

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AGREEMENTS EXTENDING THE TWO EXISTING SETTLEMENT AGREEMENTS BETWEEN THE CITY, THE OAKLAND POLICE AND FIRE RETIREMENT SYSTEM AND THE RETIRED OAKLAND POLICE OFFICERS' ASSOCIATION THAT (1) INCORPORATE THE CALCULATION OF HOURS FOR THE JUNETEENTH HOLIDAY AND (2) EXTEND THE TERM OF THE SETTLEMENT AGREEMENTS TO JUNE 30, 2026 TO ALIGN WITH THE TERMS OF THE CURRENT MEMORANDA OF UNDERSTANDING BETWEEN THE CITY AND THE OAKLAND POLICE OFFICERS ASSOCIATION (OPOA) AND OAKLAND POLICE MANAGEMENT ASSOCIATION (OPMA)**

**WHEREAS**, pursuant to Article XXVI of the Oakland City Charter, retirees of the Oakland Police Department who are members of the Oakland Police and Fire Retirement System (PFRS) are entitled to receive a retirement allowance that is based on "compensation attached to the average rank held" during the three years immediately preceding retirement; and

**WHEREAS**, "compensation attached to [...] rank" includes, among other compensation, holiday pay; and

**WHEREAS**, on November 8, 2016, the Retired Oakland Police Officers' Association (ROPOA) filed a lawsuit entitled *Retired Oakland Police Officers Association, et al. v. Oakland Police and Fire Retirement System, et al.*, Alameda County Superior Court Case No. RG16838274, against PFRS, the PFRS Board and the City of Oakland alleging that PFRS had been miscalculating the holiday pay retirement benefit received by PFRS retirees and beneficiaries of retirees who held the rank of police officer, sergeant, inspector or lieutenant; and

**WHEREAS**, on or about May 7, 2019, the Council authorized settlement of the lawsuit, which resulted in a settlement agreement with the ROPOA with respect to PFRS retirees who held the rank of police officer, sergeant, inspector or lieutenant during the 36-month period preceding retirement (Resolution No. 87666 C.M.S.); and

**WHEREAS**, on May 21, 2019, counsel for the ROPOA issued a letter to the PFRS Board challenging the new calculation method and reduction in holiday pay being credited to

police retirees and beneficiaries of police retirees who held ranks of captain or deputy chief and invited PFRS and the City to attempt to resolve the dispute in lieu of litigation; and

**WHEREAS**, on or about December 10, 2019, the Council authorized settlement under threat of litigation with the ROPOA on behalf of PFRS retirees who held rank of captain or deputy chief during the 36-month period preceding retirement. (Reso. 87972 C.M.S.); and

**WHEREAS**, both settlement agreements are currently set to expire June 30, 2024; and

**WHEREAS**, in July 2022, the City agreed to extend the term of the Memoranda of Understanding (MOUs) for the Oakland Police Officers' Association and the Oakland Police Management Association by two years to June 30, 2026 and, among other things, add Juneteenth as a paid holiday; and

**WHEREAS**, the ROPOA seeks to extend the existing settlement agreements by two years to June 30, 2026, to align with the expiration of the MOUs for the OPOA and OPMA and to incorporate the Juneteenth holiday pay hours into their holiday pay calculations for police retirees and beneficiaries of police retirees who held the rank of 1) police officer, sergeant, inspector or lieutenant and 2) captain or deputy chief pursuant to the terms set forth in the Extension to Settlement Agreements attached hereto as **Attachment A**; and

**WHEREAS**, on April 18, 2024, the Council authorized extension of the settlement agreements on these terms in Closed Session; and

**WHEREAS**, on April 24, 2024, the PFRS Board authorized extension of the settlement agreements on these terms in Closed Session; now, therefore, be it

**RESOLVED:** That the City Attorney is authorized and directed to draft settlement agreements between the City and the ROPOA and PFRS that extend those agreements by two years to June 30, 2026 and to incorporate the Juneteenth holiday in the holiday pay calculations for police retirees and beneficiaries of police retirees who held the rank of 1) police officer, sergeant, inspector or lieutenant and 2) captain or deputy chief, during the 36-month period preceding retirement, pursuant to the terms set forth in the Extension to Settlement Agreements attached hereto as **Attachment A**; and be it

**FURTHER RESOLVED:** That the City Administrator is authorized to execute the aforesaid settlement agreements once the City Attorney approves them as to form and legality; and be it

**FURTHER RESOLVED:** That the City Attorney and City Administrator are authorized and directed to take whatever steps as may be necessary to effect said settlement.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND  
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

3356310v2/SW

# **ATTACHMENT A**

## **EXTENSION TO SETTLEMENT AGREEMENTS**

This Agreement is entered into by and between the Oakland Police & Fire Retirement System and Oakland Police & Fire Retirement System Board (collectively, “PFRS”), the City of Oakland (“City”) and the Retired Oakland Police Officers Association (“ROPOA”) as of the latest date indicated on the signature blocks below, effective through June 30, 2026.

