

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

BETWEEN: City of Portland, Oregon, through its Portland Police Bureau and Bureau of Human Resources

AND: Rocky Balada

AND: City of Portland Bureau of Fire and Police Disability and Retirement

AND: The Portland Police Association

1. Parties to the Settlement Agreement and Release of All Claims (hereinafter "Agreement")

- 1.1 The parties to this Agreement are the City of Portland (City), City of Portland Bureau of Fire and Police Disability and Retirement (FPDR), Rocky Balada (Employee) and the Portland Police Association (Union).
- 1.2 The term "Employee" means Rocky Balada, his spouse or domestic partner, if any, heirs, executors, and assigns.
- 1.3 The term "City" means the City of Portland, the Mayor, City Council, their predecessors, successors, assigns, bureaus, divisions, commissions, boards, insurers, and all past, present and future employees, representatives, and agents of the City of Portland or its bureaus, divisions, commissions, and boards (all and each in their individual and representative capacities).
- 1.4 The term "FPDR" means City of Portland Bureau of Fire and Police Disability and Retirement, the Trustees, the FPDR Administrator, their predecessors, successors, assigns, boards, insurers, and all past, present and future employees, representatives, and agents of FPDR (all and each in their individual and representative capacities).
- 1.5 The term "Union" means the Portland Police Association and all officers, employees, representatives and agents of the Portland Police Association.

2. Effective Date

This Agreement shall not become effective or enforceable until seven (7) days after Employee signs it or until Portland City Council approves this Agreement, whichever is later. Employee may revoke this Agreement prior to the effective date. After the 7 day revocation period Employee may not revoke this Agreement.

3. **Background and Purpose**

3.1 **Issues Pending**

a. Employee has asserted and reaffirms certain pending and potential claims against the City and FPDR based upon or related to his FPDR membership and disability benefit claim(s), and his employment with the City.

b. All of Employee's claims for non-service connected and service connected disability benefits with FPDR are listed below:

82-3419-01-A	88-3419-01-A
83-3419-01-A	90-3419-01-A
83-3419-02-A, B	92-3419-01-A
85-3419-01-A	00-3419-01-A, B
86-3419-01-A	

c. Claims 00-3419-01-A and B are currently pending for hearing. All other disability benefit claims are closed.

3.2 **Denial and Desire to Resolve Dispute**

a. Except for already accepted service and non-service connected disability claims, the City and FPDR deny the validity of all pending and potential claims asserted by Employee.

b. The City, FPDR, Employee and Union desire to bring all pending and potential claims and disputes that Employee has or might have with the City or FPDR to a final resolution by way of compromise and settlement, and they consider it appropriate to settle and compromise any and all claims arising prior to the effective date of this Agreement that Employee has made or could make in the future concerning or related to his FPDR membership and disability benefit claim(s), and his City employment.

4. **Consideration**

4.1 **Retirement**

a. The signing of this Agreement by Employee shall be deemed to be and is accepted by the City and FPDR as a written notice by Employee of his voluntary retirement from City employment.

b. August 31, 2006 is Employee's last day of employment. September 1, 2006 is the first day of Employee's retirement. Employee agrees to

complete a pension application and follow all requirements relating to pension eligibility.

- c. Except for retirement benefits that accrued to Employee under Chapter 5 of the Portland City Charter that were in effect on or before the effective date of Employee's retirement, September 1, 2006, any and all other FPDR and employment rights are terminated.
- d. Employee is eligible to apply for a retirement badge from the Portland Police Bureau and his application will be processed.

4.2 Resolution of Disability Claims

- a. For the period of August 1, 2000 to August 31, 2006, Employee will be treated as having received service-connected disability benefits at the amount listed in Section 4.3, "Payment," below.
- b. For the period of August 1, 2000 to August 31, 2006, Employee's non-service-connected disability benefit that he received is offset from the service connected disability benefit payment set forth in Section 4.2(a), above.
- c. FPDR will adjust time loss and re-calculate disability years of service according to Chapter 5 so that September 1, 2006 is the earliest date that Employee is eligible to receive retirement benefits.
- d. Except as stated in this Agreement, any and all rights to disability benefits and medical and hospital expenses under Section 5 of the Portland City Charter are terminated. The provisions of Charter Section 5-306(g) relating to medical and hospital expenses in retirement are waived and terminated.

