

TOLLING AGREEMENT BETWEEN THE REDLANDS PROFESSIONAL
FIREFIGHTERS' ASSOCIATION AND THE CITY OF REDLANDS

This TOLLING AGREEMENT ("Agreement") is made and entered into as of this 21st day of July, 2020, (Effective Date") by and between the Redlands Professional Firefighters' Association, and each and every former and current member of the association (collectively, "Claimants") and the City of Redlands ("City"). City and Claimants are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

RECITALS

WHEREAS, Claimants are, and at all relevant times herein were, employed by the City of Redlands; and

WHEREAS, it is in the interest of both the City and the Claimants to defer litigation in order to seek non judicial resolution of the dispute; and

WHEREAS, on February 4, 2020, the Parties entered into agreement to defer any potential litigation between them with respect to the claims described in Paragraph 2 below for a period of sixteen (16) months from the effective date of April 16, 2019, to allow the Parties ample opportunity to attempt to resolve any differences or disputes between them without the need of pursuing litigation; and

WHEREAS, it is the further desire of the Parties to continue to defer any potential litigation between them for an additional three months;

NOW, THEREFORE, based upon these Recitals and the following Terms and Conditions, and in consideration of the mutual promises contained herein, City and Claimants agree as follows:

AGREEMENT TERMS AND CONDITIONS

Section 1. Recitals. All of the foregoing Recitals are true and correct and are incorporated herein as part of this Tolling Agreement for all purposes.

Section 2. Tolling Effect. The purpose of this Agreement is to toll the running of any statute of limitations or other limitations periods which may exist concerning any cause of action or claim regarding the proper pay of Claimants, under state and federal law. In addition, this Agreement tolls the statute of limitations periods, which may exist concerning any claims that City failed to properly report certain reportable items of special compensation to CalPERS, brought by or on behalf of Claimants. The Parties agree that any claims which may exist concerning the proper payment of wages under state or federal law, and any claim which may exist concerning City's failure to report required reportable items of special compensation to CalPERS, shall be tolled for a total of nineteen (19) months from and after April 16, 2019. This Agreement may be extended by written mutual consent, but shall otherwise terminate on November 15, 2020, nineteen (19) months from April 16, 2019. As used in this Section 2, and subject to the limitations of Section 3 below, the term "claim" means claims that accrued on or before the date of this Agreement, regardless of whether the Party or Parties with the claim have filed legal action to enforce it.

Section 3. Lapsed Claims. This Agreement shall not be construed to revive, renew or extend any claims that the Claimants may have against City that may already be time barred as of April 16, 2019. Nothing in this Agreement shall operate as a waiver of, or prejudice, any Party's right to assert that the statute of limitations or any other time defenses have been tolled or have not yet run for reasons other than the execution of this Agreement.

Section 4. Termination. Either Party may, at any time, provide the other with written notice terminating this Agreement with respect to that particular Party by email, mail, or personal delivery. Such termination shall be effective no sooner than thirty (30) calendar days following delivery of written notice of exercise of the termination option to the non-terminating Party. The thirty (30) calendar day period shall be deemed to have commenced after the date of delivery of such notice in accordance with Section 11 hereof. Such notice of termination shall in no event result in the shortening of any period of limitation otherwise provided by law. In the event that Claimants file a grievance or lawsuit against City regarding the dispute described herein, then this Agreement shall automatically become null and void.

Section 5. No Admission of Liability. Nothing in this Agreement shall be construed as an admission by any Party of any fault or liability, or lack thereof, nor shall it be construed as a waiver, retraction or modification of the positions of any Party on the merits of any claim. The Parties further acknowledge and agree that all settlement offers and related communications concerning the resolution of the dispute herein that take place while this Agreement is in effect, shall be considered settlement discussions, will not be offered for any purpose, and shall be protected under California Evidence Code Sections 1152 and 1154 and Federal Rules of Evidence Rules 408 and 501.

