

CITY OF PONTIAC
OFFICE OF THE EMERGENCY MANAGER
LOUIS H. SCHIMMEL

47450 Woodward Avenue
Pontiac, Michigan 48342
Telephone: (248) 758-3133
Fax: (248) 758-3292

Dated: July 24, 2013

ORDER NO. S-303

RE: Supervisory & Administrative Employees Association, Contract Provision Termination, Retiree Health, Dental, Life, Disability, Optical, and Hearing Insurance

**TO: Sherikia Hawkins, City Clerk
John Naglick, Finance Director**

The Local Financial Stability and Choice Act (Act 436 of 2012/MCL 141.15411, et. seq.) in Section 10 empowers an Emergency Manager to issue orders to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government a Manager considers necessary to accomplish the purposes of the Act and any such orders are binding on the local elected and appointed officials and employees, agents, and contractors of the local government to whom they are issued.

Section 12(1) of the Act provides that “[a]n emergency manager may take 1 or more of the following additional actions with respect to a local government that is in receivership, notwithstanding any charter provision to the contrary: **(g)** Make, approve or disapprove any appropriation, contract, expenditure...; **(k)** Subject to section 19, after meeting and conferring with the appropriate bargaining representative and, if in the emergency manager’s sole discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained, reject, modify, or terminate 1 or more terms and conditions of an existing collective bargaining agreement. The rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement under this subdivision is a legitimate exercise of the state’s sovereign powers if the emergency manager and the state treasurer determine that all of the following conditions are satisfied...; **(l)** Act as sole agent of the local government in collective bargaining with employees or representatives and approve any contract or agreement; **(ee)** Take any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government. The power of the emergency manager shall be superior to and supersede the power of any of the foregoing officers or entities....”

The City engaged in good faith collective bargaining with the Supervisory & Administrative Employees Association, (SAEA). The City met with the SAEA representatives on March 28, 2013. At this time, due to the resistance of the SAEA to the City’s efforts to

bargain and effectuate these insurance plan changes concerning health insurance, dental insurance, life insurance, disability insurance, optical insurance, and hearing insurance for the retirees, the action permitted under Section 12(1)k is necessary.

On May 22, 2013, I requested that the State Treasurer concur in my determination under Section 12(1)k of the Local Fiscal Stability and Choice Act, Public Act 436 of 2012 (Act) to allow termination of those sections of the Collective Bargaining Agreement with the unions listed above concerning health insurance, dental insurance, life insurance, disability insurance, optical insurance, and hearing insurance for the retirees due to the fact, because of the unwillingness of the SAEA to negotiate for these changes, a prompt and satisfactory resolution of the outstanding issues is unlikely to be obtained.

As stated in the May 22, 2013, correspondence to the State Treasurer, in my sole discretion and judgment, and due to the unwillingness of the Teamsters to negotiate for these changes, a prompt and satisfactory resolution of outstanding issues is unlikely to be obtained. Therefore, I determined that the four conditions of Section 12(1)k of the Act had been satisfied.

On July 23, 2013, the State Treasurer concurred with my determination and made his separate determination (see attached) that the four conditions of Section 12(1)k of the Act had been satisfied.

It is hereby ordered:

- I. By operation of law, as provided in Section 12(1)k of the Act, pursuant to the determinations made by me and the State Treasurer, the sections of the Collective Bargaining Agreement with the City and the unions listed above concerning only the retirees* entitled to the benefits as described below and to the extent the retirees are eligible and currently receive the benefits of health insurance, dental insurance, life insurance, disability insurance, optical insurance, and/or hearing insurance have been terminated and replaced with the following:

Healthcare

All City of Pontiac funded health and prescription drug insurance for retirees* is eliminated effective September 1, 2013 for fiscal years ending June 30, 2014 and June 30, 2015, or for so long as the City remains in receivership, whichever is longer.

Dental Care

All City of Pontiac funded dental insurance for all retirees is eliminated effective September 1, 2013 for fiscal years ending June 30, 2014 and June 30, 2015, or for so long as the City remains in receivership, whichever is longer.