4.3 Payment

Upon the effective date of this Agreement, the City and FPDR shall deliver to Employee and his attorney, Victor Calzaretta, two checks. One check from FPDR shall be payable to "Rocky Balada" in the amount of Ninety-Two Thousand Three Hundred Dollars (\$92,300.00). The other check, from the City, shall be payable to "Rocky Balada" and shall be in the amount of Five Hundred Dollars (\$500.00).

The amount of Five Hundred Dollars (\$500.00) is for general non-economic damages. The amount of Ninety-Two Thousand Three Hundred Dollars (\$92,300.00) is for release of disability benefit payments. Employee agrees, that if any state or federal taxing authority should ever determine that the money received by him under this Agreement constitutes taxable wages, in whole or in part, Employee will, upon written demand, indemnify the City and FPDR for all

contributions, if any, required to be paid by the City and FPDR on behalf of Employee for Employee social security tax contributions and income tax withholding.

Medicare: Based on the facts available from Balada, neither party expects that Employee is currently Medicare eligible or will be.

4.4 Disposition of Claims

- a. All FPDR claims are dismissed with prejudice.
- b. Employee gives up any and all current or future rights relating to disability benefit payments from FPDR.
- c. Employee gives up any and all current or future rights to receive medical and hospital expenses from FPDR.
- d. Employee gives up any and all rights he may have had as a City employee, including rights relating to City medical layoff and return to work policies.
- e. Employee understands that as a result of this settlement, any entitlement to employee paid health coverage, including COBRA coverage, has ended.
- f. Employee and Union agree any and all rights under the City-Union collective bargaining agreement with respect to the dispute with Employee are waived and terminated.

5. No Admission of Liability

The payment and other commitments by the City and FPDR provided by this Settlement Agreement and Release of All Claims and the City's and FPDR's execution of this Settlement Agreement and Release of All Claims is to compromise disputed claims and shall not operate or be interpreted as an admission of liability as to any claim, past, present or future, known or unknown, suspected or unsuspected, that Employee has or might have asserted against the City and FPDR, arising out of conduct that occurred prior to the date of this Settlement Agreement and Release of All Claims, by whom liability is expressly denied.

6. **Release**

6.1 **General Release**

In consideration of the promises made in this document, Employee, by signing this Agreement, accepts this settlement as a complete and final resolution and settlement of any and all liabilities and claims, direct or indirect, under any state or federal authority, and voluntarily releases and forever discharges the City and FPDR and their independent contractors from all claims arising from or in any way related to his employment as a City of Portland employee or his resignation, for any transaction, occurrence or conduct of any nature that occurred prior to the effective date of the agreement. This release and discharge includes, but is not limited to, any and all claims Employee has or might have asserted as grievances under a collective bargaining agreement or as claims in other actions, suits or proceedings that have or could have been brought under any labor agreement, the Charter and Code of the City of Portland, Oregon, any local, state or federal statutes and regulations, or common law, including, but not limited to the City of Portland Civil Service Rules, Personnel Rules, the Oregon Employer Liability Law pursuant to Chapter 654 of the Oregon Revised Statutes, Oregon Fair Employment Practices Act (ORS Chapter 659), Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Federal Rehabilitation Act of 1973, all federal and state wage and hour statutes and the Federal Fair Labor Standards Act, the Americans with Disabilities Act, the Family Medical Leave Act, the Age Discrimination in Employment Act, the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 USC Sections 4301-4333), 42 USC Sections 1981-1988, the Equal Pay Act of 1963, the Oregon Constitution and the Constitution of the United States, and all claims for attorney fees and costs.

