

THE CITY OF PROVIDENCE  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

# RESOLUTION OF THE CITY COUNCIL

No. 165


Approved April 9, 2013


RESOLVED, That the Providence City Council hereby endorses and ratifies those certain consent judgments dated December 11, 2012, December 21, 2012, and February 5, 2013, copies of which are attached, resolving certain pension issues related to both currently serving and retired police and fire personnel both individually and collectively.

IN CITY COUNCIL

APR 04 2013

READ AND PASSED

  
PRES.

  
CLERK

I HEREBY APPROVE.

  
Mayor

Date:

4/9/13

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

THE PROVIDENCE RETIRED POLICE AND  
FIREFIGHTER ASSOCIATION, INC., et al.,

Plaintiffs,

v.

THE CITY OF PROVIDENCE, by and through its  
Treasurer, JAMES J. LOMBARDI,

Defendant.

C.A. No. 11-5853

Consolidated

THE PROVIDENCE RETIRED POLICE AND  
FIREFIGHTER ASSOCIATION, INC.,

Plaintiff,

v.

THE CITY OF PROVIDENCE, by and through its  
Treasurer, JAMES J. LOMBARDI,

Defendant.

C.A. No. 12-3590

**FINAL AND CONSENT JUDGMENT**

This matter came before the Court for hearing on \_\_\_\_\_, 2013 for entry of this Final and Consent Judgment. In connection therewith, the Court makes the following findings of fact:

A. On or about October 11, 2012, The Providence Retired Police and Firefighters' Association, Inc. ("Association"), on behalf of retirees of the City (the "Retirees"), commenced a lawsuit against the City of Providence (the "City") (C.A. No. 11-5853).

B. In their complaint in C.A. No. 11-5853, as amended, the Plaintiffs sought declaratory judgment, injunctive relief and damages.

C. More specifically, the Plaintiffs in C.A. No. 11-5853 alleged that the State of Rhode Island's enactment of R.I.G.L. §28-4-1 (the "Statute") and the City's subsequent enactment of Chapter 2011-32 Ordinance No. 422 (the "Medicare Ordinance") resulted in the unilateral change of healthcare benefits for the Retirees notwithstanding the City's obligations

created under any other statute, ordinance, interest arbitration award or collective bargaining agreement to the contrary.

D. In response, the City alleged that the Statute and the Medicare Ordinance were a valid exercise of the police power of the State of Rhode Island and of the City and comported with the requirements of the State of Rhode Island and United States Constitutions.

E. On January 30, 2012, the Plaintiffs' request for a preliminary injunction in C.A. No. 11-5853 was granted and the matter was scheduled for trial on May 21, 2012.

F. On or about April 30, 2012, the Providence City Council passed and the Mayor signed into law, Chapter 2012-20 Ordinance No. 276 (the "Pension Ordinance") amending Article VI, Section 17 of the Providence Code of Ordinances dealing with its retirement system (the "Retirement Ordinances"). Among other things, the Pension Ordinance suspends certain cost-of-living adjustments and places caps on the amount of pensions payable to Retirees.

G. On May 14, 2012, the Court entered an order directing the parties in C.A. No. 11-5853 to mediate the issues and further directed that representatives of Local 799 of the IAFF, AFL-CIO, representing the active city firefighters (the "Fire Union"), and of the Providence Fraternal Order of Police Lodge No. 3, representing active city police (the "Police Union"), attend the mediation.

H. On or about May 24, 2012, this Court certified C.A. No. 11-5853 as a class action pursuant to Superior Court Rule of Civil Procedure 23 with respect to the following sub-classes of plaintiffs: City police retirees living in the State of Rhode Island; City firefighter retirees living in the State of Rhode Island; widows/widowers of City police retirees living in the State of Rhode Island; widows/widowers of City firefighter retirees living in the State of Rhode Island; City police retirees living outside the State of Rhode Island; City firefighter retirees living outside the State of Rhode Island; widows/widowers of City police retirees living outside the State of Rhode Island; and widows/widowers of City firefighter retirees living outside the State of Rhode Island (the "Medicare Class").

I. Mediation sessions were held on May 17, 22 and 25, 2012 with the Honorable Mark A. Pfeiffer (Ret.) serving as the mediator. Additional mediation sessions were held between the City and the Fire Union and the City and the Police Union on various dates between June 1, 2012 and October 9, 2012.

J. As a result of the May 2012 mediation sessions, the City, the Association, the Fire Union and the Police Union entered into Memoranda of Understanding settling in principal all of their issues, claims and defenses, with respect to both the Medicare Ordinance and the Pension Ordinance as embodied in this Final and Consent Judgment.

K. In connection with and in order to effectuate the aforesaid settlements, on or about July 12, 2012, a second lawsuit styled *The Providence Retired Police and Firefighter Association, Inc., v. The City of Providence, by and through its Treasurer, James J. Lombardi*, C.A. No. 12- 3590, was commenced by the Plaintiffs therein against the City with respect to the

Pension Ordinance. On September 28, 2012, the Court entered an order certifying C.A. No. 12-3590, as a class action pursuant to Superior Court Rule of Civil Procedure 23 with the following sub-classes of plaintiffs comprising of all persons or entities who on January 1, 2013 are:

- (i) retired from employment with the Providence Police Department and are entitled to a city-paid pension with mandatory cost of living adjustments ("COLA" or "COLAs") for the remainder of his/her life under a collective bargaining agreement ("CBA"), ordinance, judgment, court decision, consent judgment, arbitration award, or settlement agreement as a result of that employment;
- (ii) retired from employment with the Providence Fire Department and are entitled to a city-paid pension with mandatory COLAs for the remainder of his/her life under a CBA, ordinance, judgment, court decision, consent judgment, arbitration award, or settlement agreement as a result of that employment;
- (iii) were married to a person who retired from the Providence Police Department and is entitled to a city-paid pension with mandatory COLAs for the remainder of his/her life under a CBA, ordinance, judgment, court decision, consent judgment, arbitration award, or settlement agreement as a result of that marriage; or
- (iv) were married to a person who retired from the Providence Fire Department and is entitled to a city-paid pension with mandatory COLAs for the remainder of his/her life under a CBA, ordinance, judgment, court decision, consent judgment, arbitration award, or settlement agreement as a result of that marriage.

All such putative members, being referred to as the "Pension Class" (the "Medicare Class" and the Pension Class shall hereinafter be collectively referred to as the "Class" and the members thereof as the "Class Members").

L. As a condition precedent to the settlement, on or about June 26, 2012, the members of the Association voted to approve the settlement embodied in this Final and Consent Judgment.

M. As a condition precedent to the settlement, on or about January 2, 2013, the Fire Union voted to approve the settlement.

N. As a condition precedent to the settlement, on or about December 13, 2012, the Police Union voted to approve the settlement.

O. In connection with and in order to effectuate the aforesaid settlements, by order dated January 8, 2013, these class actions were consolidated.

P. By Order dated January 25, 2013 (the "Order of Notice"), the Court approved and directed two forms of notice to the Class Members, the first consisting of a Notice of Class Action Lawsuits and Proposed Settlements of Claims and of Hearing Thereon (the "First

Notice”), and the second consisting of a Notice of Approved Settlement, Deadline For Exclusion From Class, and Hearing on Entry of Final and Consent Judgment (the “Second Notice”).

