

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NICK SUNYAK, *et al.*, : Case Nos.: 1:11-CV-445
 : 1:12-CV-329
Plaintiffs, :
 : Judge Michael R. Barrett
v. :
 :
CITY OF CINCINNATI, *et al.* :
 :
Defendants. :
 :
(City of Cincinnati Pension Litigation) :

**ORDER GRANTING JOINT MOTION FOR PRELIMINARY APPROVAL OF
PROPOSED AMENDMENTS TO COLLABORATIVE SETTLEMENT AGREEMENT,
SETTLEMENT ORDER, AND CONSENT DECREE**

WHEREAS, the Court entered an Opinion and Order (Doc. #100) (“Settlement Order”) on October 5, 2015, which granted final approval of a class action settlement (Doc. #100-1) (“Collaborative Settlement Agreement” or “CSA”) intended to resolve certain litigation, including litigation pending in this Court;

WHEREAS, the Court authorized and approved the entry of a consent decree (Doc. #105) (“Consent Decree”) on November 20, 2015, which adopted and incorporated the terms of the CSA in its entirety;

WHEREAS, Paragraph 62 of the CSA governs “Modification” and provides that the CSA may “only be modified in writing and with consent of the Parties, subject to the approval of the Court or by order of the Court”;

WHEREAS, pursuant to Paragraph 62 of the CSA, the Parties consent to the modification of the CSA and have provided their written consent through their Joint Motion for Preliminary Approval of Proposed Amendments to Collaborative Settlement Agreement, Settlement Order, and Consent Decree (“Joint Motion”) filed by Plaintiffs Nick Sunyak, Jeffrey Harmon, Kim Kappel, Finley Jones, and Richard Ganulin, on behalf of themselves and the Current Employees Class they represent; Plaintiffs Thomas A Gamel, Sr., Mark K. Jones, Ely Ryder, Constance M. Roesch, Carol Walker, and Steven Dietrich, on behalf of themselves and the Retirees Class they represent; the American Federation of State and Municipal Employees Ohio Council No. 8 (“AFSCME”); the City of Cincinnati (“City”), the Cincinnati Retirement System (“CRS”), Mayor Aftab Pureval (“Mayor”), and City Manager Sheryl Long (“City Manager”) (all persons above listed comprising the “Parties” to the CSA), which Joint Motion is now before the Court;

WHEREAS, the Parties propose to replace Paragraph 17 of the CSA, as approved and adopted by the Court in the Settlement Order and Consent Decree, with the following:

17. Employee Contributions: Pension contributions made by Current Employees Class members shall be increased from nine percent of pensionable wages to ten percent of pensionable wages in four annual increments of 0.25 percent of pensionable wages with the first increase being effective as of the pay period that includes July 1, 2026, and the three subsequent increases being effective as of the pay periods that include (i) July 1, 2027, (ii) July 1, 2028, and (iii) July 1, 2029, respectively. Pension contributions made by Current Employees Class members shall not exceed ten percent of pensionable wages during the term of the Consent Decree, subject to this Agreement and the Consent Decree. Any reduction in pension contributions may not adversely affect benefits as defined in this Agreement for the members of the Current Employees Class and the Retirees Class.

WHEREAS, the Parties propose to replace Paragraph 19 of the CSA, as approved and adopted by the Court in the Settlement Order and Consent Decree, with the following:

19. City’s Annual Contribution to the CRS Pension Trust Fund:

- i. Subject to the provisions in subsection (ii) below, the City shall contribute to the CRS Pension Trust Fund no less than 19.25 percent of Covered

Payroll beginning as of the pay period that includes July 1, 2026, and continuing annually for the duration of the Consent Decree (30 years commencing November 20, 2015), notwithstanding any contrary calculations claimed by any Party or non-party under any provision of the CMC or any other basis.

