

September 9, 2020

REPAYMENT, RELEASE, AND SEPARATION AGREEMENT

THIS REPAYMENT, RELEASE, AND SEPARATION AGREEMENT (the "Agreement") is made and entered into by and between John Crooks and the Shakopee Public Utilities Commission, by and through its Commissioners, acting in their official capacity (the "Commission").

This is a legal document. The Commission advises Mr. Crooks to take the time that he needs to read and understand it. The Commission has provided this Agreement to Mr. Crooks' attorney for review and legal advice.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Commission and Mr. Crooks agree to the following terms to settle all disputes between them to the extent the law permits.

1. Separation of Employment. Mr. Crooks' employment with the Commission shall end, and his resignation shall be effective, upon execution of the Agreement by Mr. Crooks and all five of the Commissioners (President Amundson, Vice President Mocol, and Commissioners Brennan, Fox, and Meyer), which the parties anticipate to be on or about September 9, 2020 (the "Separation Date"). Mr. Crooks shall remain employed by the Commission with full salary and benefits until the Separation Date, and he remains available to assist the Commission, upon request, to respond to the reasonable inquiries and requests for information from the Commission through the Separation Date. The Agreement supersedes and replaces the Utilities Manager Employment Contract dated February 3, 2020.

2. Commission Obligations. In return for "Mr. Crooks' Obligations" in this Agreement, the Commission hereby provides the following benefits to Mr. Crooks (the "Commission Obligations") if he signs and dates this Agreement, *which cannot be until after the Separation Date*, and he does not exercise his legal rights to revoke or rescind as described in Section 6 below.

a. Payment of Benefits. The Commission shall pay Mr. Crooks his accrued but unused vacation and sick leave benefits and salary through the Separation Date, subject to the maximum compensation cap under Minnesota Statutes, Section 43A.17, and less income tax and any legally required withholding and any deductions that Mr. Crooks voluntarily authorizes in writing. Payment shall be made on the next regular payroll date after the expiration of the rescission period set forth in Section 6.

b. COBRA Health Insurance Premiums. Mr. Crooks plans to elect health insurance coverage on a COBRA basis. The Commission will pay the monthly COBRA premiums on his behalf for the period starting with the Separation Date through

March 31, 2021. This obligation is conditioned on Mr. Crooks timely signing all paperwork necessary to secure COBRA benefits and on Mr. Crooks actually, validly, and timely electing to continue such coverage. Mr. Crooks understands that he will be responsible for paying the full cost of the insurance and any legally permitted COBRA administrative fee starting on April 1, 2021 if he is still participating.

The payments and consideration set forth in Section 2 and Section 5 shall be in lieu of and discharge any obligations of the Commission to Mr. Crooks for compensation, any other expectation, remuneration, or benefit.

3. Mr. Crooks' Obligations. Mr. Crooks hereby provides the following consideration to the Commission ("Mr. Crooks' Obligations"):

- a. Release of Claims. In return for the mutual promises in this Agreement as well as the Commission's Obligations in Sections 2 and 5, Mr. Crooks hereby fully and finally waives and releases to the maximum extent permitted by applicable law the following legal and equitable claims against the Commission up to the moment that he signed this Agreement:
 - i. All claims that Mr. Crooks has now, even if he does not now know about or suspect them;
 - ii. All claims for attorney's fees, costs, and disbursements;
 - iii. All rights and claims of age discrimination, harassment, and retaliation under the federal Age Discrimination in Employment Act ("ADEA") as amended by the Older Workers Benefit Protection Act ("OWBPA"), and under the Minnesota Human Rights Act ("MHRA"); and claims of discrimination, harassment, and retaliation under the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Genetic Information Nondiscrimination Act, and any other applicable federal, state, or local law;
 - iv. All claims arising from Mr. Crooks' employment and the termination of his employment with the Commission, including, but not limited to, breach of contract, breach of implied contract, breach of covenant of good faith and fair dealing, illegal termination, fraud or misrepresentation, local civil rights laws, promissory estoppel, wrongful termination, negligence, defamation, retaliation, invasion of privacy, and infliction of emotional distress;
 - v. All claims for other alleged unlawful employment practices arising from Mr. Crooks' employment and the termination of his employment, including under the National Labor Relations Act; and
 - vi. All claims for any other form of unearned compensation that is not provided in this Agreement and can be legally waived.