Q. Based upon an Affidavit of Compliance of William M. Dolan III filed prior hereto, the First Notice was timely mailed to the Class Members on January 29, 2013 and published on February 5, 2013 in accordance with the terms of the Order of Notice.

R. The Court held a hearing (the “Fairness Hearing”) to consider the settlement embodied in this Final and Consent Judgment (the “Settlement”) and any objections thereto and, for the reasons stated on the record at the hearing, the Court overruled any objections and found the Settlement fair and reasonable.

S. Based upon an Affidavit of Compliance of William M. Dolan III filed prior hereto, the Second Notice was timely mailed to the Class Members on March 12, 2013 in accordance with the terms of the Order of Notice.

T. As evidenced by an Affidavit of William M. Dolan III filed simultaneously herewith, certain Class Members have timely opted-out and excluded themselves from the Class as hereinafter identified.

Accordingly, it is thereby:

**ORDERED, ADJUDGED AND DECREED as follows:**

**General Provisions Applicable to Medicare Ordinance and Pension Ordinance Settlements**

1. The Court has jurisdiction over the subject matter of these Class Actions and over all parties, including all Class Members. The Court is a proper and convenient venue for the consideration, approval, and administration of the Settlement.

2. The findings and decrees contained in the previous Orders of the Superior Court in these consolidated cases certifying the Class, are incorporated herein by reference as if fully set forth.

3. The First Notice and the Second Notice were disseminated and published in accordance with the Order of Notice. The notice given thereby was the best notice to the Class practicable under the circumstances, and provided due and adequate notice of the terms of the Settlement, the hearings thereon and the terms and conditions of this Final and Consent Judgment, and all other matters set forth herein to all persons entitled to notice, and satisfied the requirements of Rule 23 of the Superior Court Rules of Civil Procedure and the requirements of due process.

4. A full opportunity having been offered to Class Members to participate in the Fairness Hearing, it is hereby determined that all Class Members, other than those persons and entities who have opted-out of and requested exclusion from the Class in accordance with the terms of the Notice (as set forth in Exhibit A); are bound by this Final and Consent Judgment.

Persons who opt-out of, and are thereby excluded from, the Settlement are bound by the Medicare Ordinance and the Pension Ordinance, subject to their right to challenge the Medicare Ordinance and the Pension Ordinance.

5. The Court grants final approval of the Settlement set forth herein and, as the Court ruled at the Fairness Hearing, finds and determines that the Settlement is fair, adequate and reasonable in all respects to the City and Class Members, and hereby orders the parties to consummate the Settlement in accordance with the terms of this Final and Consent Judgment.

6. Upon the entry of this Final and Consent Judgment, without any further action by anyone, each of the Class Members who has not duly requested exclusion from the Class, for good and sufficient consideration, by operation of this Final and Consent Judgment, shall be deemed to have released and forever discharged all of the claims against the City in respect to the Medicare Ordinance and Sections 17-194 and 17-196 of the Pension Ordinance.

7. Upon entry of this Final and Consent Judgment, the Class Members who have not timely requested exclusion from the Class, by operation of this Final and Consent Judgment, shall be severally and permanently barred and enjoined from instituting, maintaining, prosecuting or enforcing against the City any of the claims settled hereby, in respect to the Medicare Ordinance and Sections 17-194 and 17-196 of the Pension Ordinance, except for enforcement of this Final and Consent Judgment. Further, in no event shall any such Class Member materially, financially or otherwise assist any person in the commencement or maintenance of any lawsuit against the City to challenge Sections 17-194 and 17-196 of the Pension Ordinance.

8. The Persons listed on Exhibit A hereto have properly excluded themselves from the Class. All persons listed on Exhibit A are not bound by this Final and Consent Judgment, and they shall not share in the benefits of the settlement effected hereby as Class Members.

9. None of the terms in this Final and Consent Judgment, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be: (a) offered or received against the City as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by the City with respect to the truth of any fact alleged by the Plaintiffs or the validity of any claim that had been or could have been asserted in the Class Actions or in any litigation, or of any liability, negligence, fault, or wrongdoing of the City; (b) be offered or received against the City as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the City or against the Plaintiffs or any member of the Class as evidence of any infirmity in the claims of the Plaintiffs or any member of the Class; (c) be offered or received against the City or against the Plaintiffs or any member of the Class as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties hereto, in any other civil, criminal or administrative action or proceedings; (d) be construed against the City, the Plaintiffs or any member of the Class as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; or (e) be construed as, or received in evidence as, an

admission, concession or presumption against the Plaintiffs or any member of the Class or any of them that any of their claims are without merit or that relief sought under the Complaint would not have exceeded the value of the Settlement effectuated hereby.

10. The Court retains jurisdiction over the Plaintiffs, the Class and the City for all matters relating to the Class Actions, including the administration, interpretation, effectuation or enforcement of the Settlement and the Final and Consent Judgment.

**Specific Provisions Pertaining to the Medicare Ordinance**

11. Except as modified by the terms of this Final and Consent Judgment, the Medicare Ordinance shall remain in full force and effect. Persons who opt-out of and are thereby excluded from the Settlement embodied herein shall remain bound by the Medicare Ordinance subject to their right to challenge the Medicare Ordinance.

12. Class Members turning age 65 shall enroll in Medicare during their initial enrollment period (three months prior to their birth month and 3 months after their birth month). If the Class Member has not enrolled during their initial enrollment period, then they shall enroll in the 2013 general enrollment period (January 1, 2012 to March 31, 2013).

13. Any Class Member not eligible to enroll in Medicare shall continue to receive fully paid healthcare benefits as they presently exist with the full cost of said healthcare benefits being paid for by the City as such costs are currently paid for by the City with any current co-pays remaining extant. Any such Class Member shall provide to the City's Benefits Department a copy of the official denial letter. Any person who has opted-out of the Class Actions and Settlement shall continue to receive healthcare benefits as they presently exist until said person becomes Medicare eligible at age 65 at which time he/she would be bound by the Medicare Ordinance subject to their right to challenge the Medicare Ordinance. This provision shall not prohibit the City from effecting changes to the healthcare benefits of the retirees who opt-out of the Class and Settlement and who are not Medicare eligible, subject to such retiree's right to challenge any such changes.

14. Whether a Class Member is eligible to enroll in Medicare shall be determined by whether that individual qualifies under Medicare Part A without paying a premium and is at least sixty-five (65) years of age.

15. Pursuant to current City policy, "spouses" shall include same sex domestic partners.

16. Class Members who have enrolled in Medicare shall be responsible to pay the monthly premium for Medicare Part B.

17. The City shall be responsible to pay for the following in connection with Medicare benefits for the Class Members:

(a) Penalties associated with the late enrollment fees for Part B for those Class Members who enrolled in Medicare during the 2012 general enrollment period.

(b) A plan as summarized in Exhibit B hereto to supplement Medicare Parts A and B, the terms of which have been agreed to by the parties, and which will be equivalent to the Blue Cross coverage in effect on June 29, 2011. A summary of the terms is attached hereto as Exhibit B.

