



**Request for City Council Committee Action
From the City Attorney's Office**

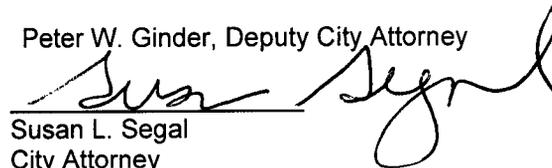
Date: December 12, 2011
To: Ways & Means/Budget Committee
Referral to:

Subject: *City of Minneapolis v. Minneapolis Police Relief Association and Minneapolis Firefighters' Relief Association*
Court File No.: 27-CV-06-11454

Recommendation: That the City Council authorize the City Attorney and the Deputy City Attorney to execute the attached Settlement Agreement and further authorize the City Attorney's Office and/or the City's outside counsel, Kennedy & Graven, to execute any other documents necessary to effectuate the settlement and dismissal of the lawsuit consistent with the terms of the agreement.

Previous Directives:

Prepared by: Peter W. Ginder, Deputy City Attorney Phone: (612) 673-2478

Approved by: 
Susan L. Segal
City Attorney

Presenter in Committee: Susan L. Segal, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
 Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
 Action provides increased revenue for appropriation increase.
 Action requires use of contingency or reserves.
 Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
 Other financial impact (Explain):
 Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

Neighborhood Notification

Background/Supporting Information

Through the joint efforts of the City, the Minneapolis Firefighters' Relief Association ("MFRA") and the Minneapolis Police Relief Association ("MPRA"), the 2011 Minnesota legislature passed legislation providing for the voluntary consolidation of the MFRA and MPRA into the Public Employees Retirement Association Police and Fire Fund ("PERA"). As a consequence of the merger legislation, the parties have reached proposed terms for a settlement of the above litigation, which terms are summarized in the attached agreement. The proposed Settlement Agreement contemplates that the above litigation will be stayed through December 30, 2011, the effective date of the merger; that the unit value for the MFRA will remain at \$82.30 and unit value for the MPRA will remain at \$86.71; and that neither fund will make any back payments or use a unit value different from that described in the merger legislation, or issue or pay any thirteenth check or post retirement benefit payments or other payments. The Settlement Agreement further requires that the MFRA and MPRA will not establish any liquidating or other special trusts nor transfer, withhold or dispose of any assets of the special fund other than to pay the reasonable and necessary expenses authorized by state law. In exchange, the City agrees to dismiss its lawsuit against the MPRA and MFRA with prejudice on or before December 30, 2011.

The Settlement Agreement is expressly conditioned on the merger of the MFRA and MPRA into PERA becoming effective on December 30, 2011, and upon compliance with the other conditions contained in the Settlement Agreement.

The Settlement Agreement has been approved by the boards of MPRA and MFRA and executed by their appropriate officers.

The City Attorney's Office believes that the proposed Settlement Agreement and dismissal is appropriate and recommends approval by the Committee and the City Council.

PWG:hhp

Attachment

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is fully effective as of _____ and is entered into by Plaintiff City of Minneapolis and its personal representatives, successors, assigns and subrogees (“City”) and Defendants Minneapolis Firefighters Relief Association (“MFRA”) and its personal representatives, successors, assigns and subrogees and Minneapolis Police Relief Association and its personal representatives, successors, assigns and subrogees (“MPRA”) (collectively, “Parties”).

