The Board of County Commissioners (BCC) historically acted as the Local Board of Health under state law. When the state public health laws were updated, the statutory authority for our Local Board of Health was repealed. There is no current functioning Local Board of Health. A resolution to form a Local Board of Health is attached.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners adopt the attached resolution forming a Local Board of Health.

Respectfully submitted,



Kathleen Rastetter
Assistant County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of a Resolution
Appointing the BCC as the Local
Board of Health



Board Order No. _____
Page 1 of 1

Whereas, Clackamas County is the Local Public Health Authority under Oregon Public Health Laws; and

Whereas, Clackamas County desires to provide the Local Public Health Administrator and the Clackamas County Health, Housing and Human Services, Public Health Division, with guidance and supervision of its public health activities; and

Whereas, to address these issues the Board of County Commissioners wishes to create a Local Board of Health as the governing body over the Local Public Health Administrator and the county's public health activities; and

Whereas, Clackamas County finds that it is in the best interest of the County to form a Local Board of Health;

NOW THEREFORE, the Clackamas County Board of County Commissioners resolves as follows:

1. The Board of Commissioners hereby create a Local Board of Health and name the Clackamas County Board of Commissioners as the members of the Local Board of Health; and
2. The Local Board of Health shall have all the authority granted to the governing body of a Local Public Health Authority under Oregon Public Health Laws.

DATED this ____ day of September, 2018

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



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Members of the Board:

Approval of Settlement Agreement in the Case of
Swanson v. Clackamas County Sheriff's Office, et al.

Purpose/Outcomes	Authorize settlement of lawsuit brought by Matt Swanson against the Sheriff's Office, Sheriff Craig Roberts and Undersheriff Matt Ellington
Dollar Amount and Fiscal Impact	\$235,000
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 10, 2018.
Strategic Plan Alignment	Build public trust through good government
Contact Person	Stephen L. Madkour, County Counsel
Contract No.	N/A

BACKGROUND:

Matt Swanson is a Sergeant with the Clackamas County Sheriff's Office. Swanson filed suit against the Sheriff's Office, Sheriff Roberts, and Undersheriff Ellington. In that lawsuit he alleged claims of retaliation, harassment, and hostile work environment.

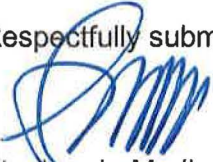
The Risk Manager, County Counsel, and the County Administrator have settlement authority up to \$100,000. The Board of County Commissioners has exclusive settlement authority of those settlements in excess of \$100,000.

The proposed settlement reached by the parties in this case is \$235,000. The terms of the proposed settlement are set forth in the attached draft Mutual 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 draft Mutual Release and Settlement Agreement.

Respectfully submitted,



Stephen L. Madkour
County Counsel

Attachment:
Mutual Release and Settlement Agreement

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

This Settlement Agreement and General Release of Claims (“Agreement”) is made and entered into on the one hand by Matthew Swanson (“Swanson”), an individual, and on the other hand by Clackamas County (County), Clackamas County Sheriff’s Office (“CCSO”), Sheriff Craig Roberts (“Roberts”), and Undersheriff Matt Ellington (“Ellington”). This Agreement becomes effective and enforceable after seven calendar days have passed following Swanson’s execution of the Agreement as provided in Section 7 of this Agreement and after a majority of the County Commissioners have approved the Agreement as provided in Section 4 of this Agreement (hereinafter referred to as “Effective Date”).

1. Meaning of Terms.

- a. As used herein, “Swanson” shall mean Matthew Swanson, his spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through him.
 - b. As used herein, “County” shall mean Clackamas County, all divisions and departments within Clackamas County, including the Clackamas County Sheriff’s Office, all past and present employees and managers (in their individual and representative capacities), all past and present officers, all past and present commissioners, insurers, attorneys, and agents.
 - c. As used herein, “CCSO” shall mean Clackamas County Sheriff’s Office, all past and present employees and managers (in their individual and representative capacities including but not limited to Undersheriff Craig Roberts and Undersheriff Matt Ellington), all past and present officers, insurers, attorneys, and agents.
 - d. As used herein, “Roberts” shall mean Sheriff Craig Roberts, his spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through him.
 - e. As used herein, “Ellington” shall mean Undersheriff Matt Ellington, his spouse, heirs, executors, administrators, agents, insurers, attorneys, assigns, and anyone claiming through him.
 - f. As used herein, “Defendants” shall mean CCSO, Roberts, and Ellington.
 - g. As used herein, “County Releasees” shall mean collectively County, CCSO, Roberts, and Ellington.
 - h. As used herein, “Parties” shall mean collectively Swanson, County, CCSO, Roberts, and Ellington.
2. Purpose. The Parties desire to settle and compromise fully and finally any and all differences between them including, but not limited to, disputes related to Swanson’s employment and separation from employment as well as all claims asserted in Swanson’s lawsuit and all claims asserted in correspondence between them, and all matters which could have been asserted, and any and all additional claims Swanson has or might have asserted against County Releasees.