(c) The City is responsible for the payment of the premium for Blue Medicare Rx (PDP) with a \$10/\$20 co-payment. A summary of benefits is attached as Exhibit C. This plan covers anyone living in the United States. There is no donut hole under this plan. Where a particular drug was previously covered under Caremark (the "original drug"), but is not covered under this plan, then the following process shall take place: (a) The retiree shall first try an alternative medically equivalent drug; (b) if thereafter the retiree's physician deems the original drug medically necessary, then the City shall be required to pay the cost of the original drug.

18. Except as provided in paragraph 19, Class Members: (a) who should have enrolled for the July 1, 2012 effective date but did not, and (b) those turning 65 after July 1, 2012 who do not enroll when they should, will be personally responsible to pay their own penalties.

19. (a) The parties acknowledge that some Class Members (including, but not limited to, third party beneficiaries such as ex-spouses entitled to healthcare coverage because of a family court order/judgment) may not have been notified of the changeover to Medicare or the need to enroll in Medicare on or before March 31, 2012, and/or if notified of the need to enroll in Medicare by March 31, 2012, may have been confused by the Court's issuance of a preliminary injunction on January 30, 2012 and thus, failed to enroll in Medicare by the deadline.

(b) It being the intent of the Parties that no Class Member who did not intentionally fail to timely enroll be left without healthcare coverage, the following process shall apply with respect to Class Members who did not intentionally fail to timely enroll:

(i) The City shall continue to provide health insurance coverage and benefits to these Class Members under their current Blue Cross plan until June 30, 2013. However, the City shall be allowed to deduct from each such Class Member's retirement check \$99.90 per month (i.e. the cost of Medicare Part B).

(ii) Once these Class Members begin being covered by Medicare on July 1, 2013, they shall be provided the same coverage and benefits given to other Class Members. In addition, the City shall pay all penalties associated with their late enrollment into Medicare Part B.

(iii) The City shall notify each of these Class Members by certified mail, return receipt requested of their continued coverage as set forth above; the need to timely enroll in Medicare during the first quarter of 2013 so that they will be covered by Medicare on July 1, 2013; and that the City will pay the cost of all late enrollment fees for each such Class Member once the class member begins receiving Medicare benefits on July 1, 2013.

(c) To the extent that any of the Class Members referenced in this paragraph 19 are still not enrolled in Medicare so as to be eligible to begin receiving Medicare benefits by July 1, 2013, then when any such Class Member eventually enrolls for said benefits, their coverage shall be governed in the following manner:



(i) Once these Class Members begin being covered by Medicare, they shall be provided the same coverage and benefits given to other Class Members.

(ii) In addition, the City shall pay all penalties associated with their late enrollment into Medicare Part B except for that portion of the penalty associated with the late enrollment after July 1, 2013 ("the post-7/1/13 penalty").

(iii) In order to be reimbursed for the post-7/1/13 penalty, the City shall be entitled to deduct said penalty from the Class Member's monthly retirement check.

(iv) By way of example, if a Class Member who should have enrolled in Medicare for a July 1, 2012 effective date does not enroll until 2015 (with a July 1, 2015 effective date), then the City shall be responsible for that portion of the penalty imposed up to July 1, 2013. The Class Member shall be responsible for that portion of the penalty imposed from July 1, 2013 to July 1, 2015 (i.e. the post-7/1/13 penalty). Because the City will be paying these penalties pursuant to an agreement with CMS, then the City shall be entitled to deduct from the Class Member's monthly retirement check the post-7/1/13 penalty.

Any disputes involving the Class Members identified in this paragraph shall be solely and exclusively resolved by binding arbitration process with the Honorable Mark A. Pfeiffer (Ret.) serving as the single arbitrator. The costs and expenses of any such arbitration shall be shared equally by the parties to the arbitration.

20. In the event that a receiver is appointed for the City or if the City files any insolvency proceedings, and in either event there is an attempt to change any of the terms of this Final and Consent Judgment, then any Class Member shall have the option to have this Final and Consent Judgment vacated as it applies to him/her and then be able to contend that all previous healthcare benefits that were in place on or before June 29, 2011 be available to him/her, with full reservation by the City of its rights, claims and defenses in any such case, including, without limitation, the right to reject, impair or otherwise modify any executory or other form of contract under applicable federal or state law; except that the defenses of laches or the statute of limitations shall not be available to the City. The remedy set forth in this paragraph is not intended to be the sole and exclusive remedy of the parties, but shall be in addition to any other remedy that may be available to the parties under law.

21. The City also agrees that in the event that it files any insolvency proceedings, then any plan with respect to the Class Members' healthcare benefits until there is a formal Plan of Adjustment, shall be governed by this Final and Consent Judgment. In addition, and to the extent allowable by law, this Final and Consent Judgment shall be deemed to be the Plan of Adjustment with respect to Class Members' benefits during any insolvency proceedings.

#### **Specific Provisions Pertaining to the Pension Ordinance**

22. Except as modified by the terms of this Final and Consent Judgment, the Pension Ordinance shall remain in full force and effect. Persons who opt-out of and are thereby excluded from the Settlement embodied herein shall remain bound by the Pension Ordinance, subject to

their right to challenge the Pension Ordinance. Further, notwithstanding the foregoing, any Class Member who has not opted-out of the Class Actions and Settlement may challenge, at a later date, any provision of the Pension Ordinance except for Sections 17-194 and 17-196.

23. Pursuant to current City policy, "spouses" shall include same sex domestic partners.

24. COLAs shall be suspended between January 1, 2013 and December 31, 2022.

25. On or before January 31, 2018, a \$1,500 stipend will be paid to all Class Members whose pensions are less than \$100,000. Any stipend paid will not be paid from the Retirement Fund and will not increase a Class Member's base pension.

26. On or before September 30, 2020, a stipend of up to \$1,500 may be paid to all Class Members whose pensions are less than \$100,000. Payment of this stipend is conditioned upon the achievement of a mutually acceptable agreement for the City to enter into a self-insured or other dental plan and the achievement of savings thereunder. The savings from any such plan shall be cumulative.

27. On January 1, 2023, COLAs will be restored to the Class Members at the rate of 3% compounded annually or what the Class Member is entitled to under his/her collective bargaining agreement or ordinance—whichever is less. The resumption of the calculation and payment of the COLA as of January 1, 2023 shall be irrespective of the funding level of the pension fund. In the event the City restores the COLA to the Fire Union or the Police Union prior to January 1, 2023, the COLA shall be likewise restored to Class Members on the same terms and conditions.

28. Once restored, COLAs shall not be paid to anyone whose pension—as a result of the COLA payment—would exceed the lesser of 150% of the State of Rhode Island median household income (as determined by the American Community Survey of the United States Census Bureau in that year) or the compensation of a current employee holding the same rank that the Class Members held at the time of his/her retirement. In all events, the cap provided herein shall not be lower than 150% of the State Median Household Income (as defined above) as of 2011.

29. The suspension or change in the calculation of the COLA affected by the terms of this Final and Consent Judgment shall not apply to any Class Member who is the beneficiary of any police officer or firefighter who has died in the line of duty.

30. In FY 12, the City shall fund no less than 80% of the pension's Annual Required Contribution ("ARC"). For the period of 2013-2033, the City will use its best efforts to fully fund the ARC, but in no event shall it be less than 95%. Thereafter, the City shall be required to fund the ARC no less than 95% whenever the pension fund is less than 80% funded as determined by the City's actuary.