WHEREAS, the City, PFRS, and ROPOA entered into a Settlement Agreement regarding the calculation of Holiday Pay for PFRS Retirees Holding the Rank of Captain & Deputy Chief on or about January 29, 2020 (“Captain & DC Settlement Agreement”) (Exhibit 1 hereto), and entered into a Settlement Agreement regarding the calculation of Holiday Pay for PFRS Retirees Holding the Rank of Police Officer, Sergeant, Inspector, and Lieutenant on or about May 22, 2019 (“Rank & File Settlement Agreement”) (Exhibit 2 hereto) (Exhibit 1 and 2 are the “Settlement Agreements”);

WHEREAS, the Captain & DC Settlement Agreement provided for 104 hours of holiday pay per year through June 30, 2024;

WHEREAS, the Rank & File Settlement Agreement provided for 144 hours of holiday pay per year through June 30, 2024 (the equivalent of 12 holidays at 12 hours per day);

WHEREAS, the Memorandum of Understanding between the City of Oakland and the Oakland Police Officers Association and Oakland Police Management Association was extended through June 30, 2026 (“MOU”), effective July 1, 2022 (Exhibit 3 hereto), and the new MOU confirmed the existing holidays for police officers, reinstating Admission’s Day and removing Lincoln’s Day, and adding Juneteenth as an additional paid holiday;

WHEREAS, the Parties wish to extend the Settlement Agreements in light of the MOU extension effective July 1, 2022, through June 30, 2026 and to expressly incorporate the Juneteenth holiday and exclude the floating holiday in holiday pay calculations, for the benefit of all Parties providing certainty and resolution of the issues set forth in the Settlement Agreements without litigation;

THEREFORE, the Parties agree as follows:

The Rank & File Settlement Agreement is incorporated by reference as if set forth at length herein, except that the following changes shall apply: For the purpose of calculating retirement allowances and benefits for PFRS members who are retirees and beneficiaries of retirees who held the rank of Police Officer, Sergeant, Inspector, and Lieutenant, PFRS shall credit Covered Retirees and Beneficiaries with 156 hours of holiday pay per year (13 hours per month with Juneteenth included) beginning July 1, 2022, through June 30, 2026.

The Captain & DC Settlement Agreement is incorporated by reference as if set forth at length herein, except that the following changes shall apply: For the purpose of calculating retirement allowances and benefits for PFRS members who are retirees and beneficiaries of retirees who held the rank of Captain and Deputy Chief, PFRS shall credit Covered Retirees and Beneficiaries with 104 hours of holiday pay per year (8.67 hours per month, with Juneteenth included and the floating holiday excluded) beginning July 1, 2022, through June 30, 2026.

All other terms remain the same.

IT IS SO AGREED.

FOR THE RETIRED OAKLAND POLICE OFFICERS ASSOCIATION:

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Kevin Traylor

FOR THE OAKLAND POLICE AND FIRE RETIREMENT SYSTEM AND  
PFR OAKLAND POLICE AND FIRE RETIREMENT SYSTEM BOARD:

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Walter Johnson, Board President

FOR THE CITY OF OAKLAND:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jestin Johnson, City Administrator

APPROVED AS TO FORM:

\_\_\_\_\_  
Sarah Grossman-Swenson  
McCracken, Stemerman & Holsberry LLP  
Counsel for the Retired Oakland Police Officers' Association

\_\_\_\_\_  
Angela Cabral  
Sloan Sakai Yeung & Wong LLP  
Counsel for the Police & Fire Retirement System

\_\_\_\_\_  
Barbara J. Parker  
City Attorney  
Office of the City Attorney for the City of Oakland

# **EXHIBIT 1**



## Settlement Agreement

In consideration of the mutual agreements and promises set forth below, the Parties to this Settlement Agreement (“Agreement”) hereby agree as follows:

### I. Parties

This Agreement is entered into as of January 29, 2020, by and among the following Parties:

Potential Plaintiff: Retired Oakland Police Officers Association (“Plaintiff”);

Potential Defendants and Respondents: City of Oakland (“City”); Oakland Police and Fire Retirement System (“PFRS”); Oakland Police and Fire Retirement System Board (“Board”), (collectively, “Defendants”).

### II. Recitals

Whereas, pursuant to Article XXVI of the City of Oakland Charter, retirees of the Oakland Police Department who are members of the Oakland Police and Fire Retirement System are entitled to receive a retirement allowance that is based on “compensation attached to the average rank held” during the three years immediately preceding retirement; and

Whereas, until December 1, 2018, for purposes of calculating “compensation attached to the average rank held”, PFRS credited retirees and beneficiaries of retirees who held the rank of captain or deputy chief for some or all of the 36-month period immediately preceding their retirement (hereinafter collectively “Covered Retirees and Beneficiaries”) with 144 hours of holiday pay per year<sup>1</sup> (12 hours per month); and

Whereas, on November 28, 2018, the PFRS Board passed Resolution No. 7030, which changed the method for calculating the amount of holiday pay to be credited Covered Retirees and Beneficiaries effective January 1, 2019; and

Whereas, under the new calculation method set forth in PFRS Resolution No. 7030, the amount of holiday pay Covered Retirees and Beneficiaries were to be credited for fiscal year 2018-2019 decreased from 144 hours to 17.67 hours; and

Whereas, because PFRS staff determined that as of January 1, 2019, Covered Retirees and Beneficiaries had already been paid more than 17.67 hours of holiday pay for fiscal year 2018-2019, PFRS did not pay any holiday pay benefits to Covered Retirees and Beneficiaries for the remainder of the 2018-2019 fiscal year; and

Whereas, on July 1, 2019, PFRS began crediting retired captains and their beneficiaries with 26.8 hours of holiday pay per year (and began paying 2.23 hours per month); and

Whereas, on July 1, 2019, PFRS began crediting retired deputy chiefs and their beneficiaries with 24 hours of holiday pay per year (and began paying 2.0 hours per month); and

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<sup>1</sup> PFRS operates on a fiscal year which runs from July 1 through June 30.

Whereas, Plaintiff claims that Covered Retirees and Beneficiaries are entitled to be credited with 152 hours of holiday pay, including “floating holiday pay”, per year; and

Whereas, Plaintiff also claims that Covered Retirees and Beneficiaries are entitled to POST pay in accordance with the POST pay provided to actives in the MOU between the Oakland Police Management Association and the City of Oakland;

Whereas, Defendants dispute Plaintiff’s claims, and assert that Covered Retirees and Beneficiaries are not entitled to POST pay, are not entitled to “floating holiday pay”, were only entitled to 17.67 hours of holiday pay for fiscal year 2018-2019, and that captains and deputy chief are only entitled to 26.8 hours and 24 hours of holiday pay, respectively, for fiscal year 2019-2020;

Whereas, the Parties wish to enter into this Agreement to compromise, resolve and settle potential claims involving the proper calculation of holiday pay, including “floating holiday pay”, and POST pay for retired captains and deputy chiefs;

Therefore, the Parties agree to settle on the terms stated below.