3. Consideration. In consideration of this Agreement, the County will provide Swanson Two Hundred Thirty-Five Thousand and No/100 Dollars (\$235,000.00) inclusive of all costs and attorneys' fees (the "Consideration"). The County shall cause the Consideration to be delivered to Swanson's attorney of record, Randy J. Harvey of Bassinger & Harvey, PO Box 1309, Sherwood, Oregon 97140 no later than 20 calendar days after this Agreement has been executed by all Parties to this Agreement.
4. Settlement Tentative Until Formally Approved By the Board of Commissioners. The settlement and the settlement documents must be approved by a majority of the five-member Clackamas County Board of Commissioners at a duly noticed public meeting.
5. Payment of Applicable Taxes. Swanson is and shall be solely responsible for all federal, state, and local taxes that may be owed by Swanson by virtue of the receipt of all or any portion of the monetary payment or Consideration provided under this Agreement, except, however, with respect to any liability or obligation that the County may have as to payroll-related tax withholdings and/or as required by applicable law. Swanson agrees to indemnify and hold the County harmless from any and all liability, including, without limitation, all penalties, interest, and other costs that may be imposed by the Internal Revenue Service or other federal or state agencies regarding any tax obligations that may arise from the treatment of the monetary consideration under this Agreement. Swanson acknowledges that the County has provided no advice concerning tax, benefits, or benefit eligibility issues in connection with the negotiation of this Agreement.
6. Mutual Releases.
 - a. Swanson's Release to County Releasees. In consideration of the Agreement, Swanson, for Swanson personally and Swanson's spouse, heirs, executors, administrators, successors and assigns, fully, finally, and forever releases and discharges County Releasees and their affiliates, as well as his, its, or their respective successors, assigns, officers, owners, spouses, agents, representatives, employees, managers, commissioners, attorneys, insurers, and employees (collectively, "County Releasees") of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, as a result of actions or omissions occurring through the Effective Date of this Agreement. Specifically included in this waiver and release are, without limitation, all claims Swanson may have that arose prior to the signing of this Agreement, and he hereby specifically waives and releases all claims against the County Releasees to the extent any such claim could be asserted, including, but not limited to, those arising under any federal or state law or local ordinances. That includes by way of illustration those arising under the Age Discrimination in Employment Act, any federal employment law, Oregon Chapters 652, 653, 659 and 659A; any tort, employment contract (express or implied, oral, or written), public policy, claims of retaliation including claims for failure to promote or claims based upon prior grievances, complaints, or lawsuits including the filing of this lawsuit, whistleblower claims, claims of aiding and abetting, or any other claims; under the common law, intentional infliction of emotional distress, reckless infliction of emotional distress, negligent infliction of emotional distress, harassment, hostile work environment, assault and battery, negligence or gross negligence, or defamation, whether such claims arose or may have arisen individually, through a governmental

agency, class of employees; and any and all claims for attorneys' fees. This release includes any and all claims of any nature that Swanson may have that arose prior to the date of his signature on this Agreement. This is a full and final waiver and release of any such claims that Swanson has or might have asserted against the Defendant Releasees and he intends that the release have the broadest effect possible under law. Swanson represents that he has no claim against the Defendant Releasees which is not released under this Agreement.