***Unless otherwise noted, retirees shall include both eligible spouses of retirees as well as eligible dependent.**

Life, Disability, Vision and Hearing

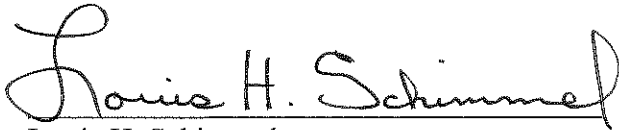
All City of Pontiac funded life, disability, vision and hearing coverage for all retirees is eliminated for fiscal years ending June 30, 2014 and June 30, 2015, or for so long as the City remains in receivership, whichever is longer.

- II. The Finance Director is directed to take all steps necessary to advise the retirees of this order and the various insurance options that may be available to them at their expense.

The Order shall have immediate effect.

Copies of the documents referenced in this Order are to be maintained in the offices of the City Clerk and may be reviewed and/or copies may be obtained upon submission of a written request consistent with the requirements of the Michigan Freedom of Information Act and subject to any exemptions contained in that state statute and subject to any exemptions allowed under that statute (**Public Act 442 of 1976, MCL 15.231, et. seq.**).

This order is effective as indicated and is necessary to carry out the duties and responsibilities required of the Emergency Manager as set forth in the Local Financial Stability and Choice Act (Act 436 of 2012/MCL 141.15411, et. seq.) and the contract between the Local Emergency Financial Assistance Loan Board and the Emergency Manager.



Louis H. Schimmel
City of Pontiac
Emergency Manager

cc: State of Michigan Department of Treasury
Mayor Leon B. Jukowski
Pontiac City Council



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

ANDY DILLON
STATE TREASURER

July 23, 2013

Louis H. Schimmel, Emergency Manager
City of Pontiac
47450 Woodward Avenue
Pontiac, MI 48342

Dear Mr. Schimmel:

Thank you for your May 22, 2013, letter, a copy of which is enclosed for reference. As the Emergency Manager for the City of Pontiac, you have asked for my concurrence with your determination to modify the most recent collective bargaining agreement for all retirees of the Supervisory and Administrative Employees Association, pursuant to Public Act 436, the Local Financial Stability and Choice Act. The proposed modification would affect retiree healthcare and dental, life, disability, optical, and hearing insurance coverage for the fiscal years of the City ending June 30, 2014 and June 30, 2015, or for so long as the City remains in receivership, whichever is longer. I note that the Local Emergency Financial Assistance Loan Board approved your proposal on July 15, 2013.

As you are aware, the City is facing a broad, generalized economic problem, as illustrated by the following statistics:

1. The City lost approximately 42 percent of its tax base from 2010 to 2013. Due to restrictions in the Michigan Constitution upon property tax increases, even as economic conditions improve, the City will be able to recover its tax base only at the annual rate of 5 percent or inflation, whichever is less.
2. City general fund property tax revenue decreased from \$12.9 million in fiscal year 2007 to \$9.1 million in fiscal year 2012.
3. City income tax revenue decreased from \$13.5 million in fiscal year 2007 to \$9.7 million in fiscal year 2012.
4. While City general fund expenditures decreased from \$56.1 million in fiscal year 2007 to \$40.0 million in fiscal year 2012, general fund revenues decreased during the same period from \$54.2 million to \$38.7 million.
5. The City has a residential housing vacancy rate of 18 percent (per the 2010 Census compared to an 8 percent vacancy rate per the 2000 Census) and more than 4,700 vacant buildings.
6. The City population declined by 11 percent between 2000 and 2012, decreasing by 7,478 from 67,653 to 60,175.

Louis H. Schimmel
July 23, 2013
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Section 12(1)(k) of the Local Financial Stability and Choice Act authorizes emergency managers to reject, modify, or terminate one or more terms and conditions of an existing collective bargaining agreement. In order to do so, however, an emergency manager and the State Treasurer both must determine that the following four conditions of Section 12(1)(k) have been satisfied:

- (i) The financial emergency in the local government has created a circumstance in which it is reasonable and necessary for the state to intercede to serve a significant and legitimate public purpose.
- (ii) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is reasonable and necessary to deal with a broad, generalized economic problem.
- (iii) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.
- (iv) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.


