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2019 DEC -5 PM 3:11

CITY OF OAKLAND



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Barbara Parker
City Attorney

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December 10, 2019

HONORABLE CITY COUNCIL
Oakland, California

Subject: Oakland Police and Fire Retirement System – Captains and Deputy Chiefs Holiday Pay Settlement
City Attorney File No. RET-960318

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 the compromise and settlement of the dispute regarding holiday pay calculations for police members of the Oakland Police and Fire Retirement System classified at the rank of captain and deputy chief 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 captain or deputy chief 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, November 19, 2019 (moved by Vice Mayor Larry Reid and seconded by Councilmember Dan Kalb - 8 Ayes, 0 Noes).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barbara J. Parker".

BARBARA J. PARKER
City Attorney

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 December ____, 2019, 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 year¹ (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

¹ 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: December _____, 2019

Retired Oakland Police Officers Association

By:

Peter Peterson, President

FOR DEFENDANTS AND RESPONDENTS:

Dated: December _____, 2019

City of Oakland

By:

Sabrina Landreth, City Administrator

Dated: December _____, 2019

Oakland Police and Fire Retirement System

By:

Walter Johnson, Board President

Dated: December _____, 2019

Oakland Police and Fire Retirement System Board

By: _____
Walter Johnson, Board President

APPROVED AS TO FORM:

Dated: December _____, 2019

McCracken, Stemerman & Holsberry, LLP

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

Dated: December _____, 2019

Gordon & Polland, LLP

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


Dated: December _____, 2019

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

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Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

**RESOLUTION AUTHORIZING AND DIRECTING CITY ATTORNEY
TO SETTLE DISPUTE REGARDING HOLIDAY PAY CALCULATIONS
FOR POLICE MEMBERS OF THE OAKLAND POLICE AND FIRE
RETIREMENT SYSTEM CLASSIFIED AT THE RANK OF CAPTAIN
AND DEPUTY CHIEF**

WHEREAS, pursuant to Article XXVI of City of Oakland 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” for Covered Retirees currently includes, but is not limited to, holiday pay; and

WHEREAS, in November 2018, the PFRS Board passed Resolution No. 7030, which changed the method for calculating the amount of holiday pay to be credited police retirees and beneficiaries of police retirees who held the rank of captain or deputy chief during the three years immediately preceding retirement; and

WHEREAS, under the new calculation method set forth in Resolution No. 7030, the amount of holiday pay credited to police retirees and beneficiaries of police retirees who held the rank of captain or deputy chief decreased from 144 hours per year to 17.67 hours per year for fiscal year 2018-2019; and

WHEREAS, PFRS currently credits police retirees and beneficiaries of police retirees who held the rank of captain with 26.8 hours of holiday pay per year; and

WHEREAS, PFRS currently credits police retirees and beneficiaries of police retirees who held the rank of deputy chief with 24 hours of holiday pay per year; and

WHEREAS, on May 21, 2019, counsel for the Retired Oakland Police Officers Association (“ROPOA”) submitted a letter to the PFRS Board objecting to and challenging the new calculation method and the reduction in holiday pay being credited to police retirees and beneficiaries of police retirees who held the rank of captain or deputy chief; and

WHEREAS, the May 21, 2019 letter also invited PFRS and the City to participate in settlement discussion to attempt to resolve this dispute regarding holiday pay calculations for police retirees and beneficiaries of police retirees who held the rank of captain or deputy chief and stated that if the dispute could not be resolved informally, ROPOA may be forced to take action in court to protect the interests of the retirees; and

WHEREAS, the City, the PFRS Board and the ROPOA wish to compromise, resolve and settle the dispute over holiday pay calculations for police retirees and beneficiaries of police retirees who held the rank of captain or deputy chief pursuant to the terms set forth in the Settlement Agreement attached hereto as **Exhibit A**; now, therefore, be it

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the dispute over holiday pay calculations for police retirees and beneficiaries of police retirees who held the rank of captain or deputy chief, pursuant to the terms set forth in the Settlement Agreement attached hereto as **Exhibit A**; and be it

FURTHER RESOLVED: That the City is 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 - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR,
THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California