- b. Defendants' Release to Swanson. In consideration of the Agreement, Defendants fully, finally, and forever release and discharge Swanson and his respective successors, assigns, spouse, agents, representatives, attorneys, and insurers (collectively, "the Swanson Releasees") of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, as a result of actions or omissions occurring through the Effective Date of this Agreement. Specifically included in this waiver and release are, without limitation, all claims Defendants may have that arose prior to the signing of this Agreement, and Defendants hereby specifically waive and release all claims against the Swanson Releasees to the extent any such claim could be asserted, including, but not limited to, those arising under any federal or state law or local ordinances. That includes by way of illustration those arising under any federal employment law, Oregon Chapters 652, 653, 659 and 659A; any tort, employment contract (express or implied, oral, or written), public policy, claim of retaliation, claim of aiding and abetting, or any other claim; under the common law, claims for wrongful discharge, intentional infliction of emotional distress, reckless infliction of emotional distress, negligent infliction of emotional distress, harassment, hostile work environment, assault and battery, negligence or gross negligence, or defamation, whether such claims arose or may have arisen individually, through a governmental agency, class of employees; and any and all claims for attorneys' fees. This release includes any and all claims of any nature that Defendants may have that arose prior to the date of their signatures on this Agreement. This is a full and final waiver and release of any such claims that Defendants have or might have asserted against the Swanson Releasees and they intend that the release have the broadest effect possible under law. Defendants represent that they have no claim against the Swanson Releasees which is not released under this Agreement.
7. Compliance with the Older Workers Benefit Protection Act. This Agreement is subject to the terms of the Older Workers Benefit Protection Act of 1990 ("OWBPA"), which 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, Swanson acknowledges that he has executed this Agreement voluntarily and with full knowledge of its consequences. Swanson is hereby advised to seek counsel regarding whether to sign this Agreement and acknowledges that he has done so. Swanson further acknowledges that this Agreement is written in a manner that is calculated to be understood, that he does understand it, that it applies to any rights he may have under the ADEA, that it releases claims up to the date it is signed but not claims or rights that he may have under the ADEA that arise after it is signed, that he is receiving consideration or benefits in addition to those to which he is already entitled, and that he has a period of up to 21 (twenty-one) calendar days to consider this Agreement, but knowingly and voluntarily waives that right by signing it on an earlier date if he does so.

Swanson further acknowledges, understands, and agrees that this Agreement shall not become effective or enforceable as a waiver of his ADEA claims until seven (7) calendar days after it is executed by him and that until seven (7) days have passed he may revoke this Agreement. Swanson will provide written notice of any such revocation to CCSO.

8. No Filings and Covenant Not to Sue of the Parties. A “covenant not to sue” is a legal term that means a person promises not to file a lawsuit or other legal proceeding. It is different from the release of claims contained above. Besides waiving and releasing the claims above, the Parties promise never to file or prosecute any legal claim of any kind against each other in any forum for any reason based on any act, omission, event, occurrence, or non-occurrence, through the Effective Date of this Agreement, including but not limited to claims, laws, or theories covered by the Parties’ Releases contained in Section 6 above.
9. Dismissal of Litigation. This release is given in full compromise and settlement of the claims of Swanson against Defendants in Civil Case No. 13:18-cv-00913-AC in the United States District Court for the District of Oregon wherein Matthew Swanson appears as Plaintiff and Clackamas County Sheriff’s Office, Sheriff Craig Roberts, and Undersheriff Matt Ellington appear as Defendants. In consideration of the foregoing, Swanson and Defendants direct entry of judgment of dismissal with prejudice and without costs or attorneys’ fees as to all of Swanson’s claims against Defendants in that certain action (Civil Case No. 13:18-cv-00913-AC) in a form attached hereto and incorporated herein by reference.
10. Exceptions to the Release. This Agreement is not intended to waive or release any claims by either party to enforce this Agreement.
11. Non-Admission. This Agreement shall not be construed as an admission by any party of any liability or acts of wrongdoing or statutory violations, nor shall it be considered to be evidence of such liability, wrongdoing, or statutory violations.
12. Waiver. No waiver of any term of this Agreement shall constitute a waiver of any other terms, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. Any party may waive any provision of this Agreement intended for its benefit, but such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.
13. Arbitration. Any controversy, claim, or dispute arising out of or relating to the settlement agreement and mutual release shall be resolved exclusively by arbitration in Oregon using the Arbitration Service of Portland. The prevailing party shall be entitled to their attorneys’ fees and costs.
14. Voluntary and Knowing Agreement. Each party hereto states that the party has carefully read this Agreement, that the party has had the opportunity to have it reviewed and explained to the party by an attorney of his choosing, that the party fully understands its final and binding effect, and that the party is signing this Agreement voluntarily and with the full intent of releasing the applicable Releasees from all claims.

15. Entire Agreement. This Agreement sets forth the entire agreement between the Parties. Swanson is not relying on any other agreements or oral representations not fully addressed in this Agreement. Any prior agreements between or directly involving Swanson and County Releasees are superseded by this Agreement. The provisions of this Agreement are severable, and if any part of this Agreement is found by a court of law to be unenforceable, the remainder of this Agreement will continue to be valid and effective. The headings in this Agreement are provided for reference only and shall not affect the substance of this Agreement.
16. Counterparts. This Agreement may be executed by email or facsimile and in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts shall constitute one agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and General Release of Claims on the respective dates set forth below.

CLACKAMAS COUNTY

By: _____

Title: _____

Date: _____, 2018

Matthew Swanson

Date: _____, 2018

CLACKAMAS COUNTY SHERIFF'S OFFICE

By: _____

Title: _____

Date: _____, 2018

Craig Roberts

Date: _____, 2018

Matt Ellington

Date: _____, 2018