6.2 ADEA Release

- a. While Employee has not alleged or claimed any age discrimination claims, Employee specifically waives any and all claims alleging discrimination in employment on the basis of age under state law, ORS 659.030, as well as claims under the federal Age Discrimination in Employment Act of 1967 (ADEA).
- b. For purposes of the Age Discrimination in Employment Act of 1967, Employee waives his right to have twenty-one (21) days to consider the release of all claims under the federal ADEA.
- c. Employee understands that he has seven (7) days following the date he signs this agreement to revoke his waiver of claims under the federal Age Discrimination in Employment Act of 1967 and that this portion of this agreement waiving claims of age discrimination will not become effective until the revocation period has expired.
- d. By signing this document, Employee knowingly and voluntarily waives any and all claims under the ADEA as of the date that the settlement agreement is last signed by the parties and the 7-day revocation period has expired. Employee, nor anyone on his behalf may sue the City of Portland, any of its bureaus, board, commissions, employees or insurers and their successors for any claim of discrimination based on age arising out of his employment prior to the date of this settlement agreement.

6.3 Reservation of Rights

Nothing in this Settlement Agreement and Release of All Claims shall affect or apply to, waive or release any claim or benefit related to Employee's participation, if any, in the Public Employees Retirement System, or 457 deferred compensation program or the FPDR System as it relates to pension benefits vested on or before the effective date of Employee's resignation.

7. Covenants

7.1 Covenant as to Total Severance from Employment

As a condition to the payment by the City described above, Employee, by this Agreement ends his employment relationship with the City of Portland by retirement. Employee has no right to reemployment, reinstatement, recall, bumping or seniority. This includes rights pursuant to Portland City Charter, City Code, City Personnel and Civil Service Rules, labor agreement, or any local, state or federal statute or common law.

7.2 Covenant Not to Seek Employment With the City or FPDR

Employee further agrees and promises that he will not apply for, demand or otherwise seek employment or reemployment with the City or FPDR as a temporary, contract, independent contract, leased or regular employee, including as a reserve officer, at any time after the execution of this Agreement and that any application so filed shall be deemed null and void. Employee further agrees that any current applications for City or FPDR employment shall be deemed null and void. Employee agrees that, if he should seek employment with the City or FPDR, he expressly waives the right to sue under federal or state law if he is denied employment. Employee further agrees that any current applications for City or FPDR employment shall be deemed null and void. The prohibition from employment includes all full time, part time, leased, exempt from classified service, and temporary positions, as well as direct employment as a consultant.

7.3 Voluntary Entry Into Agreement

Employee's decision to enter this agreement is made knowingly, voluntarily, and not as a result of coercion or representations by the City not evidenced in this Agreement.

7.4 Covenant Not to Sue

- a. In exchange for the Settlement considerations, payment, undertakings and covenants by the City and FPDR described in this Agreement, Employee

covenants not to prosecute or hereafter maintain or institute any action at law, suit or proceeding in equity, administrative or any proceeding of any kind or nature whatsoever against City and FPDR, for any transaction, occurrence or conduct of any nature that occurred prior to the effective date of the agreement. Employee further covenants and agrees that he will not raise any claim against City and FPDR by way of defense, counterclaim or crossclaim or in any other manner, on any alleged claim, demand, liability or cause of action released herein. At the time of his execution of this Settlement Agreement and Release of All Claims, Employee represents that there are no other claims, complaints or charges pending against City and FPDR in which he is a party or complainant.

- b. Employee understands and expressly agrees that if he ever asserts any claim, action or suit against the City and FPDR, or against any of the City's or FPDR's commissioners, trustees, officers, bureaus, employees, agents and insurers and their successors, individually and collectively, arising out of or in connection with employee's employment or retirement from employment with the City provided by this Agreement, the City and FPDR may plead this Agreement as an absolute defense to any such claim, action or suit. Furthermore, in the event any claim, action, or suit is asserted, this settlement shall be construed to allow the City and FPDR to use in its defense any and all matters, evidence, testimony, documentation, and records that exist or existed prior to the execution of this settlement.