- b. Scope of the Release of Claims. Mr. Crooks understands that *the above release and waiver does not apply* to any claim that controlling law clearly states may not be released, including by settlement, including unemployment compensation and worker's compensation benefits, and *rights and claims for age discrimination that arise under the ADEA as amended by the OWBPA after the date on which he signed this Agreement.* In addition, the release by Mr. Crooks under Section 3(a) will not apply to:
- i. Rights he may have to defense and indemnification relating to third-party claims brought against Mr. Crooks in his capacity as Utilities Manager or in his official capacity as agent and employee of the Commission, provided the incident arose while he was acting within the scope of his employment and excluding criminal litigation and such liability coverage is within the authority of the Commission to provide under state law, including Minnesota Statutes, Section 466.07.
- c. Consideration. The promises and benefits that Mr. Crooks is receiving in this Agreement are full and fair payment for the release and waiver of the above legal and equitable claims, and they have a value that is greater than anything else to which he was already entitled if he did not enter into this Agreement.
- d. Repayment of Excess Compensation. The Commission has engaged a third-party, independent auditor to determine the specific amount of compensation paid to Mr. Crooks in excess of Minnesota Statutes, Section 43A.17 for the years 2017-2019, and any adjustments for 2020. The parties agree to cooperate fully with the third-party auditor. The third-party auditor shall provide its determinations in writing to the Commission, and the Commission shall provide a copy of such written determinations by October 15, 2020 to Mr. Crooks of the amount of excess compensation so determined (the "Excess Compensation"). Mr. Crooks shall repay the Excess Compensation in three equal monthly installments due on the 30th of the month beginning on October 30, 2020 through December 30, 2020. To memorialize the payment by installments, Mr. Crooks will execute documents upon request of the Commission, including a mutually-agreeable promissory note and mutually-agreeable confession of judgment for the amount determined by the auditor to be owing. The parties agree to cooperate in determining any tax issues as a result of the Excess Compensation.
4. Mr. Crooks' Additional Legal Rights. *Mr. Crooks also understands that without being penalized or having an obligation to notify the Commission, this Agreement does not prohibit him from filing or reporting a charge or complaint with; or testifying, assisting, cooperating or participating in an investigation or legal proceeding conducted or initiated by, the Equal Employment Opportunity Commission, Minnesota Department of Human Rights, National Labor Relations Board, Occupational Safety and Health Administration, Securities and Exchange Commission, Minnesota Department of Labor and Industry, or*

other federal, state, or local regulatory or law enforcement commission or agency (“Government Agencies”). If he files or reports a charge or complaint, Mr. Crooks agrees that the money and benefits that he received in this Agreement as Commission Obligations completely satisfy his individual claims in connection with the charge or complaint, and he is not entitled to any other individual monetary relief of any kind with respect to the legal and equitable claims that he has waived and released in this Agreement, unless his waiver and release were deemed unlawful or otherwise invalid. Provided, this Agreement does not limit Mr. Crooks’ right to receive an award for information provided to any Government Agencies.

Definitions. For purposes of this Section 4, “the Commission” means the Shakopee Public Utilities Commission, and its successors, assigns, and each of them; and past and present commissioners, managers, indemnitors, employees, agents, insurers, attorneys, and successors or assigns of any and all of the foregoing entities. Also, for purposes of this Section 4, “Mr. Crooks” means John Crooks and any person who has or obtains legal rights or claims against the Commission through Mr. Crooks.

5. Additional Agreements and Understandings. *The Commission hereby advises Mr. Crooks that none of the following provisions interferes or is intended to interfere with his right to engage in protected, concerted activity under Section 7 of the National Labor Relations Act.*

- a. Release by the Commission. All signatories of the Agreement (President Amundson, Vice President Mocol, and Commissioners Brennan, Fox, and Meyer) agree to release Mr. Crooks to the maximum extent permitted by applicable law and waive all legal and equitable claims against him up to the moment that this Agreement is signed by them.
- b. Non-Disparagement by Mr. Crooks. Mr. Crooks agrees not to disparage the Commission, its Commissioners, its products, services, or intellectual property, encourage or assist others to disparage the Commission, or cause the Commission to be held in disrepute by the public or by the Commission’s ratepayers, sponsors, suppliers, or vendors. *This does not restrict or prohibit him from making statements or expressing opinions to, or in any other way communicating with any Government Agencies or others, concerning his and other employees’ pay, hours, and other terms and conditions of employment.*
- c. Non-Disparagement by the Commission. All signatories of the Agreement (President Amundson, Vice President Mocol, and Commissioners Brennan, Fox, and Meyer) agree not to disparage Mr. Crooks, encourage or assist others to disparage Mr. Crooks, or cause Mr. Crooks to be held in disrepute by the public or by the Commission’s ratepayers, sponsors, suppliers, or vendors.
- a. Investigative Report Public. The investigative report prepared by Special Counsel Korine Land to the Commission dated July 31, 2020 shall be public on or after the Separation Date.

