



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
 BUDGET OFFICE
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Memorandum

To: The Honorable Helio Melo
 Chairman, House Finance Committee

The Honorable Daniel DaPonte
 Chairman, Senate Finance Committee

From: Thomas A. Mullaney *Thomas A. Mullaney*
 Executive Director/State Budget Officer

Date: May 18, 2012

Subject: Amendments to Article 28 of the FY 2013 Appropriations
 Act (12-H-7323)

The Governor requests that Article 28 – Relating to Central Falls of the FY 2013 Appropriations Act be replaced with the attached version. Based on comments and feedback received at and subsequent to the hearings held in both the House and Senate Finance Committees on this article, several changes have been made, including the inclusion of a set of definitions. The intent of the original article is maintained, but this version incorporates sections of the settlement agreement with Central Falls retirees to be clear that this article is specific to this situation and not precedent setting legislation.

If you have any questions regarding this request, please feel free to contact Rosemary Booth Gallogly at 574-8942 or Marilyn McConaghy at 574-9109.

TAM:12-44
 Attachments

cc: Sharon Reynolds Ferland, House Fiscal Advisor
 Peter Marino, Senate Fiscal Advisor
 Kelly Mahoney, Policy Director, Office of the Governor
 Richard Licht, Director, Department of Administration
 Gregory Stack

REVISED ARTICLE 28 (5/16/12)

RELATING TO CENTRAL FALLS

SECTION 1. Central Falls Settlement Agreement.

(a) Definitions. As used in this public law, the following words and terms shall have the following meaning, unless the context shall indicate otherwise:

(1) “Administrative and Financial Officer” is an administration and finance officer appointed by the Director of Revenue under R.I. Gen. Laws § 45-9-10.

(2) “Appropriation Payment” means the State appropriation in the amount of \$2,636,932 to fund transition payments to Participating Retirees (“Transition Payments”).

(3) “Bankruptcy Court” means the United States Bankruptcy Court for the District of Rhode Island.

(4) “Central Falls Pension Plan” means the so-called “1% Plan” and the so-called “John Hancock Pension Plan” as restructured after the filing of the Chapter 9 petition for the City.

(5) “City” means the City of Central Falls, Rhode Island.

(6) “Contract Date” means December 19, 2012.

(7) “Director” shall mean the Rhode Island Director of Revenue.

(8) “MERS” means the Rhode Island Municipal Employee Retirement System.

(9) “Participating Retirees” means the retirees that signed the Settlement Agreement.

(10) “Participating Retirees’ Restricted 5-year Account” means the federally-insured interest-bearing account into which the City shall deposit the Appropriation Payment pursuant to Section 4 of the Settlement Agreement.

(11) “Plan of Debt Adjustment” means the amended plan of debt adjustment to be filed with the Court by the City.

(12) “State” means the State of Rhode Island.

(13) “Settlement Agreement” means the Settlement and Release Agreement by and between Receiver, the Director, the Participating Retirees, the Central Falls Police Retirees

Association, Inc. and the Central Falls Firefighters Retirees Association entered into on the Contract Date.

(14) "Receiver" means Robert J. Flanders, Jr. in his capacity as state-appointed receiver for the City, and any successor receiver appointed by the Director under R.I.G.L. § 45-9-7.

(15) "Transition Payments" means the annual payments made to Participation Retirees from the Appropriation Payment pursuant to the terms of the Settlement Agreement.

(b) Legislative Findings and Purpose.

(1) On August 2, 2011, the Receiver filed a Chapter 9 petition on behalf of the City with the Bankruptcy Court. Prior to January 9, 2012, the Settlement Agreement was executed by the Receiver, the Director, the Participating Retirees, the Central Falls Police Retirees Association, Inc. and the Central Falls Firefighters Retirees Association. On January 9, 2012, the Bankruptcy Court entered an Order approving the Settlement Agreement.

(2) For purposes of this Article, the key terms of the Settlement Agreement include, without limitation:

(i) that the Participating Retirees' pension benefits have been reduced by up to fifty-five (55%) of their pre-bankruptcy pension payments; provided however if the General Assembly authorizes the \$2,636,932 Appropriation Payment, then during Fiscal Years 2012-2016, Participating Retirees shall also receive Transition Payments, so that their combined reduced pension payments and Transition Payments shall not aggregate to less than seventy-five percent (75%) of their pre-bankruptcy pension payments;

(ii) That the Participating Retirees, the Central Falls Police Retirees Association, Inc. and the Central Falls Firefighters Retirees Association have waived substantially all of their claims against the City and the State; and

(iii) That in the event that the General Assembly fails to appropriate a minimum of \$2,000,000 for Transition Payments, the Participating Retirees may "opt out" of the Settlement Agreement and have it declared to be null and void.