31. At the end of the 10-year suspension of the COLAs, the Association or another representative group on behalf of the Class Members may enter into negotiations with the City.

The City may, at its sole option and discretion, agree to make an upward adjustment to the base of the Class Members' pensions depending on the financial stability of the pension plan for Class B retirees, to compensate the Class Members for the suspension of the COLA or the rate of inflation.

32. Notwithstanding any provision in the Pension Ordinance to the contrary, disability pensions shall be awarded at a rate of Sixty Six and Two Thirds Percent (66⅔%) of each such person's final compensation.

33. The provisions of Section 17-196 of the Pension Ordinance shall apply to Class Members except that the cap provided therein of One Hundred Fifty Percent (150%) of the state median household income shall not, in all events, be lower than One Hundred Fifty Percent (150%) of the state median household income (as defined above) as of 2011.

34. In the event that a receiver is appointed for the City or if the City files any insolvency proceedings, and in either event there is an attempt to change any of the terms of this Final and Consent Judgment, then any Class Members shall have the option to have this Final and Consent Judgment vacated as it applies to him/her and then be able to contend that all previous pension benefits (including, but not limited to, COLAs) that were in place on or before April 29, 2012 be available to him/her with full reservation by the City of its rights, claims and defenses in any such case, including, without limitation, the right to reject, impair or otherwise modify any executing or other form of contract under applicable state or federal law; except that the defenses of laches or the statute of limitations shall not be available to the City. The remedy set forth in this paragraph is not intended to be the sole and exclusive remedy of the Class Members, but shall be in addition to any other remedy that may be available to the Class Members under law.

35. The City also agrees that in the event that it files any insolvency proceedings, then any plan with respect to the Class Members' pension benefits until there is a formal Plan of Adjustment, shall be governed by this Final and Consent Judgment. In addition, and to the extent permitted by law, this Final and Consent Judgment shall be deemed to be the Plan of Adjustment with respect to a Class Member's benefits during any insolvency proceedings.

36. In the event the City settles a claim or lawsuit with any Fire or Police retiree who opts-out of the Class on terms that are materially better than the Settlement effectuated hereby, then in such event, at the election of any retiree who did not opt-out of the Class and Settlement, which election shall be made within ninety (90) days of the Settlement with any such retiree who opted-out, the Settlement embodied herein shall be void as to the retiree making the election herein provided.

37. The terms of this Final and Consent Judgment have been approved by the Providence City Council prior to its submission to the Court for entry.

**ENTER:**

**ORDER:**

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THE PROVIDENCE RETIRED POLICE  
AND FIREFIGHTER ASSOCIATION, INC.,  
ET AL.,

By their Attorneys,

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THE CITY OF PROVIDENCE, by and  
through its Treasurer, JAMES J. LOMBARDI,

By its Attorneys,

JEFFREY M. PADWA  
City Solicitor

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STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

THE CITY OF PROVIDENCE,

Plaintiff,

vs.

THE PROVIDENCE LODGE NO. 3,  
FRATERNAL ORDER OF POLICE,

Defendant.

C.A. No. \_\_\_\_\_

CONSENT JUDGMENT

RECITALS

A. This action was commenced by the City of Providence (the "City") against The Providence Lodge No. 3, Fraternal Order of Police, (the "Union;" together with the City, the "Parties") to confirm the validity of two ordinances passed by the City. The first ordinance at issue, Ordinance 2011-32, No. 422, requires all retired employees of the City who are age 65 or older to enroll in Medicare upon eligibility (the "Medicare Ordinance"). The second ordinance at issue, 2012-20, No. 276, provides, *inter alia*, for the suspension of all cost-of-living adjustments ("COLAs") on all pensions until the retirement pension system reaches a funding level of 70%, and places a cap on the amount of annual pensions (the "Pension Ordinance").

B. In its complaint, the City seeks a declaratory judgment confirming that the Medicare Ordinance and the Pension Ordinance are constitutional under the United States and Rhode Island constitutions, and enforceable, notwithstanding any of the City's obligations

created under other ordinances, interest arbitration awards, collective bargaining agreements, settlement agreements, consent judgments or court judgments.

C. On May 14, 2012, prior to the filing of the complaint in this matter but in conjunction with another matter pending before the Court (*The Providence Retired Police and Firefighters' Association, Inc., et al v. City of Providence*, C.A. No. 11-5853), the Court directed the parties of that action to mediation in an effort to settle.

D. In view of the substantial similarity of issues between the action in mediation and the anticipated issues and the likelihood of litigation between the Parties in this action, the FOP joined in the mediation. During the mediation sessions, the parties agreed to settle their expected claims regarding the Medicare Ordinance and the Pension Ordinance and to enter into this Consent Judgment.

It is hereby:

**ORDERED, ADJUDGED AND DECREED as follows:**

**As to the Medicare Ordinance:**

1. For purposes of this Consent Judgment, the term "Class Members" shall mean all current, and future FOP Members and their eligible spouses. All such Class Members are bound by the terms of the Final Judgment entered simultaneously herewith in The Providence Retired Police and Firefighters' Association, Inc., et al., v. The City of Providence, et al., C.A. No. 11-5853, and The Providence Retired Police and Firefighters' Association, Inc., et al., v. The City of Providence, et al., C. A. No. 12-3590.

2. Except as modified by the terms of this Consent Judgment, the Medicare Ordinance shall remain in full force and effect with respect to the City, the Union and its members; provided, however, that if any provision of the Ordinance is contrary to any past, present, or future collective bargaining agreement by and between the City and the Union, the

applicable provision of the collective bargaining agreement solely in respect to any healthcare or pension right or benefit shall prevail unless specifically modified by this Consent Judgment.

3. Class Members turning Medicare-eligible age shall enroll in Medicare during their initial enrollment period (three months prior to their birth month and 3 months after their birth month). If the member has not enrolled during their initial enrollment period, then they need to enroll in the 2013 general enrollment period (January 1, 2012 to March 31, 2013).

4. Any retired Class Member not eligible to enroll in Medicare shall continue to receive fully paid healthcare benefits as they presently exist with the full cost of said healthcare benefits being paid for by the City as such costs are currently paid for by the City. Any such retired Class Member shall provide to the City's Benefits Department a copy of the official denial letter. Class Members retiring after March 25, 2008 shall be subject to annual healthcare co-share and co-payments all as provided in the 2005-2006 Interest Arbitration Award.

5. Whether a retired Class Member is eligible to enroll in Medicare shall be determined by whether that individual qualifies under Medicare Part A without paying a premium.

6. Pursuant to current City policy and the collective bargaining agreement by and between the City and the Union, "spouses" shall include same sex domestic partners.

7. Retired Class Members who have enrolled in Medicare shall be responsible to pay the monthly premium for Part B.

8. The City shall be responsible to pay for the following in connection with Medicare benefits for the retired Class Members:

(a) Penalties associated with the late enrollment fees for Part B for those retired Class Members who enrolled in Medicare during the 2012 general enrollment period.