7.5 Covenant Not to Use Prior Events for Any Purpose

Employee understands that in any future proceeding involving the employee, the City and/or its employees, he cannot use for any purpose any evidence of events that occurred prior to the effective date of this agreement in any proceeding to which Employee is a party.

7.6 Covenant Regarding Work-Related Injuries and Diseases

Employee acknowledges and agrees there are no unasserted disability, workers' compensation or work-related injury claims through the date of his execution of this Settlement Agreement and Release of All Claims. Employee also acknowledges that he is not now suffering from, or been diagnosed with, any medical condition or injury which he believes to be caused by his employment with the City, other than those conditions and injuries that have been specifically and previously claimed pursuant to Chapter 5 of the City Charter prior to this Agreement. Employee agrees that any such claim(s) would be barred by the statute of limitations as untimely.

7.7 Covenant as to Grievances

- a. Pursuant to the full settlement, satisfaction and release of any and all actual and potential claims provided in this Agreement, Employee and Union covenant not to file any grievance through the Union of any kind or nature whatsoever against the City and/or FPDR for any reason related in any way to the dispute or to any other claim released herein.
- b. Union and City agree this Agreement is entered into because of unique extenuating circumstances present in this case and shall not be precedent setting in any way for any purpose.

7.8 Covenant of Understanding as to Disclosure of Terms

- a. The Parties further understand, stipulate and agree that since the City is a public body under Oregon law, this document and the terms thereof are disclosable and discoverable under the Public Records Law of the State of Oregon pursuant to Chapter 192 of the Oregon Revised Statutes, and that no promise, guarantee or provision can be made with respect to the confidentiality, publicity, or reporting of the terms of this Agreement.
- b. This agreement shall be placed in the appropriate files.

7.9 Covenant to Return All City Property

Employee agrees to return all property of City prior to the effective date of this Settlement Agreement and Release of All Claims. For the purposes of this Settlement Agreement and Release of All Claims, personal property includes, but is not limited to checkbooks, identification cards, credit cards, keys, card keys, computers, documents, equipment, business cards, supplies, and any other property belonging to the City.

7.10 Covenant to Obtain Certificate of Treating Physician

Prior to the City's and FPDR's approval of this Settlement Agreement and Release of All Claims, Employee's attorney agrees to review this Settlement Agreement and Release of All Claims with Employee's physician, Ronald Turco, and have said doctor endorse a Certificate of Understanding, which is attached and marked as Exhibit A.

8. **Acknowledgments**

8.1 **Acknowledgment as to Known and Unknown Losses**

- a. This Settlement Agreement and Release of All Claims is intended to, and does, cover not only all known losses and damages, and all claims asserted or that could have been claimed or asserted, but any further losses and damages, for any transaction, occurrence or conduct of any nature that occurred prior to the effective date of the agreement which are not now known or anticipated which may later develop or be discovered, including all effects and consequences thereof. This includes but is not limited to any tort or breach of contract, breach of express or implied employment agreement, wrongful discharge, constructive discharge, intentional infliction of emotional distress, discrimination, defamation, loss of consortium or tortious interference with contractual relations. This also includes any damage that may result from disclosure of information made as a result of any order issued pursuant to the State of Oregon Public Records Law (Chapter 192 of the Oregon Revised Statutes).
- b. Employee acknowledges that he is aware that he or his attorney may discover facts different from or in addition to the facts that they now know or believe to be true with respect to his employment or any of the claims he has asserted or could assert or any other claim based on any transaction, occurrence or conduct of any nature that occurred prior to the effective date of the agreement, but that it is his intention to, and he hereby does fully, finally, absolutely and forever settle any transaction, occurrence or conduct of any nature that occurred prior to the effective date of the agreement.