### **III. Settlement Terms**

#### **A. Credit for Holiday Pay for Covered Retirees and Beneficiaries.**

For the purpose of calculating retirement allowances and benefits for PFRS members who are retirees and beneficiaries of retirees who held the rank of captain or deputy chief, PFRS shall credit Covered Retirees and Beneficiaries with 104 hours of holiday pay per year (8.67 hours per month) beginning November 1, 2019 and shall continue to credit Covered Retirees and Beneficiaries with 104 hours of holiday pay per year during the Term (as defined below) of this Agreement.

PFRS shall not credit Covered Retirees and Beneficiaries with POST pay.

PFRS shall not adjust the amount of holiday pay paid to Covered Retirees and Beneficiaries for the time period from January 1, 2019 to November 1, 2019, or otherwise compensate Covered Retirees and Beneficiaries for any alleged underpayment of holiday pay during said period, nor shall PFRS or the City recover any alleged overpayments from Covered Retirees and Beneficiaries for the time period prior to January 1, 2019.

This is a resolution of disputed claims and is not an admission of liability by any Party or the absence of liability on the part of any other Party.

#### **B. Scope of Agreement.**

This Agreement does not settle or resolve any claims of members who are retirees or beneficiaries of retirees who held the ranks of police officer, sergeant, inspector, or lieutenant of police at retirement, *provided, however*, that this Agreement *does* apply to the portion, if any, of the 36-month period immediately preceding retirement that such retirees held the rank of captain or deputy chief.

**C. Term of Agreement.**

The term of this Agreement (“Term”) shall run from the date hereof until the earlier of: (a) June 30, 2024; or (b) the effective date of any MOU amendment adopted hereafter that results in a material change in the provision of the MOU governing POST pay or holidays, including the floating holiday, for active sworn police holding the rank of captain or deputy chief. The Party seeking to terminate the Agreement based on a material change to the above-noted MOU provisions has the burden of proof of a material change.

**D. Terms and Conditions for Active Sworn Officers.**

This settlement does not prevent the City of Oakland and the Oakland Police Management Association from re-negotiating the way POST or holiday pay is calculated for active sworn police in any rank, or from negotiating any other term or condition of employment for said active sworn police.

**E. Waiver and Release.**

Plaintiff hereby waives and releases any and all claims against Defendants that: (1) at any time prior to November 1, 2019, Covered Retirees and Beneficiaries were entitled to be credited with POST pay, “floating holiday pay”, or a different number of hours of holiday pay than the number of holiday pay hours actually credited to them by PFRS; and (2) at any time commencing on or after November 1, 2019 through the Term of this Agreement, Covered Retirees and Beneficiaries are entitled to be credited with POST pay, “floating holiday pay” or more than 104 hours of holiday pay per year.

Defendants hereby waive and release any and all claims that during the Term of the Agreement, Covered Retirees and Beneficiaries should be credited with fewer than 104 hours per year for holiday pay, and hereby waive and release any and all claims that PFRS should be entitled to recoup any alleged overpayments for holiday pay for the period prior to January 1, 2019.

Defendants further agree that in the event a MOU amendment is adopted hereafter that results in a material change to the holiday pay or POST provisions as described in Section C above, PFRS will only adjust retirement allowances and benefits for Covered Retirees and Beneficiaries from the effective date of such change and will not assert any claim for overpayments on account of payments made pursuant to this Agreement before such date. This limit on PFRS’ ability to adjust retirement allowances and benefits from the effective date of a MOU amendment resulting in a material change to the above-described provisions shall survive any termination of this Agreement in accordance with Section C above.

**F. Covenant Not to Sue.**

Plaintiff hereby agrees that during the Term of this Agreement it will not file the same or similar claims on behalf of itself or Covered Retirees and Beneficiaries, nor provide financial or other support for litigating such claims. Plaintiff further agrees that it will not, after the Term of this Agreement, file the same or similar claims on behalf of itself or Covered Retirees and

Beneficiaries seeking relief for any period of time covered by this Agreement except to enforce the terms of this Agreement.

**G. Non-Party Claims**

Notwithstanding the preceding Waiver and Release and Covenant Not to Sue provisions, this Agreement does not bar claims or lawsuits by an individual retiree or beneficiary that is not a party to this Agreement. ROPOA shall use its best efforts to encourage Covered Retirees and Beneficiaries to agree to the terms of this Agreement, which agreement shall be reflected by the individual retiree or beneficiary signing a copy of this Agreement.

Pursuant to the terms of this Agreement, PFRS will credit Covered Retirees and Beneficiaries with 104 hours per year for holiday pay starting November 1, 2019 regardless of their status as a party or non-party to this agreement, *provided, however*, Defendants expressly reserve all rights, claims and defenses with respect to any non-party retiree or beneficiary who hereafter asserts a claim demanding to be credited with a different number of holiday pay hours, “floating holiday pay”, or POST pay for any of the time periods covered by this Agreement, including time periods prior to the Term hereof.

**H. Costs and Fees.** Each side will bear their own costs and fees.

**I. Admissibility of Settlement Agreement.** This Settlement Agreement shall not be admissible in a court of law or other proceeding except to secure its enforcement.

**J. Warranty of Authority; Successors and Assigns.** Each person who executes this Agreement warrants that he or she has the authority to bind the person or entity on whose behalf he or she signs and that he or she is authorized to sign on behalf of the principal. This Agreement shall inure to the benefit of, and is binding upon, each Party’s heirs, successors and assigns.

**K. Right to Consult Attorney.** Each Party acknowledges that each of them has read this Agreement and has had the opportunity to consult with attorneys as to the meaning and legal effect of the Agreement.