Section 6. Admissibility of Agreement. This Agreement may not be used or relied upon for any purpose other than the enforcement of its terms. This Agreement shall not be admissible in any proceeding and shall not be used by either Party in any proceeding, except solely for the purpose of establishing, if the matter is contested, the tolling of any statute of limitations or other time defenses for the specific and limited period of time under such terms as are set forth in this Agreement. In the event that the terms of this Agreement are enforced in the context of a jury-trial in which any issue pertaining to the applicability of the statute of limitations or time defenses is submitted to the jury, the Court shall instruct the jury on the application of the statute of limitations or other time defenses as altered by the terms of this Agreement, but shall not disclose this Agreement or its existence to the jury or otherwise make reference to the existence of any agreement by the Parties to alter or modify the application of the statute of limitation or other time defense. Nothing in this Agreement constitutes an admission by any Party that, in the absence of this Agreement, the statute of limitations and/or any other time defense has or would have run or become applicable, and this Agreement shall not be used in any proceeding as evidence of any such admission, express or implied.

Section 7. Equitable Doctrines. Any defense which any Party may have, including those based on laches or related equitable defenses, shall not be based upon or supported in any way by the postponement of any claim or defense during the Tolling Period.

Section 8. Entire Agreement. This Agreement constitutes the complete understanding of the Parties with respect to the subject matter hereof, and there are no covenants, conditions, or terms other than those expressly set forth in this Agreement. Any prior written agreements between the Parties with respect to the subject matter hereof are terminated, null and void, and superseded by this Agreement. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any legal construction or interpretation to be made of this Agreement, the same shall not be construed against any Party.

Section 9. Amendment/Modification. This Agreement may not be amended, modified, or supplemented, except in writing duly executed by all Parties and delivered to all Parties.

Section 10. Signatories to Agreement. The signatories to this Agreement represent and warrant that they have the authorization and power to bind the party on whose behalf they are signing.

Section 11. Notice. Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

To Claimants:

~~Samantha M. Swanson~~ Michael A. McGill
Adams, Ferrone & Ferrone, APLC
4333 Park Terrace Drive, Suite 200
Westlake Village, CA 91361
Telephone: (805) 373-5900
Email: sswanson@adamsferrone.com
mmcgill@adamsferrone.com

To City:

Jeanne Donaldson
City Clerk
35 Cajon Street, Suite 4
Redlands, CA 92373
Telephone: (909)798-7531
Email: jdonaldson@cityofredlands.org

Section 12. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, and all such counterparts constituting one agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or email and/or with e-signatures shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or email shall be deemed to be their original signatures for all purposes. Each party signing this Agreement represents that he, she or it has read this Agreement, understands it, and intends to be legally bound by all of its terms.

Section 13. Governing Law. As to any causes of action governed by federal laws, this Agreement shall be construed, governed, and enforced in accordance with the applicable laws of the United States of America. As to any causes of action that exist under state law, this Agreement shall be construed, governed, and enforced in accordance with the laws of the State of California.

Section 14. Attorneys' Fees. In the event any action is commenced to enforce or interpret the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.

Section 15. No Third party Beneficiaries. This Agreement shall not be deemed to confer any rights upon any third parties as beneficiaries of this Agreement, nor obligate either of the Parties to this Agreement to any person or entity not a Party to this Agreement.

Agreed and Accepted:

CITY OF REDLANDS

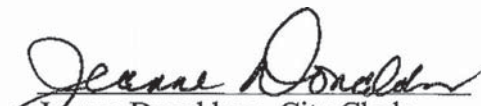
REDLANDS PROFESSIONAL
FIREFIGHTERS' ASSOCIATION


Paul W. Foster, Mayor
Brent Fuller, President

Approved as to Form Only:


Daniel J. McNugh, City Attorney
Samantha M. Swanson, Esq. Michael A. McGill, Esq.
Adams, Ferrone & Ferrone, APLC
General Counsel for Redlands
Firefighters' Association

ATTEST:


Jeanne Donaldson, City Clerk