- b. PERA. The parties will cooperate fully with PERA in making potential adjustments to Mr. Crooks' retirement contributions and related Commission contributions for the period 2017-2020.
 - c. Return of the Commission Property. Within 24 hours of the Separation Date, Mr. Crooks will return to the Commission its equipment and all Shakopee Public Utilities property, including, but not limited to: cellular telephones; computers; data and back-up data stored on any computers used by Mr. Crooks; program documents; strategic plans; financial information; credit cards; card key passes; door and file keys; computer access codes; computer disks and/or instruction manuals.
 - d. Press release. The parties mutually agree upon statements, attached as Exhibit A, to be provided to the media and the public upon signature of the Agreement. The signatories to this Agreement will refer to the conclusion of Mr. Crooks' employment as his retirement.
 - e. Dispute Resolution Process. In the event of a dispute concerning this Agreement, representative(s) of each party with settlement authority will meet and confer in a good faith effort to resolve the dispute. If the parties are unable to resolve the dispute, they shall make every effort to settle the dispute through mediation or other alternative dispute resolution methods.
 - f. Breach of Agreement. In the event of a material breach of the Agreement, as finally determined by a court of competent jurisdiction, the court may award to the prevailing party the party's reasonable attorneys' fees and costs.
 - g. Benefit Plans. This Agreement does not affect Mr. Crooks' rights in any employee benefit plan in which he participated during his employment with the Commission. Only the plan documents control his and the Commission's rights and obligations pertaining to those benefits.
6. Mr. Crooks' Legal Rights; Effective Date of Agreement. This is a legal document. Mr. Crooks has had the opportunity to consult with an attorney of his own choice and expense before signing this Agreement.

Mr. Crooks understands that he has up to 21 days from the date in the upper right-hand corner of the first page of this Agreement (which is the date the Agreement was delivered to him) to consider this Agreement, including his waiver of rights and claims of age discrimination, harassment, and retaliation under the ADEA as amended by the OWBPA. If he signs this Agreement, then for a period of seven days following the day on which he signed it, he understands that he will then be entitled to revoke this Agreement, and this Agreement will not become effective or enforceable until the seven-day period has expired.

Mr. Crooks also understands that he has the right to rescind his waiver of discrimination, harassment, and retaliation claims under the MHRA within 15 calendar days after the date on which he signs this Agreement. To rescind that waiver, Mr. Crooks must put the rescission in writing and deliver the rescission to the Commission by hand or facsimile within the 15-day period, delivered personally or by facsimile to the Commission's President.

Mr. Crooks understands that if he exercises his rights to revoke or rescind as provided above, this Agreement will be canceled, and he will not receive the Commission Obligations in Section 1. Nonetheless, his employment still ended on the Separation Date.

7. Entire Agreement; Amendment. There are no other understandings between Mr. Crooks and the Commission about any of the terms of this Agreement. Headings are provided for convenience of the parties and do not form part of the Agreement. The parties can only change this Agreement through a signed document.

8. Assignment. This Agreement will inure to the benefit of the parties hereto and shall be binding on them and their respective legal representatives, successors, heirs, and assigns. Mr. Crooks may not assign this Agreement.

9. Joint Drafting. The parties agree that they participated equally in, and are jointly responsible for, the drafting of this Agreement. In the event of any dispute, any ambiguity in this Agreement shall not be construed against either party.

10. Notice. Any notice permitted or required by this Agreement shall be made in writing by letter, personal service, facsimile, or other documentary form and shall be deemed given upon actual receipt by the party to which such notice is given. The address for notice to each party is as follows (as may be later changed by a party by proper notice):

If to Mr. Crooks:
44556 Bittners Point Road
Bovey, MN 55709

If to the Commission:
Shakopee Public Utilities Commission
Attn: President
255 Sarazin Street
Shakopee, Minnesota 55379

11. Execution in Counterparts. The Agreement may be executed in counterparts, with an electronic signature, each of which will be deemed an original, but all of which taken together constitutes but one and the same instrument.

12. Knowing, Voluntary Agreement. Mr. Crooks represents that he had enough time to read this Agreement carefully, understand its terms, and negotiate it. He also represents that he has obtained legal advice of his own attorney before signing this Agreement. Mr. Crooks now represents that he entered into this Agreement voluntarily and knowingly, and that nobody at the Commission pressured him to enter into this Agreement.

13. Severability; Laws; Venue. The provisions of this Agreement are severable. If any provision or portion thereof of this Agreement is found to be unenforceable, the provisions or portions thereof that are valid and enforceable shall remain in full force and effect. This Agreement is governed by the laws of the State of Minnesota. Venue of any dispute over the terms of this Agreement shall be in Scott County, Minnesota.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as follows:

John Crooks

Date

SHAKOPEE PUBLIC UTILITIES COMMISSION, BY AND THROUGH ITS COMMISSIONERS

Date: _____
President Debra Amundson

Date: _____
Vice President Kathi Mocol

Date: _____
Commissioner Jody Brennan

Date: _____
Commissioner Kayden Fox

Date: _____
Commissioner Mathew Meyer

EXHIBIT A: PRESS RELEASE

John Crooks and the Shakopee Public Utilities Commission announce the retirement of its long time Utilities Manager. Mr. Crooks had forty years in the utility industry with the last twenty years with SPU. Mr. Crooks thanks the employees at SPU for their continued, dedicated hard work in providing water and electric service to the citizens of Shakopee. It has been his pleasure to serve the community.