**L. Voluntary Execution of Agreement.** The Parties acknowledge, agree and understand that each of them executes this Agreement voluntarily and without any duress or undue influence on the part of, or on behalf of, any person or entity; and that no promise, inducement or agreement not expressed herein has been made by any Party to any other Party.

**M. Acts in Furtherance of this Agreement.** The Parties agree to execute, deliver and, where appropriate, file any and all documents required to carry out this Agreement.

**N. Mutual Drafting.** This Agreement is the product of negotiations and preparation by and among the Parties and their respective counsel. The Parties agree that this Agreement shall not be deemed prepared or drafted by one Party or another, or by one Party’s or another’s attorneys. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against any of the Parties. The Parties expressly waive the provisions of Cal. Civ. Code

§ 1654. The Parties agree that prior drafts of this Agreement were made pursuant to settlement privilege and shall not be admissible to show the meaning of the Agreement.

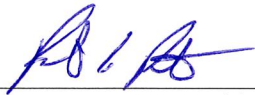
**O. Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

**P. Execution in Counterparts; Facsimile Signatures.** This Agreement may be executed in one or more duplicate counterparts, all of which taken together shall constitute the complete Agreement. A faxed signature shall have the same force and effect as an original signature.

**FOR PLAINTIFFS:**

Dated: January 29, 2020

Retired Oakland Police Officers Association

By:   
Peter Peterson, President

**FOR DEFENDANTS AND RESPONDENTS:**

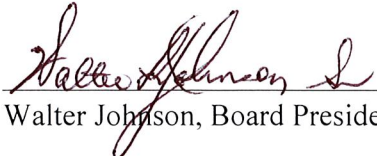
Dated: ~~January~~ Feb 03, 2020

City of Oakland

By:   
Sabrina Landreth, City Administrator


Dated: January 29, 2020

Oakland Police and Fire Retirement System

By:   
Walter Johnson, Board President

Dated: January 29, 2020

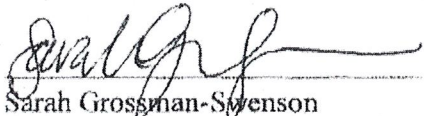
Oakland Police and Fire Retirement System Board

By:   
Walter Johnson, Board President

**APPROVED AS TO FORM:**

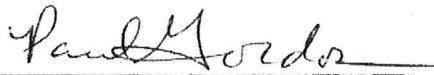
Dated: ~~January~~ <sup>Feb.</sup> 4, 2020

McCracken, Stemerma & Holsberry, LLP

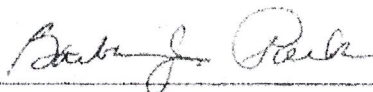
By:   
Sarah Grossman-Svenson  
Counsel for Retired Oakland Police Officers  
Association

Dated: ~~January~~ <sup>Feb.</sup> 4, 2020

Gordon & Polland, LLP

By:   
Paul Gordon  
Counsel for Oakland Police and Fire  
Retirement System and its Board

Dated: January 17, 2020

By:   
Barbara Parker  
City Attorney, City of Oakland  
2872920v1

# **EXHIBIT 2**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2019 APR 25 PM 5:41

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6<sup>TH</sup> FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
Barbara Parker  
City Attorney

(510) 238-3601  
FAX: (510) 238-6500  
TDD: (510) 839-6451

May 7, 2019

HONORABLE CITY COUNCIL  
Oakland, California

**Subject: Retired Oakland Police Officers Association et. al. v. Oakland Police and Fire Retirement System, et. al.**  
**Case No. RG16838274**  
City Attorney File No. X04324

President Kaplan and Members of the City Council:

Pursuant to Section 401 of the Charter, the City Attorney has prepared and requests your approval of a resolution authorizing compromise and settlement of the above-entitled action pursuant to the terms set forth in the Settlement Agreement attached hereto as Exhibit A.

This action arises out of a claim that Police and Fire Retirement System has been miscalculating holiday pay retirement benefits for its members who held the rank of police officer, sergeant, inspector or lieutenant for some or all of the 36-month period immediately preceding their retirement.

The Council authorized settlement of this case pursuant to the terms set forth in the Settlement Agreement attached hereto as Exhibit A in Closed Session on Tuesday, January 22, 2019 (moved by Vice Mayor Larry Reid and seconded by Councilmember Noel Gallo - 8 Ayes, 0 Noes).

Respectfully submitted,

  
BARBARA J. PARKER  
City Attorney

Assigned Attorney:  
Maria Bee, Assistant City Attorney  
Jennifer Logue, Supervising City Attorney  
Adam Hoffman, Outside Counsel  
2741075



## Settlement Agreement

In consideration of the mutual agreements and promises set forth below, the Parties to this Settlement Agreement (“Agreement”) hereby agree as follows:

### I. Purpose and Scope of Agreement

~~This Agreement is entered into as of March \_\_, 2019, by and among the following Parties:~~

Plaintiffs and Petitioners: Retired Oakland Police Officers Association; Robert Aven; Nita Balousek; Ronald Gunar; Raymond Miller; Ned Ubben (“Plaintiffs”);

Defendants and Respondents: City of Oakland; Oakland Police and Fire Retirement System (“PFRS”); Oakland Police and Fire Retirement System Board (“Defendants”).

The Parties are entering into this Agreement to compromise, resolve and settle Plaintiffs’ claims in the action entitled *Retired Oakland Police Officers Association et al. v. Oakland Police and Fire Retirement System et al.*, Alameda Superior Court Case No. RG16838274 (“Lawsuit”).