I have reviewed your determination in this regard and agree that all four statutory conditions have been satisfied. In particular, I find that:

1. The financial emergency in the City is such that it is reasonable and necessary for the State to intercede in this instance to serve a significant and legitimate public purpose.
2. The proposed modification of the collective bargaining agreement as to retiree healthcare, dental, life, disability, optical, and hearing insurance coverage is reasonable and necessary to help address the City's broad, generalized financial emergency.
3. The modification of the collective bargaining agreement is critical to resolve the City's general fund deficits projected for the fiscal years of the City ending June 30, 2014 and June 30, 2015.
4. The proposed modification of the collective bargaining agreement is limited to the fiscal years of the City ending June 30, 2014 and June 30, 2015, or for so long as the City remains in receivership, whichever is longer, involves all retirees, is temporary, and does not target specific classes of employees.

Louis H. Schimmel
July 23, 2013
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Therefore, pursuant to Section 12(1)(k) of the Act, I have also determined that the above statutory conditions have been satisfied, that the proposed modification to the collective bargaining agreement is necessary and appropriate and a legitimate exercise of the State's sovereign powers. In addition, any request previously submitted and approved pursuant to Section 19(1)(k) of former Public Act 4 of 2011, the Local Government and School District Fiscal Accountability Act, is reaffirmed.

Sincerely,



Andy Dillon
State Treasurer

Enclosure



CITY OF PONTIAC
OFFICE OF THE EMERGENCY FINANCIAL MANAGER
LOUIS H. SCHIMMEL

47450 Woodward Avenue
Pontiac, Michigan 48342
Telephone: (248) 758-3133
Fax: (248) 758-3292

May 22, 2013

Hon. Andrew Dillon
Treasurer
State of Michigan
Michigan Department of Treasury
Lansing, MI 48922

Re: **City of Pontiac / Action Under Section 12(1)(k) of PA 436 of 2012**
of the Local Financial Stability and Choice Act
Related to retiree healthcare, future new hire retiree benefits, and pension plan
Supervisory & Administrative Employees Association (SAEA)

Dear Treasurer Dillon:

During the course of my work as Emergency Manager of the City of Pontiac, I have worked diligently to reduce the cost of retiree healthcare and other post employment benefits. During the course of these efforts, I have worked with Meadowbrook Insurance in reviewing the various health and dental insurance plans provided to retirees. In December of 2011, I sought from you the authority to consolidate retiree healthcare into one policy that would increase co-pays and deductibles and that would provide the same coverage as active employees. You granted that request and I issued an order to change the health and dental insurance of retirees who were members of the SAEA at the time of their retirement (Order S-130 Revised). The revised health and dental insurance coverage has been paid by the City for the benefit of these retirees and others since February, 2012.

I have also successfully negotiated with the remaining active union (Teamsters) to eliminate health and dental insurance coverage upon retirement for new hires and I have successfully negotiated the closing of the GERS defined benefit pension plan to new hires and established a less expensive defined contribution pension plan than previously offered by the City.

I have made significant progress in reducing the expenses of the City since the time of my appointment as the Emergency Manager of the City. As part of my initiatives to reduce expenses, I have continued to work with Meadowbrook Insurance to assess the costs of retiree health and dental

insurance. However, I have come to the conclusion that over the next two years the City cannot afford the cost of this insurance for the following reason:

It is anticipated that the City deficit for Fiscal Year 2014 will be \$6 million and for Fiscal Year 2015 the deficit will be \$6.5 million if there are no further changes to the City's retiree health and dental insurance obligations (see Exhibit A attached).

This correspondence is to advise you that in my capacity as Emergency Manager of the City of Pontiac, I am seeking to invoke the action allowed under Section 12(1)(k) regarding collective bargaining agreements as provided in the Local Financial Stability and Choice Act. Section 12(1)(k) of the Act provides that both the Emergency Manager and the State Treasurer shall determine that four conditions are satisfied in order to allow modification of an existing collective bargaining agreement.