RECITALS

- A. WHEREAS, in June of 2006, the City initiated a lawsuit against the MFRA and the MPRA in the Fourth Judicial District of Minnesota, captioned *City of Minneapolis v. Minneapolis Police Relief Ass’n and Minneapolis Firefighters Relief Ass’n*, Court File No. 27-CV-06-11454 (“Action”).
- B. WHEREAS, the Parties in 2011 assisted each other and worked cooperatively to seek a voluntary merger of the MFRA and the MPRA into the Public Employees Retirement Association Police & Fire Fund (“PERA”).
- C. WHEREAS, as a result of the Parties’ efforts, the Minnesota legislature passed Laws of Minnesota 2011, First Special Session Chapter 8, Article 6 relating to the voluntary consolidation of the MFRA into PERA, and Laws of Minnesota 2011, First Special Session Chapter 8, Article 7 relating to the voluntary consolidation of the MPRA into PERA (“Merger Legislation”).
- D. WHEREAS, all necessary steps for local approval as to the Merger Legislation have occurred. The full membership of both the MFRA and MPRA, along with their respective boards of trustees, voted on whether to approve the Merger Legislation. The

membership of both associations voted to approve by margins in excess of 90 percent, with unanimous approval by the MFRA and MPRA Boards of Trustees. The City and the PERA Board of Trustees also voted to approve the Merger Legislation. The appropriate documents have been filed with the Secretary of State.

1. SETTLEMENT OF CLAIMS

A. The Parties, having negotiated in good faith, reach the following as a just and fair resolution of all claims or counterclaims that any Party asserted, could have asserted, or could have alleged in the Action, and each Party forever discharges the other Party and their respective insurers, successors, affiliates, assigns, agents, employees, officers, directors, board members and assigns of each from any and all claims or counterclaims that were made, could have been made, or could have been alleged in the Action:

1. The Action will be stayed through December 30, 2011, the effective date of the merger of the MFRA and MPRA into PERA;
2. For the period from January 1, 2010, through December 30, 2011, the unit value for the MFRA will remain at \$82.30 and the unit value for the MPRA will remain at \$86.71;
3. The MFRA and MPRA will not make any back payments, use a unit value different from that described in the Merger Legislation, or issue or pay any 13th check or Post Retirement Benefit payments or other payments, and the MFRA and MPRA will have no obligation to seek actual or alleged recoupment from their members and the City will not seek recoupment from the MFRA, the MPRA, or their members now or in the future based on any claims that were made, could have been made, or could have been alleged in the Action;

4. The MFRA and MPRA will not establish a liquidating, special or other trust. The MFRA and MPRA will not transfer, withhold or dispose of any of the assets of their respective special funds other than to pay the reasonable and necessary expenses authorized by state law governing the special funds;
5. The Parties will execute a Stipulation of Dismissal with Prejudice of the Action and a proposed Order of Dismissal in the form attached as Exhibit A hereto, and the Stipulation of Dismissal with Prejudice shall be filed with the court on or before December 30, 2011; and
6. This Settlement Agreement is expressly conditioned on the merger of the MFRA and MPRA into PERA becoming effective on December 30, 2011 and upon compliance with Paragraph 1(A)(1) through 1(A)(4) above, at which time the Parties shall comply with Paragraph 1(A)(5). If such conditions are not satisfied and the merger does not occur on said date for whatever reason, this Settlement Agreement shall be void.

2. CONSIDERATION

The Parties agree to accept in full settlement of their claims or counterclaims, and as consideration for the other terms and conditions of this Settlement Agreement, the terms set out in Paragraph 1(A)(1) through 1(A)(6) above.

3. NO ADMISSION OF LIABILITY

The Parties recognize and agree that this Settlement Agreement is the compromise of disputed claims and that the consideration accepted is not intended nor shall it be construed by anyone to be an admission of liability by any of the Parties, said Parties intending by this Settlement Agreement merely to avoid further litigation and buy their peace.

4. NO WAIVER OF DEFENSES OR COUNTERCLAIMS

The Parties agree that nothing in this Settlement Agreement affects, adds to, or subtracts from the rights or claims of any individual pensioner or beneficiary. The Parties agree that if any MFRA or MPRA pensioner or beneficiary, or any class of pensioners or beneficiaries, bring a claim or lawsuit seeking back pay or issuance or payment of any 13th check or Post Retirement Benefit payments or any claim of underpayment of benefits, other than those expressly provided for in the Merger Legislation, the Parties do not waive any defenses or counterclaims that they may have against any such future claim or lawsuit.