- ii. The City's 19.25 percent required minimum annual contribution to the CRS Pension Trust Fund as described in subsection (i) above shall be adjusted on the first day of the City's fiscal year (i.e., July 1) as follows:
 - a. In the third quarter of the City's preceding fiscal year (i.e., January to March), the CRS shall cause its actuary to issue a report indicating the projected Funded Ratio of the CRS Pension Trust Fund as of the year 2049.
 - i. If the report indicates that the projected Funded Ratio will meet or exceed 100 percent in 2049, no adjustment to the City's required minimum annual contribution to the CRS Pension Trust Fund shall be required.
 - ii. If the report indicates that the projected Funded Ratio will fall below 100 percent in 2049, the City's required minimum annual contribution to the CRS Pension Trust Fund shall be increased by 0.75 percent of Covered Payroll for the duration of the Consent Decree.
 - iii. No more than three 0.75-percent increases shall be applied to the City's required minimum annual contribution as described above, and in no event shall the City's required minimum annual contribution exceed 21.5 percent of Covered Payroll.
 - b. In the event the CRS Pension Trust Fund achieves an actual (not estimated) 100-percent Funded Ratio prior to the termination of the Consent Decree as reflected in the annual actuarial valuation prepared by the actuary for CRS ("CRS Annual Valuation"), the City's required minimum annual contribution to the CRS Pension Trust Fund shall be no less than the Net Normal Cost of operating the plan as reflected in the CRS Annual Report.
 - i. "Net Normal Cost" is the actuarial present value of (i) the projected retirement benefits, excluding healthcare benefits, accruing to CRS members in the upcoming plan year, plus (ii) the administrative expense of operating the System in the upcoming plan year, less (iii) expected employee contributions in the upcoming plan year.

- ii. The Net Normal Cost shall be calculated by CRS's actuary under the actuarial cost method and reported in the CRS Annual Valuation.
- iii. The terms "actuarial present value" and "actuarial cost method" shall have the same meaning as provided in the Actuarial Standards Board's Actuarial Standard of Practice No. 4.

WHEREAS, the Parties propose to replace Paragraph 20 of the CSA, as approved and adopted by the Court in the Settlement Order and Consent Decree, with the following:

20. Additional Contributions to the CRS Pension Trust Fund:

- i. No later than July 31, 2026, the City shall make an additional one-time contribution of \$50 million to the CRS Pension Trust Fund. In addition, the City shall cause its restricted funds as listed in the City's approved biennial budget to make annual contributions to the CRS Pension Trust Fund for the duration of the Consent Decree, which contribution the City may apportion among its restricted funds in its sole discretion. The initial restricted-fund payment shall be \$1.5 million and paid no later than July 31, 2026. Subject to provisions of subsections (a)-(c) below, subsequent annual payments shall be increased by five percent on an annually compounding basis and shall be paid no later than July 31 of each year.
 - a. In the third quarter of the City's preceding fiscal year (i.e., January to March), the CRS shall cause its actuary to issue a report indicating the projected Funded Ratio of the CRS Pension Trust Fund as of the year 2049.
 - b. If the report indicates that the projected Funded Ratio will meet or exceed 100 percent in 2049, the City shall not be required to pay the annual restricted fund contribution in its upcoming fiscal year.
 - c. If the report indicates that the projected Funded Ratio will fall below 100 percent in 2049, the City shall pay the annual restricted fund contribution required by Section 20(i) in its upcoming fiscal year.
- ii. The City, recognizing the risk typically borne by the employer in a defined benefit plan, shall contribute to the CRS Pension Trust Fund an additional three percent of Covered Payroll for three consecutive years before requesting an Annual Minimum Funded Ratio Re-opener as defined in Paragraph 35 (iii) of this Agreement. Following that three-consecutive-year supplemental contribution, the City may seek an Annual Minimum Funded Ratio Re-opener only if the City complies with the requirements

of the Annual Minimum Funded Ratio Re-opener set forth in Paragraph 35 (iii) for the term of this Agreement.

- iii. If the City sells an asset or privatizes any City service or otherwise transfers or loses a City function which results in a reduction of total Covered Payroll, the City shall provide or secure funding for any remaining pension and healthcare liabilities to remedy any impact on the CRS.
- iv. Recognizing the need for additional case contributions, the City shall make an additional contribution equal to or greater than the remaining liability on the Early Retirement Incentive Program (ERIP) through a judgment or settlement bond with the consent of the Parties and the Court or continue current required payments.

