

Resolution No. 313

WHEREAS, Calvin E. Gantenbein, Jr., a member of the Bureau of Police, applied for service-connected disability benefits (including medical benefits) from the Fire and Police Disability and Retirement Fund (Fund) alleging that he had sustained an injury ((R) C7-T1 spondylosis and herniated disk) which was attributable to work-related events and circumstances occurring on or about March 23, 1998; and

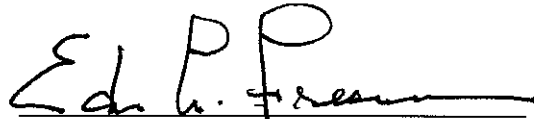
WHEREAS, there is a bona fide dispute as to whether Calvin E. Gantenbein, Jr.'s claim is compensable as a service-connected disability; and

WHEREAS, the Fund and Calvin E. Gantenbein, Jr. desire to settle any and all disputes and terminate all conflicts which exist or may exist between them concerning Calvin E. Gantenbein, Jr.'s claim that his claim is compensable by way of compromise and settlement; and

WHEREAS, a reasonable disposition of this matter under such circumstances can be accomplished pursuant to the terms and conditions of the Agreement and Stipulated Settlement and Release, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof.

NOW, THEREFORE BE IT RESOLVED by the Board of Trustees of the Fire and Police Disability and Retirement Fund that the Fund Administrator is authorized to execute an Agreement substantially in accordance with the Agreement attached hereto as Exhibit "A" on behalf of the Board of Trustees.

ADOPTED by the Board of Trustees on this 9<sup>TH</sup> day of February, 1999.



Edwin L. Freeman  
Fund Administrator

# **AGREEMENT AND STIPULATED SETTLEMENT**

## **AND RELEASE**

### **RECITALS**

WHEREAS, THE FIRE AND POLICE DISABILITY, RETIREMENT AND DEATH BENEFIT PLAN (hereinafter referred to as the "Plan") which is codified as Chapter 5 of the Charter of the City of Portland, Oregon, and the FIRE AND POLICE DISABILITY AND RETIREMENT FUND (hereinafter referred to as the "Fund") were created for the purpose of providing disability, retirement, and death benefits for the members of the Bureau of Fire, Rescue and Emergency Services and Bureau of Police of the City of Portland, Oregon; and

WHEREAS, the Plan delegates the authority and responsibility for supervising and administering the Plan and the Fund to a Board of Trustees (hereinafter referred to as the "Board"); and

WHEREAS, Calvin E. Gantenbein, Jr. (hereinafter referred to as "Gantenbein"), a former member of the Bureau of Police, on or about May 11, 1998 applied for service-connected disability benefits (including medical benefits) from the Fund alleging that he had sustained an injury ((R) C7-T1 spondylosis and herniated disk) which was attributable to work-related events and circumstances occurring on or about March 23, 1998; and

WHEREAS, there is a bona fide dispute as to whether the aforementioned condition(s) and the alleged resulting medical expenses and period of disability are compensable as service-connected disabilities under the plan; and

WHEREAS, the Fund and Gantenbein desire to settle any and all disputes and terminate all conflicts which exist or may exist between them concerning or related to Gantenbein's claim that the above described condition and the alleged medical expenses and period of disability attributable to such condition, are compensable as service-connected disabilities under the Plan, by way of compromise and settlement.

NOW, THEREFORE, it is agreed as follows:

### **AGREEMENT**

1. A. In consideration of Gantenbein's retirement, effective February 1, 1999, (with a retirement benefit computed so as to provide for a death benefit for his surviving

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spouse, if any, at 75 percent of Gantenbein's retirement benefit) and in full, complete and final settlement of any and all claims (except a claim for retirement benefits under Section 5-305 of the Plan) that Gantenbein, his successors, heirs or assigns, have or which may arise against the Fund or the Plan, the Fund hereby agrees to pay to Gantenbein a lump sum payment of \$12,600.00.