(b) A plan as summarized in Exhibit A hereto to supplement Medicare Parts A and B which will be equivalent to the current Blue Cross coverage. In the alternative, the city may create a self-insured plan to supplement Medicare Parts A and B which will be equivalent to the current Blue Cross coverage.

(c) The City is responsible for the payment of the premium for Blue Medicare Rx (PDP). A plan for Medicare Rx (PDP) is attached hereto as Exhibit B which includes the Summary of Benefits and the Evidence of Coverage.

9. Any retired Class Members who should have enrolled for the July 1, 2012 effective date but did not and those turning 65 after July 1, 2012 who do not enroll when they should will be personally responsible to pay any penalty associated with late enrollment.

10. (a) The parties acknowledge that some retired and/or other Class Members (including, but not limited to, third party beneficiaries such as ex-spouses entitled to healthcare coverage because of a family court order/judgment) may not have been notified of the change-over to Medicare or the need to enroll in Medicare on or before March 31, 2012, and/or if notified of the need to enroll in Medicare by March 31, 2012, may have been confused by the Court's issuance of a preliminary injunction on January 30, 2012 and thus, failed to enroll in Medicare by the deadline.

(b) It being the intent of the Parties that no retired and/or other Class Member who did not intentionally fail to timely enroll be left without healthcare coverage, the following process shall apply with respect to such Class Members who did not intentionally fail to timely enroll:

(i) The City shall continue to provide health insurance coverage and benefits to these retired and/or other Class Members under their current Blue Cross plan until June 30,



2013. However, the City shall be allowed to deduct from each such Class Member's retirement check \$99.90 per month (i.e. the cost of Medicare Part B).

(ii) Once these retired and/or other Class Members begin being covered by Medicare on July 1, 2013, they shall be provided the same coverage and benefits given to other retired Class Members. In addition, the City shall pay all penalties associated with their late enrollment into Medicare Part B.

(iii) The City shall notify each of these retired and/or other Class Members by certified mail, return receipt requested of their continued coverage as set forth above; the need to timely enroll in Medicare during the first quarter of 2013 so that they will be covered by Medicare on July 1, 2013; and the City will pay the cost of all late enrollment fees for each such Class Member once the Class Member begins receiving Medicare benefits on July 1, 2013.

Any disputes involving these retired and/or other Class Members shall be resolved by arbitration process with the Honorable Mark Pfeiffer serving as the single arbitrator.

11. In the event that a receiver is appointed for the City or if the City files any insolvency proceedings, and in either event there is an attempt to change any of the terms of this Consent Judgment, then the Union shall have the option to have this Consent Judgment vacated and then be able to contend that all previous healthcare benefits that were in place on or before June 29, 2011 be available, with full reservation by the City of its rights, claims and defenses in any such case, including, without limitation, the right to reject, impair or otherwise modify any executory or other form of contract under applicable federal or state law; except that the defenses of laches or the statute of limitations shall not be available to the City. The remedy set forth in this paragraph is not intended to be the sole and exclusive remedy of the parties, but shall be in addition to any other remedy that may be available to the parties under law.

12. The City also agrees that in the event that it files any insolvency proceedings, then any plan with respect to the Union's healthcare benefits until there is a formal Plan of Adjustment, shall be governed by this Consent Judgment. In addition, and to the extent allowable by law, this Consent Judgment shall be deemed to be the Plan of Adjustment with respect to the Union's healthcare benefits during any insolvency proceedings.

**As to the Pension Ordinance:**

13. Except as modified by the terms of this Consent Judgment, the Pension Ordinance shall remain in full force and effect with respect to the City, the Union and its members; provided, however, that if any provision of the Ordinance is contrary to any past, present, or future collective bargaining agreement by and between the City and the Union, the applicable provision of the collective bargaining agreement solely in respect to any pension right or benefit shall prevail unless specifically modified by this Consent Judgment. The City agrees to take no action against the Union and its members that is contrary to the terms hereof. In the event the City does take such action, in such case the Union and its members will be deemed to have suffered irreparable injury.

14. Pursuant to City policy and the collective bargaining agreement by and between the City and the Union, "spouses" shall include same sex domestic partners.

15. COLAs shall be suspended between January 1, 2013 and December 31, 2022.

16. On or before January 31, 2018, a \$1,500 stipend will be paid to all retired Class Members whose pensions are less than \$100,000. Any stipend paid will not be paid from the Retirement Fund and will not increase a retired Class Members' base pension.

17. On or before September 30, 2020, a stipend of up to \$1,500 may be paid to all retired Class Members whose pensions are less than \$100,000. Payment of this stipend is

conditioned upon the achievement of a mutually acceptable agreement for the City to enter into a self-insured or other dental plan and the achievement of savings thereunder. The savings from any such plan shall be cumulative.

18. On January 1, 2023, COLAs will be restored to the retired Class Members at the rate of 3% compounded annually or what the Class Members are entitled to under his/her collective bargaining agreement—whichever is less. The resumption of the calculation and payment of the COLA as of January 1, 2023 shall be irrespective of the funding level of the pension fund.

19. Once restored, COLAs shall not be paid to any retired Class Member whose pension—as a result of the COLA payment—would exceed the lesser of 150% of the State of Rhode Island median household income (as determined by the 2011 American Community Survey of the United States Census Bureau in that year) or the compensation of a then-current bargaining unit employee of the Police Department holding the same rank that the retired Class Members held at the time of his/her retirement. In all events, the cap provided herein shall not be lower than 150% of the state median household income (as defined above) as of 2011.

20. No retired Class Member's annual pension benefit amount, including, if any, COLA, shall exceed the annual base salary in any given applicable year of an active Union member of the same rank at which the Class Member retired. In the event any retired Class Member's annual pension exceeds said active Union member's annual base salary, that retired Class Member's pension amount, including COLA, shall be frozen until it no longer exceeds the active Union member's base salary.

21. The suspension or change in the calculation of the COLA affected by the terms of this Consent Judgment shall not apply to any retired or other Class Members who are the beneficiary of or who are any police officer or firefighter who dies or has died in the line of duty.

22. In FY 12, the City shall fund no less than 80% of the pension's Annual Required Contribution ("ARC"). For the period of 2013-2033, the City will use its best efforts to fully fund the ARC, but in no event shall it be less than 95%. Thereafter, the City shall be required to fund the ARC no less than 95% whenever the pension fund is less than 80% funded as determined by the City's actuary.

23. For the period January 1, 2013 to December 31, 2022, the provisions of City Ordinance Section 17-190(4) which are applicable to Class members shall not, solely with respect to the Union and its members, be amended or rescinded by the City; provided, however, that the City reserves the right to rescind or amend the Ordinance with respect to persons or entities other than the Union or its members.

24. Class Members' "Final Compensation" or "Retirement-Eligible Pay" (as referred to in the collective bargaining agreement by and between the City and the Union), shall mean the average of the highest four (4) years of compensation, including longevity payments and other payments included in Retirement-Eligible Pay pursuant to the collective bargaining agreement by and between the City and the FOP, and excluding overtime and detail pay.

25. Notwithstanding any provision in the Pension Ordinance to the contrary, accidental disability pensions for Class Members shall be awarded at a rate of Sixty Six and Two Thirds Percent (66 $\frac{2}{3}$ %) of each such person's final compensation.