(3) For the following and other reasons, this Article shall not be deemed a precedent that would require the General Assembly to make similar appropriations to any other Rhode Island distressed city or town:

(i) The City alone must pay 100% of the legal fees incurred in the litigation that established the constitutionality of the Fiscal Stability Act (R.I. Gen. Laws § 45-9-1 et seq.) and several important bankruptcy precedents, these precedents which have conferred a significant benefit on all Rhode Island cities and towns;

(ii) Participating Retirees have agreed to reductions in their annual pension benefits of up to 55%; and

(ii) The Settlement Agreement was approved by the Bankruptcy Court in order to make a Chapter 9 plan of debt adjustment feasible.

(4) The requested Appropriation Payment which will ease the Participating Retirees' transition to a pension benefit that has been reduced by up to fifty-five percent (55%) is fair and appropriate.

(5) The Settlement Agreement is hereby incorporated into this Article by reference.

(c) Appropriation Payment.

(1) *Appropriation Payment and Restrictions on Use.* There is hereby provided to the City of Central Falls a one-time lump-sum Payment Appropriation Payment in the amount of \$2,636,932 to be used solely for the purposes and subject to the restrictions set forth in the Settlement Agreement to fund Transition Payment to Participating Retirees.

(2) *Deposit of Appropriation Payment and Payments to Participating Retirees.* The Appropriation Payment shall be immediately deposited by the City into a restricted federally-backed or federally-insured interest-bearing account under the name of the City and denominated the "Participating Retirees' Restricted 5-Year Account." Within thirty (30) days after receipt of the Appropriation Payment from the State, for fiscal year ending 2012, the City (jointly with either the Receiver or an Administrative and Finance Officer for the City appointed by the

Director) shall withdraw from the Participating Retirees' Restricted 5-Year Account exactly the amount required to promptly pay and distribute to Participating Retirees the Transition Payments. Thereafter, during the months of July in fiscal years ending 2013, 2014, 2015, and 2016, the City (jointly with either the Receiver or an Administrative and Finance Officer for the City appointed by the Director) shall withdraw from the Participating Retirees' Restricted 5-Year Account exactly the amount required to promptly pay and distribute to Participating Retirees the Appropriation Transition Payments.

Any and all withdrawals, transfers and payments from the Participating Retirees' Restricted 5-Year Account shall require the signature of two (2) persons, one of whom shall be either the Receiver or an Administrative and Finance Officer of the City after the Receiver's duties are completed. Participating Retirees' Restricted 5-Year Account shall remain under the control of the City jointly with either the Receiver or an Administrative and Finance Officer and that it shall be segregated from and shall not be controlled or managed by any third party managing the single Central Falls Pension Plan, whether administered by the City or if transitioned into MERS. Further, the Transition Payments shall be paid to Participating Retirees jointly by the City and the Receiver or an Administrative and Finance Officer and not by any third-party pension fund manager. Such Transition Payments shall cease after the distribution at the end of fiscal year ending 2016.

(3) *Relationship to Base Pension Payments.* The Transition Payments shall not be included in the calculation of the base pension benefits of Participating Retirees for purposes of determining a Participating Retiree's COLA. However, a spouse or statutory beneficiary under R.I. Gen. Laws § 45-21.3-1 shall be entitled to 67.5% of a deceased Participating Retiree's Transition Payment.

(4) *Distribution of Balance.* Within thirty (30) days of the end of fiscal year ending 2016, the City shall withdraw the balance of the funds in the Participating Retirees' Restricted 5-Year Account (*i.e.* the accumulated interest and any remaining sums) and shall pay and distribute those

funds to each Participating Retiree based on the percentage assigned to each Participating Retiree in accordance with the requirements set forth in APPENDIX B of the Settlement Agreement. . After all of the funds in the Participating Retirees' Restricted 5-Year Account have been appropriately distributed, the City shall promptly close the Participating Retirees' Restricted 5-Year Account.

(5) *Access to Account Information and Records.* The City, as overseen by the Receiver or an Administrative and Finance Officer, as the case may be, shall maintain appropriate account information and records relating to all receipts into, maintenance of, and distributions from the Participating Retirees' Restricted 5-Year Account, and shall allow at all reasonable times for the full inspection of and copying and sharing of information about such account and any and all Transition Payments by and with any Participating Retiree.

(6) *Unclaimed Payments.* Any money distributed to a Participating Retiree from the Participating Retirees' Restricted 5-Year Account and not claimed by a Participating Retiree after the City has exercised good faith attempts over a six (6) month period to deliver it to the best last known address of such Participating Retiree shall not escheat under state law, but shall be deposited in the "Participating Retirees Wyatt Payments Account" which shall thereafter be distributed in accordance with Section 5.3 of the Settlement Agreement.

(7) *Liability and Penalties for Improper Use of Appropriation Payment.* Any person, whether in his/her individual or official capacity, who uses, appropriates or takes or instructs or causes another to use, appropriate or take, the Appropriation Payment, or any portion thereof, that is not specifically used for making Transition Payments to Participating Retirees as required hereunder and under the terms, provisions and/or restrictions of the Settlement Agreement, shall be personally liable for repayment of said funds and further shall be subject to any and all other applicable civil and criminal sanctions and/or penalties for such act(s).

