

I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Discuss and take action to approve the Settlement between the City of Bartlesville and International Association of Firefighters Local 200 (the “IAFF”) relating to overtime compensation.

Attachments:

Settlement Agreement

IAFF Represented Members Overtime Calculation Spreadsheet

II. STAFF COMMENTS AND ANALYSIS

Late last year the City was served with a demand letter from a Washington D.C. based law firm representing IAFF Local 200. Counsel for IAFF contended that the City was underpaying overtime to its members in violation of the Fair Labor Standards Act of 1938 (the “FLSA”). The November 7, 2023 letter was the City’s first notification of this problem. Upon receipt of this letter, City staff began investigating the claim in an effort to determine if the City’s payroll procedures violated the FLSA.

Over the course of many decades (the Oklahoma Fire & Police Arbitration Act was passed in 1977), the City and Local 200 had negotiated and agreed upon various stipends which were added to an employee’s monthly salary as an incentive. Examples of these stipends included incentives for CLEET certification, EMT certification, and longevity. The City had processed its payroll in this manner, in accordance with the express terms of various collective bargaining agreements and with the full agreement of the IAFF for decades, as have many other municipalities across the nation. Nonetheless, after investigation and consultation with outside counsel Staff concluded that the contract likely violated the FLSA requirement that such incentives be added to the hourly rate paid each employee, and overtime calculated based on the gross amount after inclusion of the stipend

Based on this conclusion, the City sought to cooperate with the IAFF in hopes of reaching a settlement. Following an enormously time-consuming accounting effort, Staff provided the IAFF’s counsel with a spreadsheet detailing all overtime amounts paid on February 16, 2024. IAFF’s counsel did not respond to the City for five (5) months. During that time, City staff worked to fix the underlying problem. In the IAFF’s 2024-2025 Collective Bargaining Agreement all stipends were converted to hourly rates to comply with the FLSA. Likewise, Staff negotiated, and the City Council approved a Memorandum of Understanding that modifies multi-year contract for Fraternal Order of Police Lodge 117 (the “FOP”) in the same fashion. The problem has also been fixed for general employees, so all City employees been paid in accordance with FLSA requirements since July 1, 2024.

IAFF's counsel responded to Staff's overtime calculation on July 16, 2024. There was significant back and forth between City Staff and IAFF's counsel tweaking and finalizing overtime numbers and negotiating a settlement agreement. The parties agreed to the attached Settlement Agreement on September 20, 2024. At that point, Staff did not yet have a resolution of this same issue for FOP or general employees. Resolutions of the problem for all employee groups are now ready for consideration by the City Council.

This problem is hardly unique to Bartlesville. Dozens of municipalities across the state and nation are dealing with this same issue. The problem predates the tenure of any City Council member or City employee who is currently serving.

III. RECOMMENDED ACTION

Staff recommends approval and execution of the Settlement Agreement with IAFF Local 200.

SETTLEMENT AGREEMENT

The members of IAFF Local 200 (“Local Members”), each of whom are identified on Exhibit A attached hereto, and the City of Bartlesville, Oklahoma (the “City), collectively the parties (“Parties), voluntarily enter into this this Settlement Agreement (“Agreement”), which fully and finally resolves the Released Claims addressed herein, based on the following:

I. RECITALS

1.1 Local Members are seventy-five (75) individuals employed, or formerly employed, by the City as fire fighters. On November 7, 2023, Local Members, through their attorneys, sent the City a letter detailing the City’s failure to properly pay Local Members’ overtime under the FLSA and demanding full payment for the damages, liquidated damages under the FLSA, and attorneys’ fees that had accrued within the last three years.

1.2 The City responded quickly to address these issues by agreeing to bring its overtime pay practices into accordance with the FLSA and memorializing the revised practices in its July 1, 2024 Collective Bargaining Agreement with IAFF Local 200 (“2024 CBA”). Additionally, the City provided Local Members with a calculation of unpaid overtime between November 7, 2020 and July 26, 2024.

1.3 Based on the above, the Parties ultimately reached an agreement in principle to resolve this matter on August 8, 2024.