26. The provisions of Section 17-196 of the Pension Ordinance shall apply to Class Members and retirees except that the cap provided therein of One Hundred Fifty Percent (150%)

of the state median household income shall not, in all events, be lower than One Hundred Fifty Percent (150%) of the state median household income as of 2011.

27. In the event that a receiver is appointed for the City or if the City files any insolvency proceedings, and in either event there is an attempt to change any of the terms of this Final Judgment, then the Union shall have the option to have this Final Judgment vacated as it applies to him/her and then be able to contend that all previous pension benefits (including, but not limited to, COLAs) that were in place on or before April 29, 2012 be available with full reservation by the City of its rights, claims and defenses in any such case, including, without limitation, the right to reject, impair or otherwise modify any executory or other form of contract under applicable state or federal law; except that the defenses of laches or the statute of limitations shall not be available to the City. The remedy set forth in this paragraph is not intended to be the sole and exclusive remedy of the Class Members, but shall be in addition to any other remedy that may be available to the Class Members under law.

28. The City also agrees that in the event that it files any insolvency proceedings, then any plan with respect to the Union's pension benefits until there is a formal Plan of Adjustment, shall be governed by this Consent Judgment. In addition, and to the extent permitted by law, this Consent Judgment shall be deemed to be the Plan of Adjustment with respect to the Union's pension benefits during any insolvency proceedings.

29. The severance payments to the thirteen (13) police officers who were induced to take early retirement in 2011-2012 shall be accelerated such that payments due to them on July 1, 2013, shall be paid on or before thirty (30) days after entry of this Consent Judgment by the Court.

30. The City shall raise the charge for police details by \$2.00 per hour, per officer, with \$1.50 thereof going to the officer and \$.50 cents to the City. This increased Detail Rate shall be incorporated into the collective bargaining agreement by and between the City and the Union.

31. Subject to any limitations imposed by applicable law, the parties agree that the terms of the collective bargaining agreement by and between the City and the Union shall be extended for the period of July 1, 2016 to June 30, 2017 with a re-opener for salaries (may be subject to a floor and ceiling).

32. In the event of a breach of this Consent Judgment, any disputes between the City and the Union shall be resolved by binding arbitration pursuant to the arbitration provisions of the collective bargaining agreement by and between the City and the Union. The Parties shall expedite any such arbitration proceedings, reserving the right to apply to this Court for injunctive or other similar relief.

33. The terms and conditions of this Consent Judgment shall be incorporated by reference into the prevailing collective bargaining agreement and shall be approved by the City Council.

34. This Consent Judgment is contingent on the ratification of the 2016-2017 oha, the modification of the 2013-2016 cba, the modification of the 2010-2013 oha, and adoption of the ordinance attached in Exhibit C.

35. This Consent Judgment is contingent upon no less than Fifty-One Percent (51%) of the Fire and Police retirees remaining in the class action and accepting the settlement embodied in the Final Judgment as entered in The Providence Retired Police and Firefighter's Association Inc., et al. v. The City of Providence, et al., C.A. No. 11-5853, and The Providence

Retired Police and Firefighter's Association, Inc., et al. v. The City of Providence, et al., C.A.

No. 12-3590. In the event that the number of Fire and Police retirees opting out of the aforesaid class action and settlement exceeds Fifty-One Percent, then in such event, the Union shall have the option, exercisable within sixty (60) days of entry of Final Judgment in the aforesaid class actions to waive this contingency and accept the settlement embodied herein.

36. In the event the City settles a lawsuit with any Fire or Police retiree who opts out of the aforesaid class actions and settlement, on terms that are materially better than the settlement effectuated hereby, then in such event the settlement embodied herein will be void from and after the date of any such settlement with any such Fire or Police retiree.

Dated: December 11, 2012

**THE CITY OF PROVIDENCE**

By: 

Its: DIRECTOR OF ADMINISTRATION

Date: 12/11/12

\_\_\_\_\_, Judge

**THE PROVIDENCE LODGE NO. 3,  
FRATERNAL ORDER OF POLICE**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Retired Police and Firefighter's Association, Inc., et al. v. The City of Providence, et al., C.A.

No. 12-3590. In the event that the number of Fire and Police retirees opting out of the aforesaid class action and settlement exceeds Fifty-One Percent, then in such event, the Union shall have the option, exercisable within sixty (60) days of entry of Final Judgment in the aforesaid class actions to waive this contingency and accept the settlement embodied herein.

36. In the event the City settles a lawsuit with any Fire or Police retiree who opts out of the aforesaid class actions and settlement, on terms that are materially better than the settlement effectuated hereby, then in such event the settlement embodied herein will be void from and after the date of any such settlement with any such Fire or Police retiree.

\_\_\_\_\_, Judge

Dated: December 11, 2012

THE CITY OF PROVIDENCE

THE PROVIDENCE LODGE NO. 3,  
FRATERNAL ORDER OF POLICE

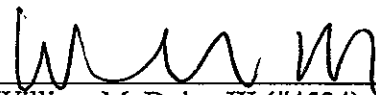
By: [Signature]  
Its: DIRECTOR OF ADMINISTRATION  
Date: 12/11/12

By: [Signature]  
Its: President FOP 3  
Date: 12/11/12



**THE CITY OF PROVIDENCE, by and  
through its Treasurer, JAMES J.  
LOMBARDI**

By its Attorneys,

  
\_\_\_\_\_  
William M. Dolan III (#4524)  
BROWN RUDNICK LLP  
10 Memorial Boulevard, 10th Floor  
Providence, RI 02903  
(401) 276-2600  
(401) 276-2601 Fax

Date: December 11, 2002

**THE PROVIDENCE LODGE NO. 3,  
FRATERNAL ORDER OF POLICE**

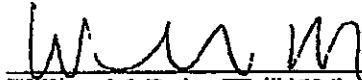
By its Attorneys,

\_\_\_\_\_  
Joseph J. Rodio, Sr., Esq.  
David R. Ursillo, Sr., Esq.  
RODIO & URSILLO, LTD.  
86 Weybosset Street, Suite 400  
Providence, RI 02903  
(401) 331-6400  
(401) 331-0436

Date: \_\_\_\_\_

THE CITY OF PROVIDENCE, by and  
through its Treasurer, JAMES J.  
LOMBARDI

By its Attorneys,



William M. Dolan III (#4524)  
BROWN RUDNICK LLP  
10 Memorial Boulevard, 10th Floor  
Providence, RI 02903  
(401) 276-2600  
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Date: December 11, 2012

THE PROVIDENCE LODGE NO. 3,  
FRATERNAL ORDER OF POLICE

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Providence, RI 02903  
(401) 331-6400  
(401) 331-0436

Date: December 11<sup>th</sup> 2012

SUPERIOR COURT

C.A. No. \_\_\_\_\_

## RECITALS

B. In its complaint, the City seeks a declaratory judgment confirming that the Medicare Ordinance and the Pension Ordinance are constitutional under the United States and Rhode Island constitutions, and enforceable, notwithstanding any of the City's obligations created under other ordinances, interest arbitration awards, collective bargaining agreements,

settlement agreements, consent judgments or court judgments.

