

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, APPROVING AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE A SETTLEMENT AGREEMENT IMPLEMENTING A SETTLEMENT WITH THE BOARD OF TRUSTEES OF THE EMPLOYEES' RETIREMENT FUND.

WHEREAS, each of the three pension plans sponsored by the City includes a benefit formally referred to as a supplemental pension distribution or supplemental pension benefit, and informally referred to as a 13<sup>th</sup> check ("13<sup>th</sup> check benefit"); and

WHEREAS, the 13<sup>th</sup> check benefit is an extra payment made to eligible retirees for any year for which the actual investment return realized by a pension fund exceeds a threshold specified in the pension plan; and

WHEREAS, in 2015, the City filed a civil action naming the three pension boards as defendants and alleging that the boards were making 13<sup>th</sup> check benefit payments in excess of the amounts prescribed by law; and

WHEREAS, the City and the Employees Pension Board ("Employees Board") filed a joint motion to sever the City's claims against the Employees Board from the City's claims against the other two boards, and without objection from the other two boards, the Court entered an Order of Severance; and

WHEREAS, City staff and the Employees Board have negotiated a settlement of the claims against the Employees Board, subject to the approval of the City Commission; and

WHEREAS, the proposed settlement resolves several issues as follows:

1) Because the City contended that the boards were overpaying the 13<sup>th</sup> check benefit, the City withheld from the annual required contribution ("ARCs") each year the amount attributable to the 13<sup>th</sup> check benefit. At about the same time, the state began to require that the ARCs include an amount to pre-fund the 13<sup>th</sup> check benefit. The City objected to that requirement.

City staff now believes that resolving this matter before the shortfall becomes unmanageable is the best course of action. As of July 31, 2019, there was a required contribution due to the Employees Retirement Fund ("Fund") in the amount of \$12,364,225.00, which includes interest through that date. The state and the Employees Board have agreed to allow the City to pay to the Fund the sum of \$12,364,225.00, plus interest at the Employees Board's actuarial assumed rate of

investment return, to be amortized over five years starting in the Fiscal Year Ending (“FYE”) September 30, 2021, and such payments to continue in FYE September 30, 2022, FYE September 30, 2023, FYE September 30, 2024, and FYE September 30, 2025, consecutively, or until fully paid off, if earlier;

2) The City agrees that future ARCs will include a pre-funding component for the 13<sup>th</sup> check benefit; and

3) The Employees Board determined that for FY2012, a 13<sup>th</sup> check benefit was due and payable to eligible retirees. However, at that time, the state was first requiring the pre-funding of a 13<sup>th</sup> check benefit, so the state indicated that the payment of this benefit, which had not been pre-funded, would have to be expressly approved by the City (copy attached). By Resolution No. R-2015-213, the City Commission denied the request of the Employees Board to approve the payment of the benefit. The settlement commits the City to pay, on or before September 30, 2019, to the Employees Board the total amount of \$4,299,167.70 for the FY 2012 13<sup>th</sup> check benefit; and

WHEREAS, approval of this settlement will result in the end of the litigation with the Employees Board (except that the Court will retain jurisdiction to enforce the settlement); and

WHEREAS, approval of this settlement will hopefully be the first step towards settling the City’s claims against all of the pension boards. Settlement with the Police and Fire Pension Boards will result in the release by the state of the Chapter 175 and Chapter 185 funds that the state has been withholding.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are incorporated in this Resolution.

Section 2: That it approves and authorizes the execution, by the appropriate City officials, of the attached Settlement Agreement, together with such non-material changes as may be subsequently approved by the City Manager and approved as to form and legal sufficiency by the City Attorney.

Section 3: That this Resolution shall be in full force and effect immediately upon its passage and adoption.

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PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOSH LEVY, MAYOR

ATTEST:

\_\_\_\_\_  
PATRICIA A. CERNY, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY for the use and reliance of the City of Hollywood, Florida, only.

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DOUGLAS R. GONZALES  
CITY ATTORNEY