B. Medical Bills. The parties stipulate that the following bills have been received by the City of Portland or the Plan from medical providers providing treatment to Gantenbein in connection with the condition described in the recitals hereinabove:

Provider: John F. Gilligan, M.D.  
Service Provided: Office visit and x-ray  
Date of Service: 5/11/98  
Total Amount of Bill: \$185.00

Provider: Body Imaging, P.C.  
Service Provided: MRI cervical spine  
Date of Service: 5/18/98  
Total Amount of Bill: \$1,150.00

Provider: Calvin Tanabe, M.D.  
Service Provided: Consultation  
Date of Service: 6/2/98  
Total Amount of Bill: \$310.00

Provider: St. Vincent's Hospital  
Service Provided: Pre-operative examination  
Date of Service: 6/18/98  
Total Amount of Bill: \$232.15

Provider: Calvin Tanabe, M.D.  
Service Provided: Surgery  
Date of Service: 6/26/98  
Total Amount of Bill: \$3,210.00

Provider: Oregon Anesthesiology Group (Tanith Graham, M.D.)  
Service Provided: Anesthesia  
Date of Service: 6/26/98  
Total Amount of Bill: \$1,127.00

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Provider: St. Vincent's Hospital  
Service Provided: Hospitalization  
Dates of Service: 6/26/98-6/27/98  
Total Amount of Bill: \$8,072.10

Provider: The Radiology Group (James Putnam, M.D.)  
Service Provided: Radiologic examination, spine  
Date of Service: 6/26/98  
Total Amount of Bill: \$18.00

Provider: Therapeutic Associates, Inc. (Jan Jackson, PT; Catherine Sloan, PT)  
Service Provided: Physical Therapy  
Dates of Service: 11/23/98-1/18/99  
Total Amount of Bill: \$3,323.46

Gantenbein stipulates that the preceding bills are the only bills incurred by him for treatment he has received relative to the medical condition described in the recitals hereinabove and he agrees that if any such bills, except the bill from Therapeutic Associates, Inc., are unpaid, they will be his responsibility to either pay or seek payment from sources other than the Plan or the Fund. The bill from Therapeutic Associates, Inc., in the amount of \$3,323.46, will be paid directly by the Fund to Therapeutic Associates, Inc.

Gantenbein further agrees that any unpaid bills other than those listed above will not be the responsibility of the City of Portland, the Plan or the Fund and that any such unpaid bills will be his responsibility to either pay or seek payment from sources other than the Plan, the Fund or the City of Portland.

Gantenbein agrees to indemnify and hold the City of Portland, the Plan and the Fund harmless for any claims or medical services or any payments made by or judgments held by health insurers or other providers for medical services arising out of the condition referred to in the recitals hereinabove.

The parties agree that should this settlement ever be set aside for any reason, the Plan and Fund shall be entitled to full credit for all sums paid pursuant to this settlement,

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with such credit to be applied against any and all obligations that might become due or owing as a result of the setting aside of this Agreement. In the event that Gantenbein should be reinstated to his former position as a Portland Police Officer and commence accruing retirement benefits under the Plan for active service after May 11, 1998, he shall repay to the Fund any retirement benefits which he has received as a result of his retirement pursuant to the terms of this Agreement.

2. Gantenbein agrees that the payments to him and on his behalf as described in paragraph 1 above are in lieu of any and all disability benefits, medical benefits or other sums of money or equitable relief which are or could be claimed by him from the Fund in connection with the medical condition described in the recitals hereinabove. It is expressly understood and agreed that this Agreement is intended to, and does, cover not only all known disability benefits, medical benefits, losses, damages or equitable relief, but any further disability benefits, medical benefits, losses, damages or equitable relief not now known or anticipated which may later develop or be discovered, including all effects and consequences thereof. Gantenbein further agrees that the payment of money to him or on his behalf under the provisions of this Agreement does not in any way or fashion constitute an admission by the City of Portland, the Board, the Plan or the Fund that his claim is compensable under the terms and provisions of the Plan or otherwise or that the medical condition described in the recitals hereinabove or his alleged medical expenses or disability were in any way attributable to his employment as a Portland police officer, and that the parties hereby released deny that the herniated disk and spondylosis ((R) C7-T1 spondylosis and herniated disk) allegedly suffered by Gantenbein arose out of and in the course of his employment as a Portland police officer or that any medical expenses or period of disability allegedly attributable to such conditions are compensable under the terms and provisions of the Plan or otherwise.
3. In consideration of the Fund's payments to him and on his behalf as described in paragraph 1 above, Gantenbein, for himself and for his heirs, successors and assigns, agrees to and does hereby irrevocably release and forever discharge the City of