C. On May 14, 2012, prior to the filing of the complaint in this matter but in conjunction with another matter pending before the Court (*The Providence Retired Police and Firefighters' Association, Inc., et al v. City of Providence*, C.A. No. 11-5853), the Court directed the parties of that action to mediation in an effort to settle.

D. In view of the substantial similarity of issues between the action in mediation and the anticipated issues and the likelihood of litigation between the Parties in this action, the Union joined in the mediation. During the mediation sessions, the parties agreed to settle their expected claims regarding the Medicare Ordinance and the Pension Ordinance and to enter into this Consent Judgment.

It is hereby:

**ORDERED, ADJUDGED AND DECREED as follows:**

**As to the Medicare Ordinance:**

1. For purposes of this Consent Judgment, the term "Class Members" shall mean all current and future Members of the Union and their eligible spouses. All such Class Members are bound by the terms of the Final and Consent Judgment entered simultaneously herewith in *The Providence Retired Police and Firefighters' Association, Inc., et al., v. The City of Providence, et al.*, C.A. No. 11-5853, and *The Providence Retired Police and Firefighters' Association, Inc., et al., v. The City of Providence, et al.*, C. A. No. 12-3590.

2. Except as modified by the terms of this Consent Judgment, the Medicare Ordinance shall remain in full force and effect with respect to the City, the Union and its members; provided, however, that if any provision of the Ordinance is contrary to any past, present or future collective bargaining agreement by and between the City and the Union, the

provision of the collective bargaining agreement solely in respect to any healthcare right or benefit shall prevail unless specifically modified by this Consent Judgment.

3. Retired Class Members turning Medicare eligible shall enroll in Medicare during their initial enrollment period (three months prior to their birth month and 3 months after their birth month). If the member has not enrolled during their initial enrollment period, then they need to enroll in the 2013 general enrollment period (January 1, 2012 to March 31, 2013).

4. Any retired Class Member not eligible to enroll in Medicare shall continue to receive fully paid healthcare benefits as they then presently exist with the full cost of said healthcare benefits being paid for by the City as such costs are currently paid for by the City. Any such retired Class Member shall provide to the City's Benefits Department a copy of the official denial letter.

5. Whether a retired Class Member is eligible to enroll in Medicare shall be determined by whether that individual qualifies under Medicare Part A without paying a premium and is above sixty-five (65) years of age.

6. Pursuant to current City policy and the collective bargaining agreement by and between the City and the Union, "spouses" shall include same sex domestic partners.

7. Retired Class Members who have enrolled in Medicare shall be responsible to pay the monthly premium for Part B.

8. The City shall be responsible to pay for the following in connection with Medicare benefits for the retired Class Members:

(a) Penalties associated with the late enrollment fees for Part B for those Class Members who enrolled in Medicare during the 2012 general enrollment period.

(b) The plan as summarized in Exhibit A hereto to supplement Medicare Parts A and B which will be equivalent to the current Blue Cross coverage. In the alternative, the City may create a self-insured plan to supplement Medicare Parts A and B which will be equivalent to the current Blue Cross coverage.

(c) The City is responsible for the payment of the premium for Blue Medicare Rx (PDP). The plan for Medicare Rx (PDP) is attached hereto as Exhibit B which includes the Summary of Benefits and the Evidence of Coverage.

9. Any retired Class Members who should have enrolled for the July 1, 2012 effective date but did not and those turning Medicare eligible after July 1, 2012 who do not enroll when they should will be personally responsible to pay any penalty associated with late enrollment.

10. (a) The parties acknowledge that some retired and/or other Class Members (including, but not limited to, third party beneficiaries such as ex-spouses entitled to healthcare coverage because of a family court order/judgment) may not have been notified of the changeover to Medicare or the need to enroll in Medicare on or before March 31, 2012, and/or if notified of the need to enroll in Medicare by March 31, 2012, may have been confused by the Court's issuance of a preliminary injunction on January 30, 2012 and thus, failed to enroll in Medicare by the deadline.

(b) It being the intent of the Parties that no retired and/or other Class Member who did not intentionally fail to timely enroll be left without healthcare coverage, the following process shall apply with respect to Class Members who did not intentionally fail to timely enroll:

(i) The City shall continue to provide health insurance coverage and benefits to these retired and/or other Class Members under their current Blue Cross plan until

June 30, 2013. However, the City shall be allowed to deduct from each such Class Member's retirement check \$99.90 per month (i.e. the cost of Medicare Part B).

(ii) Once these retired and/or other Class Members begin being covered by Medicare on July 1, 2013, they shall be provided the same coverage and benefits given to other Class Members. In addition, the City shall pay all penalties associated with their late enrollment into Medicare Part B.

(iii) The City shall notify each of these retired and/or other Class Members by certified mail, return receipt requested of their continued coverage as set forth above; the need to timely enroll in Medicare during the first quarter of 2013 so that they will be covered by Medicare on July 1, 2013; and that the City will pay the cost of all late enrollment fees for each such Class Member once the Class Member begins receiving Medicare benefits on July 1, 2013.

Any disputes involving these retired and/or other Class Members shall be resolved by arbitration process with the Honorable Mark Pfeiffer serving as the single arbitrator in accordance with the arbitration procedures set forth in the current collective bargaining agreement between the City and the Union.

11. In the event that a receiver is appointed for the City or if the City files any insolvency proceedings, and in either event there is an attempt to change any of the terms of this Consent Judgment, then the Union shall have the option to have this Consent Judgment vacated and then be able to contend that all previous healthcare benefits that were in place on or before June 29, 2011 be available, with full reservation by the City of its rights, claims and defenses in any such case, including, without limitation, the right to reject, impair or otherwise modify any executory or other form of contract under applicable federal or state law; except that the defenses

of laches or the statute of limitations shall not be available to the City. The remedy set forth in this paragraph is not intended to be the sole and exclusive remedy of the Parties, but shall be in addition to any other remedy that may be available to the Parties under law.

12. The City also agrees that in the event that it files any insolvency proceedings, then any plan with respect to the Union's healthcare benefits until there is a formal Plan of Adjustment, shall be governed by this Consent Judgment. In addition, and to the extent allowable by law, this Consent Judgment shall be deemed to be the Plan of Adjustment with respect to the Union's healthcare benefits during any insolvency proceedings.

**As to the Pension Ordinance:**

13. Except as modified by the terms of this Consent Judgment, the Pension Ordinance shall remain in full force and effect with respect to the City, the Union and its members; provided, however, that if any provision of the Ordinance is contrary to any past, present or future collective bargaining agreement, the provision of the collective bargaining agreement by and between the City and the Union solely in respect to any pension right or benefit shall prevail unless specifically modified by this Consent Judgment. The City agrees to take no action against the Union and its members that is contrary to the terms hereof. In the event the City does take such action, in such case the Union and its members will be deemed to have suffered irreparable injury.

14. Pursuant to City policy and the collective bargaining agreement by and between the City and the Union, "spouses" shall include same sex domestic partners.

15. COLAs shall be suspended between January 1, 2013 and December 31, 2022.



16. On or before January 31, 2018, a \$1,500 stipend will be paid to all retired Class Members whose pensions are less than \$100,000. Any stipend paid will not be paid from the Retirement Fund and will not increase a Class Member's base pension.