WHEREAS, the Court has reviewed the Parties' Joint Motion and memorandum in support, the proposed amendments to the CSA, Settlement Order, and Consent Decree, and the record in this case, and finds the Parties' Joint Motion to be well-founded.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Court preliminarily approves the proposed amendments to the CSA, Settlement Order, and Consent Decree as serving the best interest of the City, the CRS, and the members of the Current Employees Class and the Retirees Class in light of the purposes, objectives and goals of the CSA and the Consent Decree, as permitted by Paragraph 62 of the CSA, and as fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23, subject to further consideration thereof at the fairness hearing provided for below.

2. The Court approves the Parties' proposed notice program. The Court finds that the proposed notice program is reasonably calculated to apprise class members of their right to object, constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, is the best notice practicable under the circumstances, and meets all applicable requirements of the Federal Rules of Civil Procedure, due process, and any other applicable law. The City shall issue class notice to the Current Employees Class members and the Retirees Class members informing them

of the terms of these proposed amendments to the CSA and Consent Decree and that the Court will conduct a fairness hearing on **May 18, 2026, at 3 p.m.** This notice shall be primarily by electronic means (e.g., email) and shall inform the members of the two Classes that they may attend the fairness hearing in person. For those Current Employee Class members or Retirees Class members without known access to electronic mail or for whom the City does not have a valid email address, the notice shall be sent by regular United States mail. The notice shall also be posted on the City's and CRS's retirement website. The notice shall be sent via email (or, in the case of regular US mail, delivered to the US postal service) no later than March 19, 2026. The City shall cover the cost associated with issuing this notice.

3. If any member of the Current Employees Class or the Retirees Class wishes to object to the proposed amendments, they shall mail their objections to the addresses listed below postmarked on or before April 20, 2026. Counsel for the Parties may file a response to any timely objections on or before May 4, 2026.

Potter Stewart U.S. Courthouse
Attention: Clerk of Courts
100 East Fifth Street, Room 103
Cincinnati, Ohio 45202

Emily Smart Woerner (0089349)
Marion E. Haynes III (0080671)
Room 214, City Hall
801 Plum Street
Cincinnati, Ohio 45202
E-mail: emily.woerner@cincinnati-oh.gov
E-mail: marion.haynes@cincinnati-oh.gov

Jeffrey S. Goldenberg
Goldenberg Schneider, LPA
4445 Lake Forest Drive, Suite 490
Cincinnati, Ohio 45242
Email: jgoldenberg@gs-legal.com

Peter J. O'Shea
Katz Teller
255 East Fifth Street, Suite 2400
Cincinnati, Ohio 45202
Email: poshea@katzteller.com

Kimm A. Massengill-Bernardin
General Counsel
Ohio Council 8, AFSCME, AFL-CIO
6800 North High Street
Worthington, Ohio 43085-2512
Email: kmassengillbernardin@afscme8.org

4. The fairness hearing shall commence on May 18, 2026, at 3 p.m. in Courtroom 109, 100 East Fifth Street, Cincinnati, Ohio 45202. At the fairness hearing, the Parties will request that the Court, among other things, (a) approve the proposed amendments as final, fair, reasonable, adequate, and binding on all Class Members; and (b) direct the Parties and their Counsel to amend the CSA and Consent Decree accordingly. Members of the two Classes may attend the fairness hearing in person.

5. Except to the extent the Court grants final approval of the proposed amendments following the fairness hearing, the terms of the CSA, Settlement Order, and Consent Decree will continue in full force and effect for the duration of the Consent Decree (30 years commencing November 20, 2015).

6. The Court retains continuing and exclusive jurisdiction over the Parties for the duration of the Consent Decree (30 years commencing November 20, 2015) as to all matters relating to the administration, consummation, enforcement, and interpretation of the CSA, Settlement Order, and Consent Decree and for any other necessary purposes related thereto, including the entry of any additional order as may be necessary and appropriate.