1.4 The Parties have agreed to resolve the matters in dispute between and among them pursuant to the terms of this Agreement. Specifically, the Parties and their counsel have considered that the interests of all concerned are best served by compromise, settlement, and release of Local Members’ FLSA claims. The Parties have concluded that the terms of this Agreement are fair, reasonable, adequate, and in the Parties’ mutual best interests.

1.5 The Parties to this Agreement, for good and valuable consideration, the sufficiency of which is acknowledged, do hereby agree to the following Settlement Agreement, Release, and Waiver of Claims.

II. PAYMENT AND DISTRIBUTION

2.1 In consideration for the terms, conditions, and promises in this Agreement, the City, in accordance with paragraph 2.2, shall pay or cause to be paid to Local Members a total of \$116,303.19 (“the Settlement Amount”), and will, moving forward, adhere to the overtime provisions contained in the 2024 CBA, which are consistent with the FLSA.

2.2 The Settlement Amount will be divided and distributed to Local Members as follows:

- (1) a set of payroll checks and/or stubs for direct deposit payments, regular payroll checks for active (employed) Local Members, and separate payroll checks for inactive (no longer employed) Local Members, made Payable to each Local Member in accordance with Exhibit A to this Agreement and totaling a pre-tax amount of \$63,106.69 (the “Backpay Amount”), less all applicable deductions and withholdings for each individual Local Member. Local Members will notify the City if they wish to defer any additional amounts to applicable benefit plans prior to distribution. With respect to all Local Members who are no longer employed by the City as of the effective date of this Agreement, the Defendant shall utilize the last known withholding amount for each former employee; and
- (2) one check in the total amount of \$60,038.00 representing \$53,196.50 in liquidated damages and \$6,841.50 in reimbursed attorneys’ fees and expenses (the “Lump Sum Amount”), payable to Local Members’ Counsel Mooney, Green,

Saindon, Murphy & Welch, P.C. for distribution to the Local Members. Local Members' counsel shall provide the City with a W-9 within three (3) days after the Parties have executed this Agreement. In accordance with Paragraph 2.4 below and pursuant to the individual retainer agreements signed by all Local Members, Local Members' counsel will deduct their litigation expenses and contingency attorney fee equal to twenty-five percent (25%) of the Settlement Amount prior to distributing to all Local Members their liquidated damages share of the Lump Sum Amount.

These amounts are agreed to among the Parties to compromise, settle, and satisfy the Released Claims described in paragraph 3.1 below, liquidated damages related to the Released Claims, and all attorneys' fees and expenses related to the Released Claims.

2.3 The City shall issue payment of the Settlement Amount within forty-five (45) calendar days after the execution date of this Agreement. After this 45- day period, interest shall accrue on any unpaid Settlement Amount at the rate set forth in 28 U.S.C. § 1961.

2.4 Local Members have entered into individual agreements with Local Members' Counsel. These agreements provide for a contingency attorney fee amount equal to twenty-five percent (25%) of the Settlement Amount calculated after expenses are deducted from the Settlement Amount. Local Members and their counsel are solely responsible for determining the contingency attorney fee applicable to this Agreement. Local Members' counsel shall deduct their contingency attorney fee from the Lump Sum Amount in accordance with Local Members' individual agreements with Local Members' Counsel.

2.5 The City will forward the Lump Sum Amount payable to Mooney, Green, Saindon, Murphy and Welch, P.C., who will be responsible for distributing to each Local Member listed in Exhibit A his/her respective share of the Lump Sum Amount.

2.6 Local Members and their counsel determined the method used to calculate the amounts to be paid to each Local Member for the Back Pay Amount and his/her share of the Lump Sum Amount.

2.7 Local Members and their counsel, Mooney, Green, Saindon, Murphy & Welch, P.C., will defend, release, and hold the City harmless from any and all claims or causes of action arising from the allocation and distribution of the Settlement Amount.