For purposes of calculating compensation attached to the average rank held under Article XXVI of the Oakland City Charter, PFRS currently credits members who are retirees and beneficiaries of retirees who held the rank of police officer, sergeant, inspector or lieutenant for some or all of the 36-month period immediately preceding their retirement (“Covered Retirees and Beneficiaries”) with 144 hours per annum for holiday pay in calculating their retirement allowance or benefit. Plaintiffs claim that Covered Retirees and Beneficiaries are entitled to be credited with a higher number of hours for holiday pay, including “floating holiday” pay. Defendants dispute Plaintiffs’ claims. The purpose of this Agreement is to settle this dispute for the period covered by the Lawsuit through June 30, 2024, when the 2019-2024 Memorandum of Understanding between the City of Oakland and the Oakland Police Officers Association (“the new MOU”) is scheduled to expire. This is a resolution of disputed claims and is not an admission of liability by any Party or the absence of liability on the part of any other Party, nor does it constitute an admission that averages may be used to determine compensation attached to the rank.

This Agreement does not settle or resolve any claims of members who are retirees or beneficiaries of retirees who held the ranks of captain and deputy chief of police at retirement, *provided however*, this Agreement does apply to the portion, if any, of the 36-month period immediately preceding retirement that such retirees held the rank of police officer, sergeant, inspector or lieutenant. The Parties specifically reserve for separate resolution the calculation of holiday pay benefits for retirees and beneficiaries of retirees who held the rank of captain or deputy chief.

This Agreement does not bar claims by any individual retiree or beneficiary not named herein. Pursuant to the terms of this Agreement, for purposes of calculating retirement allowances and benefits PFRS will credit Covered Retirees and Beneficiaries with 144 hours per annum for holiday pay, *provided however*, Defendants expressly reserve all rights, claims and

defenses with respect to any non-party retiree or beneficiary who hereafter asserts a claim demanding to be credited with a different number of holiday pay hours for any of the period covered by this Agreement.

**II. Settlement**

**A. Credit for Holiday Pay for Covered Retirees and Beneficiaries.**

For the purpose of calculating retirement allowances and benefits for PFRS members who are retirees and beneficiaries of retirees who held the ranks of police officer, sergeant, inspector, and lieutenant, and subject to the terms and conditions stated in Section I above, PFRS shall credit Covered Retirees and Beneficiaries with 144 hours for holiday pay per annum during the term of this Agreement.

This holiday pay benefits methodology shall continue from the date hereof until the earlier of: (a) July 1, 2024; or (b) the effective date of any MOU amendment adopted hereafter that results in a material change in the average number of hours of holiday pay received by active sworn police below the rank of captain. (The use of the phrase “average number of hours of holiday pay received by active sworn police below the rank of captain” in this Agreement is used solely for purposes of determining whether an MOU amendment terminates this Agreement. The Parties agree that by using this terminology, Petitioners in no way concede that use of averages is proper in the calculation of holiday pay; Respondents agree that Petitioners have made no such concession.) The Party seeking to terminate the Agreement is responsible for providing evidence of a material change.

**B. Term of Agreement.** The term of this Agreement (“Term”) is from the date hereof until the earlier of: (a) July 1, 2024; or (b) the effective date of any MOU amendment adopted hereafter that results in a material change in the average number of hours of holiday pay received by active sworn police below the rank of captain.

**C. Terms and Conditions for Active Sworn Officers.** This settlement does not prevent the City of Oakland and the Oakland Police Officers Association from re-negotiating the way holiday pay is calculated for active sworn police, or from negotiating any other term or condition of employment for said active sworn officers.

**D. Waiver and Release.** Plaintiffs hereby waive and release any and all claims against Defendants that, at any time during the period commencing three years before the filing of the Lawsuit through the Term of this Agreement (the “Settlement Period”), Plaintiffs are entitled to be credited with more than 144 hours per annum for holiday pay (including, without limitation, “floating holiday” pay). Defendants hereby waive and release any and all claims that during the Settlement Period Plaintiffs should be credited with fewer than 144 hours per annum for holiday pay. Defendants further agree that in the event an MOU amendment is adopted hereafter that results in a material change in the average number of hours of holiday pay received by active sworn police below the rank of captain, PFRS will only adjust retirement allowances and benefits from the effective date of such changes and will not assert any claim for overpayments on account of payments made pursuant to this Agreement before such date.

**E. Dismissal and Covenant Not to Sue.** Promptly after execution of this Agreement by all Parties, Plaintiffs will dismiss the Lawsuit without prejudice. Plaintiffs hereby agree that during the Term of this Agreement they will not re-file the same or similar claims on behalf of themselves or Covered Retirees and Beneficiaries, or provide financial or other support for litigating such a claim. Plaintiffs further agree that they will not, after the Term of this Agreement, file the same or similar claims on behalf of themselves or Covered Retirees and

Beneficiaries seeking relief for any portion of the Settlement Period except to enforce the terms of this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall prevent Plaintiffs from filing claims pertaining to the same or similar claims on behalf of, and based upon a member's status as, a retiree or beneficiary of a retiree who held the rank of captain or deputy chief.

**F. Costs and Fees.** Each side will bear their own costs and fees, including expert fees and attorneys' fees.

**G. Admissibility of Settlement Agreement.** This Settlement Agreement shall not be admissible in a court of law or other proceeding except to secure its enforcement.

**H. Warranty of Authority; Successors and Assigns.** Each Party who executes this Agreement warrants that he or she has the authority to bind the person or entity on whose behalf he or she signs and that he or she is authorized to sign on behalf of the principal. This Agreement shall inure to the benefit of, and is binding upon, each Party's heirs, successors and assigns.

**I. Right to Consult Attorney.** Each Party acknowledges that each of them has read this Agreement and has had the opportunity to consult with attorneys as to the meaning and legal effect of the Agreement.

**J. Voluntary Execution of Agreement.** The Parties acknowledge, agree and understand that each of them executes this Agreement voluntarily and without any duress or undue influence on the part of, or on behalf of, any person or entity; and that no promise, inducement or agreement not expressed herein has been made by any Party to any other Party.