I am seeking to modify the existing Collective Bargaining Agreement dated August 9, 2012, for the period July 1, 2012 through June 30, 2016 between the City of Pontiac and the SAEA, which, pursuant to applicable labor laws, remains in full force and effect to the current date. The modifications would allow the City to terminate those sections of the collective bargaining agreement with SAEA concerning health, dental, life, disability, optical and hearing insurance for the retirees for a period of the two Fiscal Years ending June 30, 2014 and June 30, 2015, or for the period of the City's receivership under Public Act 436, whichever is longer. On December 16, 2011, I previously requested that you concur with my determination under Section 19(k) of Public Act 4 to allow for modification of the health and dental insurance offered to retirees and for the elimination of the life, disability, vision and hearing insurance for the retirees. On December 20, 2011, you concurred with my determination and made your own determination that the four conditions of Section 19(k) of the Act had been satisfied. Following those determinations, I revised the sections of the collective bargaining agreement dealing with retiree post-employment benefits and implemented revised health and dental insurance for this group. In addition, I terminated the disability, vision and hearing insurance for retirees and modified the life insurance coverage to a lower level per covered individual. While this request specifically deals with the termination of the revised health and dental insurance coverage for this group, I also ask that you reaffirm your approval to allow me to terminate the life, disability, vision and hearing insurance for retirees for a period of the two Fiscal Years ending June 30, 2014 and June 30, 2015, or for the period of the City's receivership under Public Act 436, whichever is longer. The changes to health and dental insurance would save the City an estimated \$5.9 million dollars for Fiscal Year 2014 and \$6.5 million dollars for Fiscal Year 2015. In addition, there are other modifications to the collective bargaining agreement relating to the City's pension retirement plans that I seek to implement to reduce costs to the City as set forth in the attached exhibit (Exhibit C).

It should be noted that these retirees also receive pensions from the City of Pontiac General Employees Retirement System (GERS) which is an ordinance created pension fund to which the City has contributed in the past. The latest actuarial report of GERS shows that the plan is 149.2% funded on its pension liability. (See Exhibit B attached - Actuarial report dated April 19, 2013). Benefits to the retirees can only be increased by an amendment to the ordinance. I propose to amend the ordinance to increase the current benefits for the retirees by \$400 per month for a period of 12 months beginning with Fiscal Year 2014 (which could be increased for another 12 months beginning with Fiscal Year 2015 by another amendment). Retirees could choose to pay for the monthly costs of their health and dental

insurance with the increased pension amount. The City will assist retirees with the purchase of replacement coverage through an array of group insurance benefits administered by Meadowbrook Insurance.

I met with the union representation of the SAEA on March 28, 2013. At this time, due to the resistance of the SAEA to the City's efforts to bargain and effectuate these healthcare plan changes and the other modifications to the collective bargaining agreement as set forth in the attached exhibit (Exhibit C), the action permitted under Section 12(1)(k) is necessary. I also provided this proposed action to the Pontiac City Council on May 10, 2013 pursuant to the requirements of section 19(1). On May 16, 2013 the Pontiac City Council rejected my proposals for health care and pension plan changes and therefore as required in Section (19)(2) has 7 days to submit their alternative proposal for health care and pension plan changes to the Local Emergency Financial Assistance Loan Board.

Background

The City of Pontiac has been in financial crisis for a number of years. An Emergency Financial Manager was first appointed in 2009 to assist the financial recovery of the City and its continually expanding deficit. I was appointed Emergency Manager on September 12, 2011. After my initial assessment of the financial status of the City, it became apparent that substantial cost-cutting and organizational changes were required for the City to have a chance at succeeding with its Deficit Elimination Plan. As part of my Amended Financial Operating Plan I am preparing for submission to the State of Michigan in June, 2013, I will be including a discussion of the legacy costs of retiree healthcare.

I previously attempted to raise revenue to maintain the revised health and dental insurance for retirees through a 6.5 mill ballot proposal in the November 2012 election to specifically fund the costs of retiree health insurance benefits. This ballot proposal "Amend charter to allow an additional \$6.50 on each \$1,000 of taxable valuation to be levied to pay the cost of retiree health insurance?" was defeated in the election by a vote of 79% No - 21% Yes.