5. BINDING EFFECT

The terms of this Settlement Agreement shall be binding upon and be enforceable against and shall inure to the benefit of the Parties hereto jointly and severally and their personal representatives, successors, assigns and subrogees. In entering into this Settlement Agreement, the Parties represent that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal consequences of this Settlement Agreement; that the terms of the Settlement Agreement have been completely read and explained to the Parties by their attorneys; and that the terms of the Settlement Agreement are fully understood and voluntarily accepted .

6. ENTIRE AGREEMENT

The Parties further understand and agree that this document contains the entire agreement between the Parties with respect to the Action and claims, and that the terms of this Settlement Agreement are contractual and not a mere recital. By their signatures below, the undersigned each represent that they have carefully read this document, know and understand the terms and effect hereof, have fully discussed the terms and effect of this documents with their attorney,

have authority to enter into this Settlement Agreement, and have signed this Settlement Agreement as their free and considered act. The July 27, 2011 Term Sheet for the MFRA is incorporated herein and made part of this Settlement Agreement.

CITY OF MINNEAPOLIS

Date: _____, 2011

Susan L. Segal, Minneapolis City Attorney

Date: _____, 2011

Peter Ginder, Deputy City Attorney

MINNEAPOLIS FIREFIGHTERS RELIEF ASSOCIATION

Date: 12/8, 2011

W. C. Schirmer
Walter Schirmer, Executive Secretary of the MFRA

Date: 12/7, 2011

Frank J. Boerboon
Frank Boerboon, President of the MFRA

MINNEAPOLIS POLICE RELIEF ASSOCIATION

Date: 12/8, 2011

Renee E. Tessier
Renee Tessier, Executive Director of the MPRA

Date: 12/8, 2011

Larry Ward
Larry Ward, President of the MPRA

EXHIBIT A

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

City of Minneapolis, a Minnesota municipal corporation,

Case Type: Other Civil
Court File No. 27-CV-06-11454
Judge Poston

Plaintiff,

vs.

**STIPULATION OF DISMISSAL
WITH PREJUDICE**

Minneapolis Police Relief Association and
Minneapolis Firefighters Relief Association;

Defendants.

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff City of Minneapolis and Defendants Minneapolis Firefighters Relief Association and the Minneapolis Police Relief Association, acting through their respective undersigned counsel, that the above-entitled action, is hereby ordered dismissed on the merits, with prejudice and without costs to any of the parties.

BASSFORD REMELE
A Professional Association

Dated: _____

By _____

Charles E. Lundberg (License #6502X)
Nicole A. Delaney (License #0390102)
33 South Sixth Street, Suite 3800
Minneapolis, Minnesota 55402-3707
(612) 333-3000

and

Karin E. Peterson (#185048)
Ann E. Walther (#21369X)

RICE, MICHELS & WALTHER, LLP
206 East Bridge- Riverplace
10 Second Street N.E.
Minneapolis, MN 55413
(612) 676-2300

and

Robert D. Klausner (FL. #244082) (admitted *pro hac vice*)

KLAUSNER & KAUFMAN, P.A.

10059 N.W. 1st Court
Plantation, FL 33324
(952) 916-1202

Attorneys for Defendants Minneapolis Fire Relief Association and Minneapolis Police Relief Association

KENNEDY & GRAVEN CHARTERED

Dated: _____

By _____

John M. LeFevre, Jr. (#61852)

Peter G. Mikhail (#249907)

Mary D. Tietjen (#279833)

470 U.S. Bank Plaza

200 South Sixth Street

Minneapolis, MN 55402

(612) 337-9300

Attorneys for Plaintiff City of Minneapolis

ORDER

Upon the foregoing Stipulation and the Court being fully advised in the premises,
IT IS HEREBY ORDERED that the above-entitled action, is hereby dismissed on the merits,
with prejudice and without costs to any of the parties.

BY THE COURT:

Dated: _____

The Honorable Janet N. Poston