

**LETTER OF AGREEMENT**  
**By and Between**  
**MUNICIPALITY OF ANCHORAGE (MOA)**  
**and the**  
**ANCHORAGE POLICE DEPARTMENT EMPLOYEES ASSOCIATION, APDEA**  
**APDEA-0013**

**Re: Calculation of Overtime Pay, APDEA Grievances 10-14 and 12-3**

**Recitals**

- A. This Agreement is intended to resolve any and all issues raised in APDEA grievances 10-14 and 12-3.
- B. The parties recognize that there is a dispute under Article VII, Section 2 of the current collective bargaining agreement as to: (1) the application of the "regular rate of pay" for overtime under Article VII, Section 2 of the current collective bargaining agreement; and (2) the method of calculating the "denominator" of the "regular rate of pay" for overtime purposes under the FLSA and Article VII, Section 2 of the current collective bargaining agreement.
- C. Article VII, Section 2 of the current collective bargaining agreement states in pertinent part:

"All work in excess of eight (8) hours per day or in excess of ten (10) hours per day for those working four-tens (4-10's) or forty (40) hours per week shall be paid for at the overtime rate of pay of one and one-half (1-½) times the regular rate of pay."

- D. The "regular rate of pay" is often expressed as the following fraction:

$$\frac{\text{remuneration for employment}}{\text{hours worked}} = \text{regular rate of pay}$$

**Agreement**

The parties agree as follows:

1. Where the term "regular rate of pay" is used in Article VII, Section 2 of the current collective bargaining agreement, the MOA will apply the "regular rate of pay" when paying overtime only when an APDEA member works more than 40 hours in a workweek. Paid leave (including, but not limited to, holidays, vacation,

military leave, jury duty, and sick leave) is not "hours worked" for the purpose of meeting the 40-hour workweek threshold.

2. Where the term "regular rate of pay" is used in Article VII, Section 2 of the current collective bargaining agreement, the MOA will use the higher of the following two rates of pay in paying overtime when an APDEA member works fewer than 40 hours in a workweek, excluding paid leave: the factored rate of pay or working out of class / acting rate of pay.
3. In calculating the "regular rate of pay" for overtime under the FLSA and Article VII, Section 2 of the current collective bargaining agreement, the MOA will allow the "denominator" of the regular rate of pay fraction to "float" by including all hours worked in a workweek.
4. The MOA shall pay two hundred and fifty thousand dollars (\$250,000.00) to the APDEA and its members as wages claimed in the above-mentioned grievances and as costs and fees incurred by the APDEA. The payment to employees is for unpaid overtime compensation due to the alleged miscalculation of the "regular rate of pay" for the period of time between November 24, 2008 and March 13, 2011. A minimum payment in the amount of \$50.00 is being made to certain employees as a projection of underpaid overtime compensation, but is not directly attributable to hours worked. These settlement funds will be distributed to current and former APDEA members as wages by payroll checks in the amounts indicated in Exhibit A as determined by APDEA and to the APDEA through an accounts payable check in amounts directed by APDEA. Payment will be made within 30 days of assembly approval. Retired APDEA members who receive a back pay check shall not receive 401(k) or 457 contributions from the MOA.

In entering into this Agreement, the MOA makes no representation as to PERS treatment of the settlement wages set forth in Paragraph 4 of this Agreement as pensionable funds. The MOA, in coordination with APDEA, will submit this final agreement to the State of Alaska Division of Retirement and Benefits for a determination of whether the settlement wages set forth in Paragraph 4 of this Agreement are pensionable funds.

5. The APDEA has paid the arbitrator's cancellation fee.
6. Pursuant to AMC 3.70.130(B), this Agreement shall not extend beyond the term of the current collective bargaining agreement and shall remain in effect until a successor collective bargaining agreement is negotiated or reached through the dispute resolution process set forth in AMC 3.70.

Pursuant to AMC 3.70.130 D., each and every collective bargaining contract, agreement, modification, written interpretation, or other change, alteration or amendment, no matter how denominated, shall include a summary of requirements and remedial provisions, and the certification under oath or affirmation by each duly





CLERK'S OFFICE

APPROVED As Amended

Date: 1-28-14

AM 41-2014(A) was amended and approved 1-24-18

**ANCHORAGE, ALASKA  
AR No. 2014-16**

Submitted by: Chair of the Assembly at the  
Request of the Mayor  
Prepared by: Department of Law  
For reading: January 14, 2014

1 | **A RESOLUTION APPROVING LETTER OF AGREEMENT APDEA-0013 BETWEEN**  
2 | **THE MUNICIPALITY OF ANCHORAGE AND THE ANCHORAGE POLICE**  
3 | **DEPARTMENT EMPLOYEES ASSOCIATION RESOLVING TWO GRIEVANCES**  
4 | **AND CLARIFYING CONTRACT LANGUAGE TO CONFORM TO MUNICIPAL**  
5 | **PRACTICE.**

6 | \_\_\_\_\_  
7 |  
8 | **WHEREAS**, since at least 1999, the Municipality has calculated overtime using both  
9 | a contractual rate and a statutory rate as applicable;

10 |  
11 | **WHEREAS**, a bona fide dispute has arisen regarding the use of two rates and the  
12 | calculation of the statutory rate resulting in two grievances, (APDEA 10-14 and 12-3);