I also asked the GERS Board of Trustees to consider a move to the State of Michigan MERS plan, which would have provided excess funds to maintain retiree health insurance benefits. As of the date of this request, the GERS Board has failed to adopt a resolution to release census data to MERS to determine how this initiative could be accomplished.

In a negotiations meeting with the SAEA on March 28, 2013 (see Exhibit D attached Agenda), and in subsequent negotiation meetings on April 12, 2013 and April 17, 2013, I was informed of the union's opposition to a change in their collective bargaining agreement pertaining to the City's obligation to fund retiree healthcare and the other modifications to the collective bargaining agreement relating to the City's pension retirement plans as set forth in the attached exhibit (Exhibit C).

Based upon the positions taken during meetings, it is clear the SAEA has rejected the City of Pontiac's efforts to re-negotiate the retiree health and dental insurance changes I proposed and the other modifications to the collective bargaining agreement relating to the City's pension retirement

plans as set forth in the attached exhibit (Exhibit C). Moreover, in my discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained.

Collective Bargaining Agreement Provisions At Issue

Based upon the facts and determinations set forth above, the City of Pontiac requests the modification of the above listed unions collective bargaining agreements to eliminate any obligation by the City to contribute to the cost of health and dental insurance coverage for the retired members of the above listed unions for Fiscal Years ending June 30, 2014 and 2015, or for the period of the City's receivership under Public Act 436, whichever is longer. The City will assist present retirees who wish to find replacement health and/or dental coverage through an array of group insurance benefits administered by Meadowbrook Insurance. In my capacity as the Emergency Manager, I will use my authority to amend the respective pension ordinances for Fiscal Year 2014 to provide a monthly pension increase of \$400 to the 1,400 pensioners, which increase can be renewed for the subsequent Fiscal Year at a later date. The increased pension payment will reduce the assets of the GERS pension plan by approximately \$5,380,000 annually. This represents about 1.4% of the total assets of this plan which is currently 149.2% funded. The increased pension payments will reduce the assets of the Police and Fire pension plan by approximately \$1,339,200 annually. This represents about .6% of the total assets of this plan which is currently 87.9% funded.

Specific Request

Specifically, I am requesting that you approve the following requests for the period of two fiscal years fiscal years ending June 30, 2014 and June 30, 2015 or for the period of receivership, whichever is longer:

1. Reaffirm the termination of life, disability, vision, and hearing insurance for all retirees.
2. Termination of health and dental insurance for all retirees.
3. Implementation of new language to Article IX, Section 13C as follows: "No employee hired after June 1, 2010 shall be entitled to any health insurance upon retirement."
4. Implementation of new language to Article IX, Section 11B as follows: "No employee hired after June 1, 2010 shall be entitled to any dental insurance upon retirement."
5. Implementation of new language to Article IX, Section 10 as follows: "Any new employee hired after implementation of the July 1, 2005 through June 30, 2008 Collective Bargaining Agreement shall not be allowed to participate in the City GERS defined benefit plan. The GERS plan shall be closed.

Employees hired after implementation of this agreement will be allowed, however, to participate in a 401(a) defined contribution retirement plan that will be managed and maintained by a plan administrator of the City's choice. At the time of this agreement, the City has selected the ICMA Retirement Corporation. The employee shall contribute at least one percent of the employee's

base salary. The City will match the employee's contribution up to five percent of the employee's base salary on a tax-free basis. The City's contribution may be adjusted if necessary to comply with any state law that determines any revenue sharing formula, such as the EVIP and its successor. The employee shall be fully vested for all City contributions. The employee shall also be permitted to make additional voluntary contributions in excess of five percent of the employee's base salary on an after-tax basis to the maximum permitted by law.

In addition, the City will permit all employees to participate in a 457(b) deferred compensation plan with a plan designated by the City. At this time of this agreement, the City has selected the ICMA Retirement Corporation. Participation in this plan is voluntary, and the City shall not make contributions to this plan.

If it is determined that any of these provision are in violation of IRS tax codes or other relevant laws, rules or regulations, the parties shall meet and agree to alternative contract language to bring these provisions into full compliance.

At no time shall the City permit the establishment of any defined contribution or deferred compensation plan that requires the City to actively manage the plan or file any reports with the IRS.