**K. Acts in Furtherance of this Agreement.** The Parties agree to execute, deliver and, where appropriate, file any and all documents required to carry out this Agreement.

**L. Mutual Drafting.** This Agreement is the product of negotiations and preparation by and among the Parties and their respective counsel. The Parties agree that this Agreement shall not be deemed prepared or drafted by one Party or another, or by one Party's or another's attorneys. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against any of the Parties. The Parties expressly waive the provisions of Cal. Civ. Code § 1654. The Parties agree that prior drafts of this Agreement were made pursuant to settlement privilege and shall not be admissible to show the meaning of the Agreement.

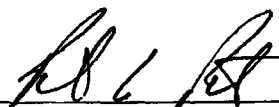
**M. Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

**N. Execution in Counterparts; Facsimile Signatures.** This Agreement may be executed in one or more duplicate counterparts, all of which taken together shall constitute the complete Agreement. A faxed signature shall have the same force and effect as an original signature.

**FOR PLAINTIFFS:**

Dated: March 25, 2019

Retired Oakland Police Officers Association

By:   
Peter Peterson, President

Dated: March \_\_\_\_\_, 2019

Robert Aven

By: \_\_\_\_\_  
Robert Aven

Dated: March \_\_\_\_\_, 2019

Nita Balousek

By: \_\_\_\_\_  
Nita Balousek

Dated: March \_\_\_\_\_, 2019

Ronald Gunar

By: \_\_\_\_\_  
Ronald Gunar

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**FOR PLAINTIFFS:**

Dated: March \_\_\_\_\_, 2019

Retired Oakland Police Officers Association

By: \_\_\_\_\_  
Peter Peterson, President

Dated: March 23, 2019

Robert Aven

By:   
Robert Aven

Dated: March \_\_\_\_\_, 2019

Nita Balousek

By: \_\_\_\_\_  
Nita Balousek

Dated: March \_\_\_\_\_, 2019

Ronald Gunar

By: \_\_\_\_\_  
Ronald Gunar

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**FOR PLAINTIFFS:**

Dated: March \_\_\_\_\_, 2019

Retired Oakland Police Officers Association

By: \_\_\_\_\_  
Peter Peterson, President

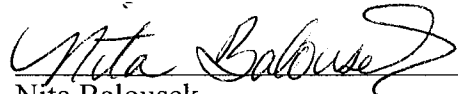
Dated: March \_\_\_\_\_, 2019

Robert Aven

By: \_\_\_\_\_  
Robert Aven

Dated: March \_\_\_\_\_, 2019

Nita Balousek

By:   
Nita Balousek

Dated: March \_\_\_\_\_, 2019

Ronald Gunar

By: \_\_\_\_\_  
Ronald Gunar

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**N. Execution in Counterparts; Facsimile Signatures.** This Agreement may be executed in one or more duplicate counterparts, all of which taken together shall constitute the complete Agreement. A faxed signature shall have the same force and effect as an original signature.

**FOR PLAINTIFFS:**

Dated: March \_\_\_\_\_, 2019

**Retired Oakland Police Officers Association**

By: \_\_\_\_\_  
Peter Peterson, President

Dated: March \_\_\_\_\_, 2019

**Robert Aven**

By: \_\_\_\_\_  
Robert Aven

Dated: March \_\_\_\_\_, 2019

**Nita Balousek**

By: \_\_\_\_\_  
Nita Balousek

Dated: March \_\_\_\_\_, 2019

**Ronald Gunar**

By: *Ronald B. Gunar*  
Ronald Gunar

Dated: March 23, 2019

Raymond Miller

By: Raymond Miller  
Raymond Miller

Dated: March \_\_\_\_\_, 2019

Ned Ubben

By: \_\_\_\_\_  
Ned Ubben

**FOR DEFENDANTS AND RESPONDENTS:**

Dated: March \_\_\_\_\_, 2019

City of Oakland

By: \_\_\_\_\_

Dated: March \_\_\_\_\_, 2019

Oakland Police and Fire Retirement System

By: \_\_\_\_\_



Dated: March \_\_\_\_\_, 2019

Raymond Miller

By: \_\_\_\_\_  
Raymond Miller

Dated: March 15, 2019

Ned Ubben

By:   
Ned Ubben

**FOR DEFENDANTS AND RESPONDENTS:**

Dated: March \_\_\_\_\_, 2019

City of Oakland

By: \_\_\_\_\_

Dated: March \_\_\_\_\_, 2019

Oakland Police and Fire Retirement System

By: \_\_\_\_\_

Dated: March \_\_\_\_\_, 2019

Raymond Miller

By: \_\_\_\_\_  
Raymond Miller

Dated: March \_\_\_\_\_, 2019

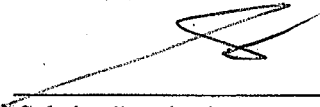
Ned Ubben

By: \_\_\_\_\_  
Ned Ubben

**FOR DEFENDANTS AND RESPONDENTS:**

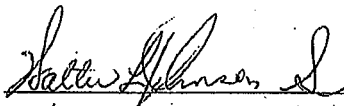
Dated: May 21, 2019

City of Oakland

By:   
\_\_\_\_\_  
Sabrina Landreth  
City Administrator

Dated: May 23, 2019

Oakland Police and Fire Retirement System

By:   
\_\_\_\_\_  
WALTER L. JOHNSON, SR.