8.2 **Acknowledgment as to Cooperation in Implementing Settlement**

Employee, City and FPDR agree to execute, acknowledge and/or deliver any and all documents reasonably necessary to carry out and perform their respective obligations under this Settlement Agreement and Release of All Claims.

8.3 **Acknowledgment as to Settlement Agreement and Release of All Claims Made With Advice of Counsel.**

The Parties acknowledge and agree that they have been represented and advised by legal counsel of their own choice throughout all negotiations and mediation sessions, if any, that preceded the execution of this Settlement Agreement and Release of All Claims, and with respect to the execution of this Settlement Agreement and Release of All Claims.

8.4 Acknowledgment as to Severability of Terms.

- a. Except as provided in this paragraph, every provision contained in this Settlement Agreement and Release of All Claims is intended to be severable. In the event a court or agency of competent jurisdiction determines any term or provision contained in this Settlement Agreement and Release of All Claims to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other terms and provisions in this Settlement Agreement and Release of All Claims and the remainder of the Settlement Agreement and Release of All Claims shall continue in full force and effect, except as provided below.
- b. Notwithstanding the above, in the event a court or agency of competent jurisdiction determines that any of the provisions comprising paragraphs 4.1, 4.2, 4.3, 4.4, 5, 6.1, 6.2, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.9 and 7.10 are held to be illegal, this entire Settlement Agreement and Release of All Claims shall be void.

8.5 Acknowledgment as to Time for Consideration of Offer and Agreement.

Employee acknowledges that he has had a reasonable period of time in which to consider, negotiate and sign this Settlement Agreement and Release of All Claims.

8.6 Acknowledgement That Wages Not at Issue

Employee and City agree that payment of the total of Ninety-Two Thousand Eight Hundred Dollars (\$92,800.00) also constitutes settlement of claims that Employee now has but has not asserted or any other claims that he may have for compensatory or general damages, pecuniary loss or damages of any type including punitive damages, costs and attorney's fees, and does not represent the payment of wages from the City or FPDR to Employee. Neither the City nor the FPDR has withheld any taxes and any tax obligation is the responsibility of the Employee. The Employee needs to seek his own advice for federal and state tax purposes.

9. Prior Agreements Superseded

This Settlement Agreement and Release of All Claims contains the entire agreement of the City, FPDR, Employee and Union, and supersedes all prior or contemporaneous oral or written understandings, statements, representations or promises, and is intended fully to integrate the agreement between Employee, Union, City and FPDR with respect to settlement of the matters described herein.

10. **Attorney Fees**

The Parties agree that they are not and shall not be liable for any of the other party's attorneys' fees or costs incurred in connection with the resolution of the dispute or preparation or execution of this Settlement Agreement and Release of All Claims. The Parties agree and expressly represent that any and all claims for attorney fees arising out of their respective claims are expressly discharged by this Agreement.

11. **Mediation Costs**

FPDR will pay the mediator's fee.

12. **Choice of Law**

This settlement document shall be construed in accordance with and governed by the statutes of common law of the State of Oregon (without regard to choice of law rules). Any disputes now or hereafter arising in connection with the execution or operation of these documents, regardless of whether such disputes arise in contract, tort or otherwise, shall be governed and determined by the applicable laws of the State of Oregon.

13. **Signatures and Certifications**

I, ROCKY BALADA, FURTHER AGREE AND CERTIFY THAT [initial each]:

RMB I HAVE CAREFULLY READ THIS ENTIRE DOCUMENT

RMB I WAIVE MY RIGHT TO HAVE AT LEAST 21 DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT BEFORE SIGNING IT

RMB I HAD AN ADEQUATE OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF MY CHOICE PRIOR TO SIGNING THIS AGREEMENT

RMB NEITHER THE CITY NOR THE FPDR HAS PROVIDED ANY INFORMATION CONCERNING POSSIBLE TAX CONSEQUENCES OF THIS AGREEMENT AND RELEASE OF PAYMENTS THEREUNDER

RMB I INTELLIGENTLY, KNOWINGLY AND VOLUNTARILY AGREE TO THE TERMS OF THIS AGREEMENT AND RELEASE

RMB I AM SIGNING THIS AGREEMENT AND RELEASE VOLUNTARILY AND WITH THE FULL INTENT OF RELEASING THE CITY AND THE FPDR FROM ALL CLAIMS RELATING TO, OR ARISING OUT OF, MY EMPLOYMENT WITH THE CITY OF PORTLAND, AS PROVIDED HEREIN.