Determinations Under Section 12(1)(k)

In my sole discretion and judgment as Emergency Manager, after meeting and conferring with the SAEA representatives regarding the desired changes to their collective bargaining agreement, I have determined a prompt and satisfactory resolution is unlikely to be obtained. I have determined that all the following conditions of Section 12(1)(k) have been satisfied to modify the SAEA collective bargaining agreement.

- (i) **The financial emergency in a local government has created a circumstance into which it is reasonable and necessary for the State to intercede to serve a significant and legitimate public purpose.**

If the City does not eliminate payment of an estimated \$12.4 million dollars of expense for retiree health and dental insurance coverage, eliminate health and dental insurance coverage upon retirement for new hires, and implement a city/employee matching contribution rather than the present City required 8% and employee required 3% contribution to the city's defined contribution plan, for Fiscal Years 2014 and 2015, the City will run a budget deficit of approximately \$6 million for Fiscal Year 2014 and \$6.5 million for Fiscal Year 2015. These deficits will significantly reduce the City's ability to reach a balanced budget in the near future.

- (ii) Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is reasonable and necessary to deal with the broad, generalized economic problem.

The GERS pension benefit increase will provide for payment for a portion of the cost of the healthcare coverage of the retirees and they will be able to purchase insurance at a group rate. The savings generated by this change, eliminating health and dental insurance coverage upon retirement for new hires, and from closing the present city defined benefit pension plan and implementing a matching city/employee contribution to the city's defined contribution plan is necessary as the City has no other costs that can be reduced without the elimination of public safety services.

- (iii) Any plan involving the rejection, modification, or termination of one or more terms of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.

The reduction of the healthcare costs and from closing the present city defined benefit pension plan and implementing a matching city/employee contribution to the city's defined contribution plan will directly reduce the deficit budget for the City and will prevent the elimination of vital public safety services to the public.

- (iv) Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.

The reduction of the healthcare costs is only for a period of two fiscal years or the period of receivership, whichever is longer and applies to all retirees.

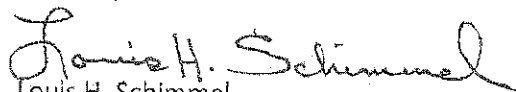
All retirees will be treated the same. The non-union and non-police and fire retirees (1,121 persons) will receive a payment of \$400 per month from their respective pensions which is approximately 68% of the retirees. Police and fire retirees who are covered by the Police and Fire VEBA Trust (246 persons who retired after August 22, 1996) will have their healthcare costs paid by the VEBA at no additional costs to the City. The police and fire VEBA trust has approximately \$34 million in assets and has an approximate life of 15 years without any further contributions by the City¹. The only other remaining retiree group are the police and firefighters who retired before August, 22, 1996 who are not covered by the VEBA Trust (279 persons). Those employees will also receive a monthly payment of \$400 from their respective pension and will be assisted with the purchase of replacement coverage through an array of group insurance benefits administered by Meadowbrook Insurance. Thus, all of the retiree groups are being treated the same by the City.

¹The Emergency Manager previously issued an Order S-225 on August 1, 2012, eliminating contributions to the Police and Fire VEBA based upon concurrence from Treasury. The effect of this Order was recently affirmed in Oakland County Circuit Court by the Honorable Judge Daniel O'Brien.

The proposed contract modifications are limited to the term of two fiscal years, or for the period of the City's receivership under Public Act 436, whichever is longer. Therefore, this plan is of a temporary nature, subject to review and renewal by the City. Additionally, this plan does not target any specific group of employees. Rather, it concerns all retirees of the City and is applicable to all non-union retirees, as well as all collectively bargained retirees.

Based on the foregoing, I request your written concurrence with my determination pursuant to Section 12(1)(k) of the Act. Time is of the essence. The City's new fiscal year starts on July 1, 2013. In order to have maximum impact on the 2013-2014 fiscal year, and given the time frame for notices to be sent to retirees regarding healthcare, I urge prompt consideration of this request.

Sincerely,



Louis H. Schimmel
Emergency Manager

Enclosures

cc: Roger Fraser, Deputy State Treasurer
John Clark, Esq., Giarmarco, Mullins & Horton, P.C.