2.8 The City shall reflect the Individual Back Pay Amounts on each Local Member's W-2 form as set forth in Exhibit A to this Agreement, less applicable deductions. Local Members' counsel will be responsible for distributing 1099-MISC forms to the Local Members for their share of the Lump Sum Amount.

III. RELEASE AND WAIVER OF CLAIMS

3.1 Local Members hereby release, acquit, and forever discharge the Defendant from all Fair Labor Standards Act claims relating to overtime pay for time worked as fire fighters from January 1, 2021 through August 1, 2024 ("Released Claims"). Local Members agree and acknowledge that, with respect to such claims, Local Members are waiving not only their right to recover money or other relief in any action that they might institute but also that they are waiving their right to recover money or other relief in any action that might be brought for such claims on their behalf by any other person or entity including, but not limited to, the state of Oklahoma, the United States Department of Labor ("DOL"), or any other (U.S. or foreign) federal, state, or local agency or department.

3.2 All Local Members shall be deemed to and shall have waived, released, discharged, and dismissed all Released Claims as set forth in Paragraph 3.1, with full knowledge of any and all rights they may have, and they hereby assume the risk of any mistake in fact in connection with the true facts involved or with regard to any facts which are now unknown to them.

3.3 All Local Members understand and agree that, to the fullest extent permitted by law, they are precluded from filing or pursuing any legal claim or action of any kind against any entity at any time in the future, or with any federal, state or municipal court, tribunal or other authority arising out of the Released Claims.

3.4 All Local Members agree that they are entering this Agreement knowingly, voluntarily, and with full knowledge of its significance. Each Local Member affirms that he/she has not been coerced, threatened, or intimidated into agreeing to the terms of this Agreement, and he/she has been advised to and has had the opportunity to consult with an attorney with respect to the terms of this Agreement.

IV. NO ADMISSION OF LIABILITY

4.1 The City does not admit any allegations made against it in the Local Members' November 7, 2023 letter, referenced above. Nothing contained in this Agreement, including the City's agreement to bring its overtime pay practices into accordance with the FLSA in its 2024 CBA, shall be deemed an admission of liability or of any violation of any applicable law, rule, regulation, order, or contract of any kind. The City acknowledges that retaliation is prohibited under the FLSA.

V. CONTINUED JURISDICTION

5.1 The U.S. District Court for the Northern District of Oklahoma shall have jurisdiction to construe, interpret and enforce the provisions of this Agreement, and to hear and adjudicate any dispute or litigation arising under this Agreement.

VI. PARTIES' AUTHORITY

6.1 The signatories hereby represent that they are fully authorized to enter into this Agreement and to bind the parties hereto to the terms and conditions hereof.

6.2 All of the Parties acknowledge that they have been represented by competent, experienced counsel throughout all negotiations which preceded the execution of this Agreement, and this Agreement is made with the consent and advice of counsel who have jointly prepared this Agreement.

6.3 Any signature made and transmitted by facsimile, email, or verified electronic signature program such as DocuSign for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement.

VII. MUTUAL FULL COOPERATION

7.1 The Parties agree to use their best efforts and to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement and effectuate the terms of this Agreement.

XIII. MODIFICATION

8.1 This Agreement and its attachment may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court.

IX. ENTIRE AGREEMENT

9.1 This Agreement and its attachments constitute the entire agreement between the Parties concerning the subject matter hereof. No extrinsic oral or written representations or terms shall modify, vary or contradict the terms of this Agreement. In the event of any conflict between this Agreement and any other settlement-related document, the parties intend that this Agreement shall be controlling.

X. CHOICE OF LAW/JURISDICTION

10.1 This Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the state of Oklahoma, both in its procedural and substantive aspects, and shall be subject to the continuing jurisdiction of the United States District Court for the Northern District of Oklahoma. This Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any Party, regardless of who drafted or who was principally responsible for drafting this Agreement or any specific term or condition thereof.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date indicated below:

**MOONEY, GREEN, SAINDON,
MURPHY & WELCH, P.C.**

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Attorney for Local Members

Dated:

**ROBINETT, KING, ELIAS,
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Attorney for the City

Dated: