

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

HUGH MACDONALD, LAWRENCE VERBIEST,  
GILBERT COX and MICHIGAN AFSCME  
WAYNE COUNTY RETIREE SUB-CHAPTER 38

Plaintiff's,

Case No: 09-031117-CL

v.

Honorable Leslie Kim Smith

COUNTY OF WAYNE,

Defendant.

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**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement ("Agreement" or "SA") made this \_\_\_\_\_ day of May, 2015, by and between the named plaintiffs, Hugh MacDonald, Lawrence Verbiest, Gilbert Cox ("Named Plaintiffs") and Michigan AFSCME Wayne County Retiree-Sub-Chapter 38 ("AFSCME Retiree Sub-Chapter") on behalf of themselves and on behalf of all bargaining unit employees who retired from Wayne County before December 1, 1990, or who retired on or after December 1, 1990 and whose health insurance benefits from the County, were established and modified by the 1990 Wayne County Health and Welfare Benefit Plan ("Plaintiffs" or "Plaintiffs' Class" or

“Class Members”) and the Defendant, County of Wayne (“County” or “Defendant”), collectively referred to as the “Parties.” This Agreement is subject to and dependent on notice to the Class in such manner as the Court directs and the Court’s approval of the settlement pursuant to MCR 3.501(E) and approval of the Wayne County Commission (“Commission”).

**1. BRIEF OVERVIEW OF THE LAWSUIT AND PROCEDURAL BACKGROUND**

Plaintiffs filed a class action Complaint, later amended, in December, 2009, seeking injunctive relief and damages. The Court denied Plaintiffs’ motion for preliminary injunction on January 21, 2010. On October 5, 2010, the Court certified a class of “retired employees of Wayne County, who now and immediately prior to retirement, were members of collective bargaining groups, who received health insurance, and who experienced a unilateral change in their benefits in October, 2009.” On December 20, 2010, the Court modified the class certification by certifying a sub-class consisting of former Wayne County employees who retired under collective bargaining agreements (“CBA’s”) referencing the Wayne County Health and Welfare Benefit Plan (“1990 HWBP”), including surviving spouses, eligible dependents and survivors of its members. The Court subsequently entered orders regarding Summary Disposition on November 12, 2012, November 27, 2012, December 6, 2012, December 14, 2012, and February 28, 2013. Now pending before the Court is the Plaintiffs’ motion for reconsideration of an Order denying Summary Disposition for the pre-1990 class of retirees. Plaintiffs’ Applications for Leave to appeal were denied by the Michigan Court of Appeals on December 3, 2013.

The Plaintiff Class and the County wish to settle this lawsuit and any other claims which could have been brought according to the terms detailed below, and the Named Plaintiffs recommend settlement to the Class Members in according to the terms detailed below.

**2. THE NEGOTIATION OF THE PARTIES LEADING TO SETTLEMENT.**

Plaintiffs began negotiations with the position that retiree health insurance is a vested right and the decision of Judge Baxter to the contrary in connection with post-1990 retirees was in error. The County took the position that retirees have no vested right to immutable health insurance benefits for life, that Wayne County has an express contractual right to modify the benefits provided post-1990 retirees, and that Judge Baxter's rulings on all dispositive motions but the motion concerning pre-1990 retirees were correct.

The Parties recognize that final resolution of this litigation, which is almost five years old, could take another four to five years until all trials and appeals are exhausted.

The County provided data to the Plaintiffs' counsel and the Named Plaintiffs which demonstrated that it was in a perilous financial condition. It further represented that in order to help solve the financial problem, it had determined to cease health insurance for any County employee, including non-bargaining unit retirees for whom it was not required to legally provide health insurance. In addition to changes in retiree health insurance, the County has demanded of active bargaining unit employees that they increase their co-pays for health insurance and for pensions, that the eligible age to get a pension be increased and that significant wage concessions be made. The County had advised the bargaining unit employees that it would not provide health insurance for future retirees. Non-bargaining unit employees will be required to make the same concessions as bargaining unit employees.

The County came to the conclusion that the concessions were necessary to help avoid a financial emergency and potential consequences adherent thereto, including the potential appointment of an emergency manager. The County has advised Plaintiffs' counsel and the Named Plaintiffs that, absent an agreement, it will terminate retiree health insurance effective July 1, 2015. The Named Plaintiffs were persuaded that the financial picture painted by the County was real and the consequences of a failure to come to an agreement would put retiree pensions in jeopardy. The provisions of this Agreement treat pre and post 1990 retirees equally, albeit with stipends that replace the prior healthcare benefits. The Parties recognize and acknowledge that the healthcare benefits referenced in the 1990 HWBP and the underlying labor agreements are not accrued financial benefits, but that the monetary stipends provided under this Agreement shall be treated as an accrued financial benefit for Class Members.

If the County were to terminate health insurance benefits, it could take many years of litigation to get them reinstated if the courts agreed with the legal position of the Plaintiffs. Securing a favorable result from the courts under the circumstances of this case is not guaranteed. Bearing in mind the risks and the facts as they affect both sides, the Parties submit to the following Agreement.

**3. TERMS UNDER WHICH THE CLASS MEMBERS MAY RECEIVE HEALTH BENEFITS OR STIPENDS AND THOSE COVERED.**

- A. All health insurance and health care benefits currently provided to Class Members by the County shall cease and the only obligation of the County to provide Health Benefits to Class Members and eligible dependents shall be as provided in this

Agreement for any Class Member, as of the first of the month for which monthly stipends under this Paragraph 3 commence (the "Effective Date").

- B. Subject to meeting the qualification requirements set forth in this Agreement, a Class Member and eligible dependents may be entitled to a monthly stipend in amounts not to exceed that amount authorized under Paragraphs 3C to 3K of this Agreement for the Class Member. Except as otherwise provided by this Agreement, Class Members and their eligible dependents are entitled to the accrued financial benefits represented by the monetary stipends described in this Agreement for the remainder of their lives.
- C. Class Members who are retirees and their eligible spouses, as determined by the 1990 HWBP, and who are Medicare eligible shall receive a monthly stipend of \$130.00 per person. Any additional reimbursement under paragraph 7 of the Retirement Health Benefits section of the 1990 HWBP shall not exceed \$5.00, after the effective date of this Agreement, even if the stipend amount in the HWBP is more. Nothing in this Agreement shall have any effect on the right of the County to reduce or eliminate any stipend amounts described in the 1990 HWBP. Class Members who are not Medicare-eligible and meet the eligibility requirements in the following paragraphs shall begin receiving the stipend available to Medicare-eligible Class Members and eligible dependents upon the first month of becoming Medicare-eligible and will no longer be eligible for the non-Medicare stipend set forth in Exhibit A.

D. Class Members who are, at time of receipt of the monthly stipend under this Paragraph 3D, neither Medicaid nor Medicare eligible shall receive a monthly stipend from the County according to the schedule set forth in Exhibit A, subject to the following eligibility requirements and qualifications:

1. Class Members, and spouses and eligible dependents of class members, shall not be eligible for any stipend from the County if the Class Member is eligible, either as a primary, spouse or dependent, for health insurance benefits from any other source, including but not limited to Medicaid, state or federal government, or another current or former employer.
2. Income eligibility of the monthly stipend from the County under the schedule set forth in Exhibit A shall be determined, based on household federal adjusted gross income from the most recently filed federal income tax forms.
  - a. Prior to the first monthly stipend under Paragraph 3C, Class Members shall be provided notice of the right to this stipend and the conditions for eligibility, including the requirement for submission of their signed 2014 federal tax year income tax form and a verification of its accuracy. The County may require each Class Member to submit a power of attorney or other authorization sufficient to allow the County to obtain verification from the Internal Revenue Service or the Michigan Department of Treasury of the accuracy of the information submitted by Class Member.

The following schedule shall be followed in 2015 for commencing payment of monthly stipends under Paragraph 3C:

- i. Within 60 days following the latter of the date of the Order approving this Agreement or the date the County Commission approves this Agreement, the County shall provide the notice required in Paragraph 3D(2)(a) to each Class Member.
  - ii. For each Class Member that returns the required information, before the first of the month not more than 60 days more following the date of the information was received from the Class Member, the County will cause payment of the monthly stipend to the eligible Class Member in the amount specified under the schedule set forth in Exhibit A.
- b. In 2016 and each year thereafter, Class Members shall be notified at their last known address of their obligation to submit their signed federal income tax form for the tax year in order to qualify for the maximum monthly stipend to which the Class Member may be eligible under the Exhibit A schedule, as adjusted by Paragraph 3E. Dates for such notification and submission by the Class Member of the required information shall be established by the County once the end of the first annual period that commenced in 2015 is established

and such dates shall be set to allow for of notice and response periods consistent to those provided in 2015.

- c. The County may withhold a stipend under Paragraph 3C for a Class Member who fails to submit information necessary to determine eligibility pursuant to paragraph 3D. If a Class Member fails to timely file requested information, but subsequently files the information within the current annual period, the County will adjust the monthly stipend for the current annual period and retroactively adjust payments to reflect the schedule set forth in Exhibit A for the Class Member.
3. If a Class Member or dependent, including spouse, is eligible for a stipend under Paragraph 3C, that individual will receive a stipend under that Paragraph. If the remaining Class Member, spouse or dependents are not eligible for a stipend under Paragraph 3C, the remainder of the family will receive a stipend under Paragraph 3D, without consideration of the individual available for a stipend under Paragraph 3C. For example, if Class Member is eligible for a stipend under Paragraph 3C and his or her spouse is not and they have no other dependents, the spouse would be eligible for a stipend under Paragraph 3D as an individual. Additional dependents could warrant a stipend under two- person or family coverage, as applicable. Likewise, if a remaining Class Member, spouse, or other eligible dependent of a retiree is not qualified for a stipend under



Paragraph 3D, the remainder of the family who are eligible under Paragraph 3D, without consideration of the ineligible members of the family, would determine whether the level of the stipend was for the retiree, retiree and spouse (or 1 dependent), or family classifications. However, disqualification of a spouse for purposes of changing classifications shall not eliminate the spousal income from the retiree's adjusted gross income unless the spouse files separately.

- a. A "Family" under the following schedule shall be either:
  - i. The retiree, spouse and 1 or more other eligible dependent,  
or
  - ii. The retiree and 2 or more eligible dependents other than the retiree's spouse.

E. After the County has provided the notices required under Paragraph 3D(2)(a), the County shall determine the total amount of monthly stipends claimed by Class Members under Paragraph 3D and annualize that amount for the period ending one year after the first stipend payment (the "Base Year Non-Medicare Stipend"). To the extent the Base Year Non-Medicare Stipend is more or less than \$2,450,000.00 (the "Base Year Variance"), the following shall apply:

- 1. If the Base Year Variance is plus or minus 5% or less, there shall be no adjustment of the schedule set forth in Exhibit A;
- 2. If the Base Year Variance is greater than 5%, the dollar amount representative of that variance over 5% shall be applied to the stipends set

forth in Exhibit A in a manner which proportionately reduces each stipend level by adjusted gross income class such that the total Base Year Non-Medicare Stipend will not exceed \$2,450,000.00.

3. If the Base Year Variance is under minus 5%, the dollar amount representative of that variance under minus 5% shall be applied to the stipends set forth in Exhibit A in a manner to proportionately increase each stipend level, by adjusted gross income class, such that the total Base Year Non-Medicare Stipend will equal, but not exceed \$2,450,000.00. For example, if the Base Year Non-Medicare Stipend were determined to be \$2,205,000.00, the Base Year Variance would be a 10% decrease (to minus \$245,000.00). That \$245,000.00 difference would be applied proportionately to increase the stipends in Exhibit A in a manner such that the total stipends for the 2015 annualized period would not exceed \$2,450,000.000.
4. Stipend levels, as adjusted by this Paragraph, will be used for Class Members eligible for a stipend under Paragraph 3D in the second annual period commencing in 2016 and each annual period thereafter. The County shall provide a copy of the calculations made pursuant to this paragraph 30 days prior to the implementation of any change in stipend amounts.

5The Base Year Variance and the monthly stipend amounts shall be re-adjusted after the end of the first year, which is intended to commence in 2015, for

which Class Members are eligible for stipends under Paragraph 3D. Any Base Year Variance that requires a re-adjustment to monthly stipend amounts previously paid in any month prior to the date of the re-adjustment shall be added to or deducted from any subsequent stipend payable to a Class Member or their eligible dependent under this Agreement.

- F. All living Class Members at the time of the court approval of this Agreement who are retirees who do not execute an opt-out of this Agreement shall receive a one-time stipend which shall be in addition to any monthly stipend payable under the 1990 HWBP and the monthly stipends payable under this Agreement. The amount of the one-time stipend shall be an amount equal to \$1,000,000.00 divided by the number of living Class Members at the time of the court approval who are retirees entitled to the stipend payable under this Paragraph 3F. The stipend payable under this Paragraph 3F is conditioned upon repayment in the event the Class Member is a member of any class of litigants exercising its right to void this Agreement under Paragraph 3K.
- G. Each of the three (3) class representatives and the one (1) President of the AFSCME Retiree Sub-Chapter shall receive a one-time payment of \$5,000 in consideration of the considerable expense, time and energy they have expended on the class.