13 |  
14 | **WHEREAS**, these disputes involve Article VII, section 2, of the APDEA collective  
15 | bargaining agreement and are unique to that contract; and

16 |  
17 | **WHEREAS**, an agreement has been reached with APDEA to allow the Municipality to  
18 | continue its present methods of calculating overtime without incurring any added cost  
19 | of re-programming its payroll systems or re-calculating a number of years of claimed  
20 | overtime deficiencies on a paycheck to paycheck basis; now, therefore,

21 |  
22 | **THE ANCHORAGE ASSEMBLY RESOLVES:**

23 |  
24 | **Section 1.** Letter of Agreement, APDEA-0013 attached as Exhibit A, is hereby  
25 | approved.

26 |  
27 | **Section 2.** This resolution shall be effective immediately upon passage and  
28 | approval by the Assembly.

29 |  
30 | PASSED AND APPROVED by the Anchorage Assembly this 28th day of  
31 | January, 2014.

32 |  
33 |  
34 | Ernest Hall  
35 | Chair of the Assembly

36 |  
37 | ATTEST:

38 |  
39 | Barbara A. Jones  
40 | Municipal Clerk  
41 |  
42 |  
43 |



**MUNICIPALITY OF ANCHORAGE**  
**ASSEMBLY MEMORANDUM**

No. AM 41-2014

Meeting Date: January 14, 2014

*See AM 41-2014(A)*

1 **From:** MAYOR

2  
3 **Subject:** A RESOLUTION APPROVING LETTER OF AGREEMENT APDEA-  
4 0013 BETWEEN THE MUNICIPALITY OF ANCHORAGE AND THE  
5 ANCHORAGE POLICE DEPARTMENT EMPLOYEES  
6 ASSOCIATION RESOLVING TWO GRIEVANCES AND  
7 CLARIFYING CONTRACT LANGUAGE TO CONFORM TO  
8 MUNICIPAL PRACTICE.  
9

10 Letter of Agreement APDEA-13 resolves two outstanding grievances between the  
11 Municipality of Anchorage (MOA) and The Anchorage Police Employees  
12 Association (APDEA). See Exhibit A – LOA APDEA-13 (employee names and  
13 compensation omitted). This grievance resolution allows the Municipality to  
14 continue its present methods of calculating overtime without incurring any added  
15 costs of re-programming MOA payroll systems or re-calculating a number of years  
16 of claimed overtime deficiencies on a paycheck to paycheck basis.  
17

18 The two grievances, APDEA 10-14 and 12-3, are based on contractual questions of  
19 how to calculate the rate of pay used to pay overtime compensation. The specific  
20 issues raised in the grievances are described in LOA APDEA-13 and involve  
21 application of disputed federal wage and hour calculations and definitions applied to  
22 contractual language. The method by which overtime rates of pay are calculated is  
23 defined by the Fair Labor Standards Act (FLSA) and the collective bargaining  
24 agreement (CBA). There is disagreement as to whether these two sources say  
25 exactly the same thing about how the rate of pay for overtime calculations should be  
26 made for APDEA employees. Additionally, there is the issue of past practice and  
27 whether prior methodologies must remain in place even if they are at odds with  
28 some (but not all) of the aforementioned sources. This settlement stops the  
29 disagreement short of expensive and risky arbitration, compensates employees for  
30 perceived losses in the past, allows the MOA to continue with its method of  
31 calculation for overtime compensation, and precludes additional contests on this  
32 matter in the future.  
33

34 The Administration disputes all of APDEA's claims as payroll practices for  
35 calculating overtime have been consistent since at least 1999 and are correct by  
36 Federal Department of Labor guidelines. There is however a bona fide dispute as to  
37 whether APDEA or its membership were reasonably aware of the MOA practices  
38 and methodology prior to these grievances.  
39

40 If the MOA was found to have violated the Collective Bargaining Agreement,  
41 APDEA was alleging five years of payroll errors going back to 2008. The alleged

1 errors are generally only a few cents on each hour worked. However, based on the  
2 size of the APDEA work group, the cumulative exposure could exceed \$100,000 a  
3 year. Further, the administrative costs for calculating damages and or re-  
4 programming MOA payroll software are estimated to exceed \$250,000 each. Thus,  
5 even a compromise verdict in arbitration could be extremely expensive.  
6

7 Although the administration strongly emphasizes that current payroll processes are  
8 legally and contractually correct, a good faith dispute exists. A business decision  
9 was made to settle this matter to provide certainty and to avoid the potential costs of  
10 an adverse verdict.  
11

12  
13 **THE ADMINISTRATION RECOMMENDS APPROVAL.**  
14

15 Prepared by: William A. Earnhart, Assistant Municipal Attorney  
16 Approved by: Mark Mew, Police Chief  
17 Fund Certification: Lucinda Mahoney, CFO  
18 Non Encumbering – Various Accounts  
19 2013 Police Operating Budget  
20 Not to Exceed \$250,000  
21 Concur: Dennis A. Wheeler, Municipal Attorney  
22 Concur: George J. Vakalis, Municipal Manager  
23 Respectfully submitted: Daniel A. Sullivan, Mayor  
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