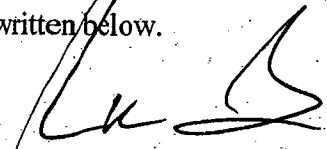
Rocky I UNDERSTAND THAT IF I EVER ASSERT ANY CLAIM AGAINST THE CITY AND/OR THE FPDR ARISING OUT OF MY EMPLOYMENT WITH THE CITY THAT EXISTED OR OCCURRED BEFORE THE EFFECTIVE DATE OF THIS AGREEMENT, THIS AGREEMENT MAY BE PLEADED AS AN ABSOLUTE DEFENSE TO THE CLAIM.

Rocky I UNDERSTAND THIS AGREEMENT COVERS NOT ONLY KNOWN LOSSES AND DAMAGES, BUT ANY FURTHER LOSSES, DAMAGES AND CONSEQUENCES RESULTING FROM ANY TRANSACTION, OCCURRENCE OR CONDUCT OF ANY NATURE THAT OCCURRED PRIOR TO THE EFFECTIVE DATE OF THE AGREEMENT, EVEN IF THEY ARE NOT NOW KNOWN, ANTICIPATED, DEVELOPED OR DISCOVERED.

Rocky NO ONE HAS MADE ANY PROMISE OR REPRESENTATION TO INDUCE ME TO SIGN THIS AGREEMENT THAT IS NOT CONTAINED IN THIS AGREEMENT.

Rocky I HAVE NOT RELIED ON ANY PROMISE OR REPRESENTATION THAT IS NOT CONTAINED IN THIS AGREEMENT IN DECIDING TO SIGN THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the day and year written below.

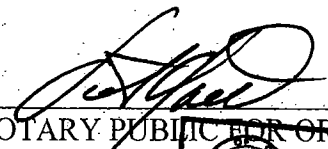


Rocky Balada
Employee

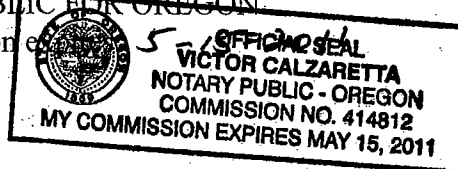
Date: 10/15/08

STATE OF OREGON)
) ss.
County of Multnomah)

SUBSCRIBED AND SWORN TO before me this 15 day of October, 2008
by Rocky Balada.



NOTARY PUBLIC FOR OREGON
My Commission Expires



CITY OF PORTLAND:

Tom Potter
Mayor of the City of Portland

Date: _____

Rosanne M. Sizer
Chief of Police for City of Portland

Date: _____

Anna Kanwit, Deputy Director
Bureau of Human Resources

Date: _____

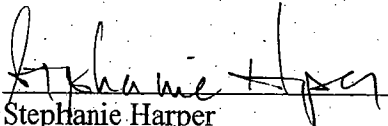
Linda Jefferson, Administrator
Fire and Police Disability and
Retirement Fund

Date: _____

Robert King, President
Portland Police Association

Date: _____

APPROVED AS TO FORM:


Stephanie Harper
Deputy City Attorney

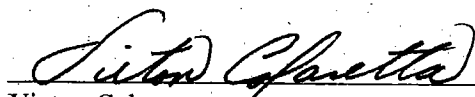
Date: 10-14-08

Damon Vickers
Attorney for FPDR

Date: _____

Will Aitchison
Attorney for Portland Police Association

Date: _____


Victor Calzaretta
Attorney for Rocky Balada

Date: 10-14-08