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Portland, the Board, the Plan and the Fund (including each of their Commissioners, Trustees, employees, agents and representatives, individually and collectively) from any and all causes of actions or claims arising from or in any way related to the medical condition described in the recitals hereinabove. This release and discharge includes but is not limited to, any and all claims Gantenbein has or might have asserted as grievances under the collective bargaining agreement between the City and Gantenbein's union, or as claims in other actions, suits or proceedings that Gantenbein might have brought under the Charter and Code of the City of Portland, Oregon, any local, state or federal statutes, including but not limited to the City of Portland Civil Service Rules, Personnel Rules, Oregon Fair Employment Practices Act (ORS Chapter 659), Title VII of the Civil Rights Act of 1964, the federal Americans with Disabilities Act, the federal Rehabilitation Act of 1973, Oregon Wage and Hour statutes, the federal Fair Labor Standards Act, the Oregon Constitution, the Constitution of the United States or any suit or action under any state or federal law. Notwithstanding the preceding sentence, this Agreement is not intended to preclude any action or claim that Gantenbein might have or make against the City of Portland, its commissioners, employees, agents or representatives under the federal Age Discrimination Employment Act with respect to his termination from employment as a Portland police officer.

4. In consideration of the payments to him and on his behalf referred to in paragraph 1 hereof, Gantenbein hereby withdraws all pending requests for a hearing relative to his application for service-connected disability benefits, with respect to the medical condition described in the recitals hereinabove, and agrees that such claim for service-connected disability benefits (including medical benefits) shall be dismissed by the Board with prejudice. Gantenbein further agrees that the payments to him and on his behalf referred to in paragraph 1 hereof shall be accepted in full and final settlement of all issues raised or which could have been raised with respect to his application for service-connected disability benefits (including medical benefits) and/or the medical condition described in the recitals hereinabove and extinguishes

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any right to future recourse with respect to such claim and/or the medical condition described in the recitals hereinabove.

5. Gantenbein further agrees that the payments to him or on his behalf as described in paragraph 1 hereof shall be in full, final and complete settlement of all claims and rights which he has or which may arise in the future against the City of Portland, the Board, the Plan or the Fund for any wages lost or medical expenses (including hospital expenses) incurred because of the medical condition referred to in the recitals hereinabove. It is also understood and agreed that Gantenbein for himself and for his heirs, successors and assigns, voluntarily waives and relinquishes any and all rights he or they have or may have under the Plan, except as specifically provided in this paragraph 5 and Gantenbein acknowledges and agrees that after he executes this agreement he and his heirs, successors and assigns are ineligible to receive any benefits from the Fund except the retirement benefits provided for by Section 5-305 of the Plan.
6. Gantenbein understands and expressly agrees that if he ever asserts any claim, action or suit against the Fund, the Plan, the City of Portland, the Board, or their respective commissioners, trustees, employees, agents or representatives, arising out of or concerning the subject matter of this Agreement, the Fund, the Plan, the Board, the City of Portland, and their respective commissioners, trustees, employees, agents and representatives 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 Agreement shall be construed so as to allow the Fund, the Plan, the City, the Board, and their respective commissioners, trustees, employees, agents, and representatives to use in their defense any and all matters, evidence, testimony, documentation, and records that exist or existed prior to the execution of this settlement.
7. GANTENBEIN FURTHER STIPULATES AND CERTIFIES THAT HE HAS READ THIS DOCUMENT IN ITS ENTIRETY AND FULLY UNDERSTANDS THE MEANING AND EFFECT, BOTH PRESENT AND FUTURE, OF THIS DOCUMENT AND THAT HIS QUESTIONS HAVE BEEN FULLY AND

COMPLETELY ANSWERED, THAT NO FURTHER QUESTIONS REMAIN, THAT HE HAS HAD SUFFICIENT TIME TO INTELLIGENTLY, KNOWINGLY, AND VOLUNTARILY ENTER INTO THIS AGREEMENT AND DOES IN FACT INTELLIGENTLY, KNOWINGLY, AND VOLUNTARILY AGREE TO THE TERMS CONTAINED HEREIN.

8. THE TERMS SET FORTH HEREIN IN THE 7 PARAGRAPHS IMMEDIATELY PRECEDING THIS PARAGRAPH ARE CONTRACTUAL AND NOT A MERE RECITAL.

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

\_\_\_\_\_  
Calvin E. Gantenbein, Jr.

Date \_\_\_\_\_

BOARD OF TRUSTEES OF THE FIRE AND  
POLICE DISABILITY AND RETIREMENT FUND

By \_\_\_\_\_  
Edwin L. Freeman  
Fund Administrator

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
William R. Selby  
Senior Deputy City Attorney  
Of Attorneys for the Board of Trustees,  
Fire and Police Disability and Retirement Fund

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