- H. Commencing January 1, 2016 and for each year thereafter, Class Members eligible for a stipend under Paragraph 3C shall be granted an increase in their monthly stipend in the amount equal to and subject to the following:
1. The stipend shall be equal to the product of the following:
    - a. \$130.00 for 2016 and the prior year's stipend under this Paragraph 3H for each year subsequent to 2016, multiplied by
    - b. The percentage change in the general wage levels for non-supervisory AFSCME employees for the annual period being calculated.
  2. The maximum percentage change in general wage levels for non-supervisory AFSCME employees for any year used in Paragraph 3H(1)(b) above shall not exceed 2%.
  3. If there is a negative percentage change from January 1, 2015 in general wage levels for non-supervisory AFSCME employees from to the year in which a calculation is made, stipends under this Paragraph 3H may be less than the prior year but shall not be less than zero. Any portion of the a negative percentage change that did not reduce a stipend amount shall be banked and used to offset subsequent year increases.
  4. The supplemental stipend under this Paragraph 3H shall never exceed 12.5% of the \$130.00 stipend to Class Members who eligible under section 3C for a stipend.

- I. The County, at its sole discretion, has the right to employ procedures to carry out the administration of the stipend program, including but not limited to all tasks necessary to verify and modify eligibility of Class members under the rules set forth in this Agreement. To the extent not inconsistent with the terms of this Agreement, the County shall apply the governing rules pursuant to the County's 1990 HWBP for determining eligibility under various benefit options or changes in marital or dependency status. Any changes to the County's 1990 HWBP shall have no impact on the Class Members. The County will hire a firm to assist the Class Members in the transition in order to ensure, to the extent possible, that Class Members have no lapse in health insurance coverage.
- J. The County has the right to take advantage of any future state or national governmental programs, legislation, executive order, or other initiatives to fund Class member stipends, however enacted, provided that the availability of such funding shall not operate to reduce the stipends required to be paid by this Agreement.
- K. The AFSCME Retiree Sub-Chapter has the right to request that the County meet and confer if there are material changes to the operation or current enactment of the Affordable Care Act to eliminate individual subsidies for, or will have a materially adverse affect upon those Class Members who meet the following criteria:
  - a. Are not eligible for Medicaid or Medicare;

- b. Are not eligible for employer sponsored other retiree health care as an employee or dependent;
- c. Will be subject to the individual mandate if individual subsidizes are eliminated in Michigan; or
- d. Are unable be able to obtain individual insurance from public or private exchanges or other programs.

If the situation is not resolved to the AFSCME Retiree Sub-Chapter's satisfaction, it shall have a right to void this Agreement and reinstate the cause of action for Class Members who are impacted by the terms of Paragraph 3K who have not elected to maintain their rights under this Agreement as noted below. Class Members impacted by Paragraph 3K shall be granted the right by the AFSCME Retiree Sub-Chapter representative to maintain their rights under this Agreement and may elect to waive their right to void this Agreement. All Class Members who opt to void this Agreement under this section shall immediately have any stipend provided for under this Agreement and all County-provided Health Insurance benefits cease.

#### **4. WAIVER AND RELEASE**

- A. By entering into this Agreement, the Parties are waiving and forever discharging their rights to trial and/or appeal and are waiving any and all claims they actually had or may have had, under any Federal or State statute, Michigan or United States Constitutions, common law, rule, regulation, Michigan P.A. 312 award, grievance arbitration award and previous CBA's, prior settlement agreements and

prior judgments, whether known or unknown as to all matters covered by the Settlement Agreement.

- B. All Class Member rights and obligations related to healthcare, health insurance, and healthcare coverage are governed exclusively by this Agreement and cannot be modified, except in writing executed by the AFSCME Retiree Sub-Chapter, County CEO and approved by formal vote of the Wayne County Commission.
- C. This Agreement acts as a complete bar to any future action by any Class Member for healthcare, health insurance, or healthcare coverage, except to enforce the terms of the Agreement.
- D. Nothing in this Agreement shall be construed to establish any duty to bargain with Class Members or their claimed representative(s) or establish any bargaining rights to any Plaintiff or group claiming to represent any Plaintiff.
- E. Class Counsel and the Named Plaintiffs represent that they are seeking to protect the interests of the entire Class. Each of the Named Plaintiffs represents that he or she has read the operative pleadings in the lawsuit and that he or she has read this Agreement and, after having an opportunity to consult with Class Counsel, agrees to its terms and shall use their best efforts to recommend to Class Members and to the Court that this Agreement be approved.