Dated: March \_\_\_\_\_, 2019

Oakland Police and Fire Retirement System  
Board

By: \_\_\_\_\_

**APPROVED AS TO FORM:**

Dated: March 28, 2019

McCracken, Stemerman & Holsberry, LLP

By:

  
\_\_\_\_\_  
Sarah Grossman-Swenson  
Counsel for Plaintiffs and Petitioners

Dated: March \_\_\_\_\_, 2019

Hanson Bridget, LLP

By:

\_\_\_\_\_  
Adam Hofmann  
Counsel for Defendant and  
Respondent City of Oakland

Dated: March \_\_\_\_\_, 2019

Gordon & Polland, LLP

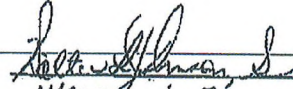
By:

\_\_\_\_\_  
Paul Gordon  
Counsel for Defendants and  
Respondents Oakland Police and  
Fire Retirement System and PFRS  
Board

Dated: May 13, 2019

Oakland Police and Fire Retirement System  
Board

By:


  
Warren L. Johnson, Jr.

**APPROVED AS TO FORM:**

Dated: March \_\_\_\_\_, 2019

McCracken, Stemerma & Holsberry, LLP


By:

  
Sarah Grossman-Swenson  
Counsel for Plaintiffs and Petitioners

Dated: <sup>May</sup> March 22, 2019

Hanson Bridget, LLP

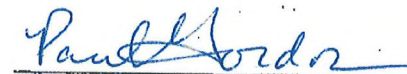
By:

  
Adam Hofmann  
Counsel for Defendant and  
Respondent City of Oakland

Dated: <sup>May</sup> March 22, 2019

Gordon & Pollard, LLP

By:

  
Paul Gordon  
Counsel for Defendants and  
Respondents Oakland Police and  
Fire Retirement System and PFRS  
Board

# **EXHIBIT 3**

**City of Oakland and OPOA and OPMA**  
**Tentative Agreement MOU Extension**

Purpose: The parties acknowledge the significant investment in hiring, training and retaining highly qualified police officers. The purpose of this tentative agreement is to protect that investment by providing incentives and stability for members of the OPOA and OPMA to have fulfilling careers serving Oakland residents.

**1. Term (OPOA & OPMA)**

Current MOU expires June 30, 2024  
Proposed: Expires June 30, 2026

**2. Wage increases (OPOA & OPMA)**

Under the current MOU, three and a half percent wage increases are scheduled for the first full pay period of July 2022 and the first full pay period of July 2023. These increases are accounted for in the City's budget. The tentative agreement extends the MOU two additional years with three percent wage increases effective the first full pay periods of July 2024 and July 2025 respectively.

**3. Longevity (OPOA & OPMA)**

Article III. H. 5. Longevity Premium Pay

At the beginning of each fiscal year during the term of this Memorandum, eligible represented employees shall receive longevity premium pay in accordance with the rates enumerated below:

	PERS	P&F
a. 4 through 6 years of service	<u>\$2,550</u>	
b. 7 through 9 years of service	<del>\$2,550</del> <u>\$5,200</u>	
c. 10 through 14 years of service	<del>\$2,950</del> <u>\$5,600</u>	
d. 15 through 19 years of service	<del>\$3,350</del> <u>\$6,000</u>	
e. 20 or more years of service	<del>\$3,750</del> <u>\$6,400</u>	\$1,168.30

Payment shall be in a lump sum, included and paid at the same time as the uniform allowance, and added to the second payroll in July each year. Payments to be reported to CalPERS when earned to conform to CalPERS Regulations. Eligibility for receipt of special premium pay under this provision shall be determined as of the beginning of each fiscal year.

**4. Recruitment Incentives (OPOA & OPMA)**

A serving member that completes the Oakland Police Department "Mentorship Training" and successfully recruits a new Police Officer Trainee and mentors them may apply and is eligible to receive, a five thousand dollar (\$5,000) one-time incentive. Such incentive shall be paid in two installments: (1) two thousand five hundred dollars (\$2,500) upon the recruit successfully completing the Oakland Police Academy, and (2) two thousand five hundred dollars (\$2,500) upon the recruit successfully completing the Field Training Program.

This incentive is subject to verification by the Training Commander (Lieutenant of Police), which includes the referring Officer's serial number on the initial job application and evidence of a mentor relationship as determined by the Chief of Police or his/her/their designee.

Excluded from this incentive are members assigned to Recruitment, Training and Background Units.

**5. Crisis Intervention Team Incentive (C.I.T. Incentive)**

H. Premium Pay

4. Other Premium Assignment Pay

7. Crisis Intervention Behavioral Health Training (CIT)/Hazard Duty Pay Incentive (new section)

To be eligible for this premium, members must possess an official certificate for Crisis Intervention and Behavioral Health Training from an agreed upon course of instruction and be in the rank of Police Officer, Sergeant, or Lieutenant of Police.

Upon authorization of the Chief of Police or his/her designee, qualified unit members shall receive the following:

- a. Starting the first full pay period of January 2023, a two percent (2%) premium.
- b. Starting the first full pay period of July 2023, an additional two percent (2%) premium, totaling four percent (4%).
- c. Starting the first full pay period of January 2024, an additional one percent premium, totaling five percent (5%).

**6. Holidays (OPOA & OPMA)**

- Add Juneteenth (June 19<sup>th</sup>) as paid holiday
- Reinstate Admission's Day and remove Lincoln's Day

**7. NOID**

Discipline and notice of disciplinary action shall be served on members in person by a member holding the rank of Captain or higher. That Captain should be able to personally meet with and explain to the member the details of why the discipline is being imposed on him/her/them.

**8. OPMA leave benefit**

One-time non-precedential five (5) days of Extra Vacation Leave will be awarded on two occasions: July 2022 and July 2023.

**9. Re-employment After Resignation (OPOA & OPMA)**

Civil Service Rule 5.11 stated in the MOU:

Any member who has resigned from service in good standing shall, upon written request, be considered for re-employment to a position in the same or similar class in the competitive civil service, within two (2) years of the date of such separations (Civil Service Rule 5.11).

**10. Length of Service Repayments due (OPOA) (Appendix B)**

Police Officer Trainee Training Costs. The parties recognize that in the past a substantial number of persons have accepted the benefit of training at the Oakland Police Academy and then have voluntarily separated from service to join other safety agencies or have decided for personal reasons that police work is not their preference. The purpose of this provision is to ensure that the recruit either accepts a commitment of service to the City or is responsible for costs associated with Academy training.