17. On or before September 30, 2020, a stipend of up to \$1,500 may be paid to all retired Class Members whose pensions are less than \$100,000. Payment of this stipend is conditioned upon the achievement of a mutually acceptable agreement for the City to enter into a self-insured or other dental plan and the achievement of savings thereunder. The savings from any such plan shall be cumulative.

18. On January 1, 2023, COLAs will be restored to the retired Class Members at the rate of 3% compounded annually or what the retired Class Members is entitled to under his/her collective bargaining agreement-whichever is less. The resumption of the calculation and payment of the COLA as of January 1, 2023 shall be irrespective of the funding level of the pension fund.

19. Once restored, COLAs shall not be paid to any retired Class Member whose pension-as a result of the COLA payment-would exceed the lesser of 150% of the State of Rhode Island median household income (as determined by the American Community Survey of the United States Census Bureau in that year) or the compensation including longevity (defined as that person's base salary excluding overtime or payments for temporary or extra duty beyond the normal or regular work day) of a then current bargaining unit employee of the Providence Fire Department holding the same rank that the retired Class Members held at the time of his/her retirement. In all events, the cap provided herein shall not be lower than 150% of the state median household income (as defined above) as of 2011.

20. No retired Class Member's annual pension benefit amount, including, if any, COLA, shall exceed the annual base salary (including longevity) in any given year of an active Union member of the same rank at which the Class Member retired. In the event any retired Class Member's annual pension exceeds said active Union member's annual base salary, that retired Class Member's pension amount, including COLA, shall be frozen until it no longer exceeds the active Union member's base salary.

21. The suspension or change in the calculation of the COLA affected by the terms of this Consent Judgment shall not apply to any retired and/or other Class Members who are the beneficiary of, or who are any police officer or firefighter that dies or has died in the line of duty.

22. In FY 12, the City shall fund no less than 80% of the pension's Annual Required Contribution ("ARC"). For the period of 2013-2033, the City will use its best efforts to fully fund the ARC, but in no event shall it be less than 95%. Thereafter, the City shall be required to fund the ARC no less than 95% whenever the pension fund is less than 80% funded as determined by the City's actuary.

23. At the end of the 10-year suspension of the COLAs, the Union may enter into negotiations with the City which may, at its sole option and discretion, agree to adjust the base of the retired Class Members' pensions depending on the financial stability of the pension plan for Class B retirees.

24. Notwithstanding any provision in the Pension Ordinance to the contrary, disability pensions for retired Class Members shall be awarded at a rate of Sixty Six and Two Thirds Percent (66⅔%) of each such person's final compensation.

25. The provisions of Section 17-196 of the Pension Ordinance shall apply to Class Members and retirees except that the cap provided therein of One Hundred Fifty Percent (150%)

of the state median household income shall not, in all events, be lower than One Hundred Fifty Percent (150%) of the state median household income (as defined above) as of 2011.

26. In the event that a receiver is appointed for the City or if the City files any insolvency proceedings, and in either event there is an attempt to change any of the terms of this Consent Judgment, then the Union shall have the option to have this Consent Judgment vacated and then be able to contend that all previous pension benefits (including, but not limited to, COLAs) that were in place on or before April 29, 2012 be available with full reservation by the City of its rights, claims and defenses in any such case, including, without limitation, the right to reject, impair or otherwise modify any executing or other form of contract under applicable state or federal law; except that the defenses of laches or the statute of limitations shall not be available to the City. The remedy set forth in this paragraph is not intended to be the sole and exclusive remedy of the Union, but shall be in addition to any other remedy that may be available to the Union under law.

27. The City also agrees that in the event that it files any insolvency proceedings, then any plan with respect to the Union's pension benefits until there is a formal Plan of Adjustment, shall be governed by this Consent Judgment. In addition, and to the extent permitted by law, this Consent Judgment shall be deemed to be the Plan of Adjustment with respect to the Union's benefits during any insolvency proceedings.

28. Subject to any limitations imposed by applicable law, the parties agree that the terms of the collective bargaining agreement by and between the City and the Union shall be extended for the period of July 1, 2016 to June 30, 2017 with a re-opener for salaries (may be subject to a floor and ceiling) and healthcare co-share payments subject to an agreement on a floor and a ceiling.

29. In the event of a breach of this Consent Judgment, any disputes between the City and the Union shall be resolved by binding arbitration pursuant to the arbitration provisions of the collective bargaining agreement by and between the City and the Union. The Parties shall expedite any such arbitration proceedings, reserving the right to apply to this Court for injunctive or other similar relief.

30. The terms and conditions of this Consent Judgment shall be incorporated by reference into the prevailing collective bargaining agreement and shall be approved by the City Council.

31. This consent decree is contingent on the ratification of the 2016-2017 collective bargaining agreement by and between the City and the Union, the modification of the 2011-2013 collective bargaining agreement by and between the City and the Union, the modification of the 2013-2016 collective bargaining agreement by and between the City and the Union, and the adoption of the ordinances attached in Exhibit C.

32. This Consent Judgment is contingent upon no less than Fifty-One Percent (51%) of the Fire and Police retirees remaining in the class action and accepting the settlement embodied in the Final Judgment as entered in The Providence Retired Police and Firefighter's Association Inc., et al. v. The City of Providence, et al., C.A. No. 11-5853, and The Providence Retired Police and Firefighter's Association, Inc., et al. v. The City of Providence, et al., C.A. No. 12-3590. In the event that the number of Fire and Police retirees opting out of the aforesaid class action and settlement exceeds Fifty-One Percent, then in such event, the Union shall have the option, exercisable within sixty (60) days of entry of Final and Consent Judgment in the aforesaid class actions to waive this contingency and accept the settlement embodied herein.

33. In the event the City settles a lawsuit with any Fire or Police retiree who opts out


of the aforesaid class actions and settlement, on terms that are materially better than the settlement effectuated hereby, then in such event the settlement embodied herein will be void from and after the date of any such settlement with any such Fire or Police retiree.

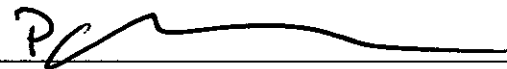
\_\_\_\_\_, Judge

Date: December 21, 2012

**THE CITY OF PROVIDENCE**

**LOCAL 799 OF THE INTERNATIONAL  
ASSOCIATION OF FIREFIGHTERS,  
AFL-CIO**

By: 

By: 

Its: DIRECTOR OF ADMINISTRATION

Its: President

Date: 12/21/12

Date: 21 Dec 12

**THE CITY OF PROVIDENCE, by and  
through its Treasurer, JAMES J.  
LOMBARDI**

**LOCAL 799 OF THE INTERNATIONAL  
ASSOCIATION OF FIREFIGHTERS,  
AFL-CIO**

By its Attorneys,

By its Attorneys,

\_\_\_\_\_  
William M. Dolan III (#4524)  
BROWN RUDNICK LLP  
10 Memorial Boulevard, 10th Floor  
Providence, RI 02903  
(401) 276-2600  
(401) 276-2601 Fax

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Edward C. Roy, Jr. (#\_\_\_\_)  
1130 Ten Rod Road, A-103  
North Kingstown, RI 02852  
(401) 667-7878  
(401) 667-7112 Fax

Date: \_\_\_\_\_

Date: \_\_\_\_\_