SECTION 2. Section 28-9.1-6 of the General Laws in Chapter 28-9.1 entitled "Firefighters' Arbitration" is hereby amended to read as follows:

28-9.1-6. Obligation to bargain. -- It shall be the obligation of the city or town, acting through its corporate authorities, to meet and confer in good faith with the representative or representatives of the bargaining agent within ten (10) days after receipt of written notice from the bargaining agent of the request for a meeting for collective bargaining purposes. This obligation shall include the duty to cause any agreement resulting from the negotiations to be reduced to a written contract, provided that no contract shall exceed the term of one year, unless a longer period is agreed upon in writing by the corporate authorities and the bargaining agents, but in no event shall the contract exceed the term of three (3) years unless a budget commission or a receiver has been appointed for a municipality pursuant to Chapter 45-9, in which case the contract shall not exceed the term of five (5) years. An unfair labor practice charge may be complained of by either the employer's representative or the bargaining agent to the state labor relations board which shall deal with the complaint in the manner provided in chapter 7 of this title.

SECTION 3. Section 28-9.2-6 of the General Laws in Chapter 28-9.2 entitled "Municipal Police Arbitration" is hereby amended to read as follows:

28-9.2-6. Obligation to bargain. -- It shall be the obligation of the city or town, acting through its corporate authorities, to meet and confer in good faith with the designated representative or representatives of the bargaining agent, including any legal counsel selected by the bargaining agent, within ten (10) days after receipt of written notice from the bargaining agent of the request for a meeting for collective bargaining purposes. This obligation includes the duty to cause any agreement resulting from the negotiations to be reduced to a written contract, provided that no contract shall exceed the term of one year, unless a longer period is agreed upon in writing by the corporate authorities and the bargaining agent, but in no event shall the contract exceed the term of three (3) years unless a budget commission or a receiver has been appointed for a municipality pursuant to chapter 45-9, in which case the contract shall not exceed the term of five (5) years. An unfair labor charge may be complained of by either the employer's

representative or the bargaining agent to the state labor relations board which shall deal with the complaint in the manner provided in chapter 7 of this title.

SECTION 4. Section 28-9.3-4 of the General Laws in Chapter 28-9.3 entitled "Certified School Teachers' Arbitration" is hereby amended to read as follows:

28-9.3-4. Obligation to bargain. -- It shall be the obligation of the school committee to meet and confer in good faith with the representative or representatives of the negotiating or bargaining agent within ten (10) days after receipt of written notice from the agent of the request for a meeting for negotiating or collective bargaining purposes. This obligation includes the duty to cause any agreement resulting from negotiations or bargaining to be reduced to a written contract; provided, that no contract shall exceed the term of three (3) years unless a budget commission or a receiver has been appointed for a municipality pursuant to chapter 45-9, in which case the contract shall not exceed the term of five (5) years. An unfair labor practice charge may be complained of by either the bargaining agent or the school committee to the state labor relations board which shall deal with the complaint in the manner provided in chapter 7 of this title.

SECTION 5. Section 28-9.4-5 of the General Laws in Chapter 28-9.4 entitled "Municipal Employees' Arbitration" is hereby amended to read as follows:

28-9.4-5. Obligation to bargain. -- It shall be the obligation of the municipal employer to meet and confer in good faith with the representative or representatives of the negotiating or bargaining agent within ten (10) days after receipt of written notice from the agent of the request for a meeting for negotiating or collective bargaining purposes. This obligation includes the duty to cause any agreement resulting from negotiation or bargaining to be reduced to a written contract; provided, that no contract shall exceed the term of three (3) years unless a budget commission or a receiver has been appointed for a municipality pursuant to chapter 45-9, in which case the contract shall not exceed the term of five (5) years. Failure to negotiate or bargain in good faith may be complained of by either the negotiating or bargaining agent or the municipal

employer to the state labor relations board, which shall deal with the complaint in the manner provided in chapter 7 of this title. An unfair labor practice charge may be complained of by either the bargaining agent or employer's representative to the state labor relations board, which shall deal with the complaint in the manner provided in chapter 7 of this title.

SECTION 6. Under R.I. Gen. Laws §45-9-1 et seq., a municipality subject to the jurisdiction of a fiscal overseer, budget commission or receiver is responsible for payment of expenses and costs incurred carrying out the responsibilities of the fiscal overseer, budget commission and/or receiver. During fiscal 2011, the State incurred and paid on behalf of the City of Central Falls expenses totaling \$ 1,073,131. On or about September 15, 2011, the State billed the City of Central Falls for said \$ 1,073,131 expenses, for which the City of Central Falls is responsible under §45-9-1 et seq., and which continue to be incurred and paid for by the State on behalf of the City. The State intends to bill the City of Central Falls for those expenses. Recognizing that the City of Central Falls does not currently have the financial ability to reimburse the State in full for said expenses and may need additional time to reimburse the State for expenses reflected in future bills submitted by the State for such expenses, the City of Central Falls shall have until June 30, 2021 to reimburse the State for all such expenses paid by the State and billed to the City.

SECTION 7. This article shall take effect upon passage.