Thus the parties agree that any member who, prior to completing five years of service, voluntarily separates from service with the department shall be responsible for reimbursing the City, on a full or prorata basis, for up to ~~\$20,000~~ ~~\$11,000~~ of the cost of his/her training at the Police Academy. To the extent this amount exceeds the maximum that may be legally recovered, the City shall be entitled to recover only the maximum allowable under the law. A schedule of the members' reimbursement responsibility is set forth as follows:

Length of Service - Percentage of Repayment Due:

Separation prior to 1 year: 100% repayment of the ~~\$11,000~~ \$20,000 or maximum permitted by law, whichever is higher;

Separation after 1 year, but before completing the second year: 80% repayment of the ~~\$11,000~~ \$20,000 or maximum permitted by law, whichever is higher;

Separation after 2 years, but before completing the third year: 60% repayment of the ~~\$11,000~~ \$20,000 or maximum permitted by law, whichever is higher;

Separation after 3 years, but before completing the fourth year: 40% repayment of the ~~\$11,000~~ \$20,000 or maximum permitted by law, whichever is higher;

Separation after 4 years, but before completing the fifth year: 20% repayment of the ~~\$11,000~~ \$20,000 or maximum permitted by law, whichever is higher.

Separation after 5 years: 0% repayment.

Repayment shall be due and payable at the time of separation and the City shall deduct any amounts owed under this provision from the employee's final paycheck. If said deduction does not fully reimburse the City for outstanding costs, the balance shall thereupon be due and owing.

A member shall not be deemed to have voluntarily separated under this provision if the member can demonstrate that at the time of separation a personal emergency or other extreme facts requiring an absence from service which could not be reasonably accommodated by either a leave of absence or a request for re-employment upon cessation of the emergency or extreme facts. A demonstrated health problem of a member or of a person in the member's immediate family is an example of such an emergency.

## **11. Constructive Receipt (OPOA & OPMA)**

Article IV – Leaves and Holidays



Section A. 4. Buy-back

Employees may sell back to the City up to one hundred twenty (120) hours of accrued vacation leave each calendar year provided that:

- d. The employee has taken at least forty (40) hours of vacation leave during the preceding calendar year;
- e. The employee's remaining balance, after buy-back has occurred, is at least one (1) year's accrual at the accrual rate applicable at the time of buy-back.
- f. Unit members who wish to sell back vacation must file an irrevocable election identifying the number of Vacation Leave hours they will sell back in December of the tax year preceding the sell back. The election will apply only to Vacation Leave hours accrued in the following tax year.
- g. Employees who do not pre-designate a buy-back amount by the annual deadline will be deemed to have waived the right to sell back any Vacation Leave in the following tax year and will not be eligible to sell back Vacation Leave in that year.
- h. In the event of financial hardship, an employee may, at any time, sell back unused Vacation Leave, even if they have not filed a timely irrevocable election. Financial hardship will be determined in accordance with nondiscriminatory and objective standards and is defined as a situation where (1) the sellback is needed to address an immediate and heavy financial need, and (2) the sellback is limited to the amount necessary to satisfy that financial need. Financial hardship includes, but is not limited to: medical or other expenses related to the illness, injury or death of the employee or the employee's immediate family; loss of the employee's property due to casualty, or repair expenses for damage to the employee's principal residence; or payments necessary to prevent eviction of the employee from the employee's principal residence or foreclosure of the mortgage of that residence. The sell-back shall be limited to the amount necessary to meet the financial hardship, including any amounts necessary to pay federal, state, or local income taxes reasonably anticipated to result from the sell-back. However, the total amount of Vacation Leave sold back (including both pre-election and hardship withdrawal) shall not exceed one-hundred and twenty (120) hours per year.

To sell back unused Vacation Leave in the event of financial hardship, the employee must provide a signed affidavit describing the type of hardship and the amount of the requested sell-back. The employee shall not be required to produce financial or other private information to support the affidavit. The City shall develop a form which shall be used and which will contain the following statement: "I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct and that the amount of Vacation Leave I am requesting to sell-back is limited to the amount necessary to meet the financial hardship, including any amounts necessary to pay federal, state, or local income taxes reasonably anticipated to result from the sell-back. By signing below, I accept full liability for all tax or other financial consequences in the event that a taxing authority later finds any of the information provided in this affidavit to be inaccurate."

**12. Eligible lists (OPOA)**

Attachment 3, Section 9: Extend from 12 months to 18 months.

9. Duration of Eligibility Lists. Eligibility lists established by promotional examinations shall be in effect for a period of eighteen (18) months. The list may be extended as defined in Section B. 1.

**13. Ratification (OPOA & OPMA)**

This agreement is subject to ratification of the OPOA and OPMA membership and the City Council in open session. Upon approval by both Parties, an amended MOU will be prepared incorporating the terms set forth herein.

**14. Exclusive Application /Non-Waiver.**

The Parties acknowledge that there was no formal reopener of the existing MOU in arriving at this Agreement, however, informal dialogue occurred over shared concerns relating to the current staffing crisis facing the Department. Unless specifically referenced and/or modified herein, the provisions of the current MOU will remain in effect for the duration of the modified MOU.


FOR THE CITY OF OAKLAND:

  
\_\_\_\_\_  
Edward D. Reiskin, City Administrator

  
\_\_\_\_\_  
Ian Appleyard, Human Resources Director

  
\_\_\_\_\_  
Date

FOR THE OAKLAND POLICE OFFICERS'  
ASSOCIATION

  
\_\_\_\_\_  
Barry Donelan, President

  
\_\_\_\_\_  
Rockne Lucia, Chief Negotiator

  
\_\_\_\_\_  
Date