**5. NOTICE TO CLASS MEMBERS AND CIRCUIT COURT APPROVAL OF THE SETTLEMENT**

The County shall be responsible for mailing notice to all Class Members in form and content as approved by the Court.

Notices under this Agreement shall be provided by U.S. Mail, or other such notice as may be acceptable to the Court, to the Class Members (former employees) last known address on file with the County. Notice shall be deemed to have been provided to the Class Members upon mailing.

The County does not waive and expressly reserves any immunity that it may have granted under state law.

#### **6. SETTLEMENT PAYMENT**

The County shall pay to the Plaintiffs' Class and their Counsel, the amount of Eight Hundred Forty Six Thousand Dollars (\$846,000.00), inclusive of all damages, costs, sanctions, interest and attorney fees (the "Settlement") and an IRS Form 1099 shall be issued to Class Counsel reflecting that payment.

#### **7. SETTLEMENT APPROVAL CONTINGENCY**

In the event that this Agreement does not receive any of the necessary approvals, then this Agreement shall be null and void and shall have no force or effect and no party to this Agreement shall be bound by any of its terms. This Agreement, and all of its provisions, and all of its negotiations, statements and proceedings relating to it shall be without prejudice to the rights of any party or any Class Member. All Parties shall be restored to their respective positions existing immediately before the execution of this Agreement; and, neither the provisions of this Agreement, nor the fact of its being made, shall be admissible or entered into evidence for any purpose in any proceeding whatsoever.

The Settlement shall not be binding on any of the Parties until all of the Parties, their representatives and the Court have approved and executed this Agreement.



## **8. OPT-OUT**

If 50 or more Class Members who are retirees opt out of this class , the County has the option, but not the requirement, to declare this Agreement null and void.

## **9. CESSATION OF HEALTH BENEFITS FOR OPT OUTS**

If less than 50 Class Members who are retirees opt out, or the County chooses to proceed with this Settlement notwithstanding there being 50 or more Class Members who are retirees who opt out, upon this Agreement becoming effective all County health benefits to Class Member retirees who have elected to opt out, along with their spouse and eligible dependents, will cease.

## **10. AUTHORSHIP**

This Agreement is a negotiated document, and the Parties agree that in the event of a dispute over the meaning of all or a portion of this document, they shall acknowledge that they mutually negotiated the terms and provisions of the Agreement. Any rule of construction that ambiguities or other disputes about the document be resolved against the drafting Party does not apply to the construction or interpretation of this Agreement.

## **11. GRIEVANCE PROCEDURE**

In the event there is a disagreement concerning the meaning or application of any of the provision on this Agreement, the AFSCME Retiree Sub-Chapter may file a grievance with the County Labor Relations Division. The County may file a grievance with the AFSCME Sub-Chapter. The grievance shall be referred to arbitration if not settled within 10 days. The arbitrator shall be selected in the same manner as provided in the AFSCME CBA. There shall be no court reporters or briefs. The arbitrator shall issue a bench opinion. The cost of arbitration

shall be split between the parties. The arbitrator's authority is limited by this Agreement. The arbitrator's decision shall be final and binding.

## **12. INTEGRATION**

This Agreement embodies the entire settlement agreement of all the Parties and supersedes any and all other understandings, negotiations, or discussions, either oral or in writing, express or implied, with respect to the settlement of disputes between the Parties to this Agreement. The Parties to this Agreement have not executed this Agreement in reliance on any representation, inducement, promise, agreements, warranty, fact or circumstances, not expressly referenced and/or set forth in this Agreement. This Agreement cancels and supersedes any and all prior agreements, including CBA's and any HWBP's incorporated therein, or any and all understandings or past practices between the parties whether written, oral or by conduct.

## **13. MODIFICATION**

This Agreement is not subject to any modification, termination, waiver, or addition that is made orally. This Agreement is subject to modification, termination, waiver, or addition only by means of a writing signed by the County and the AFSCME Retiree Sub-Chapter and which expressly states that this Agreement, or any term contained in this Agreement, is to be so modified, terminated, waived or added to. The failure of any Party to enforce at any time, or for any period of time, any one or more of the terms of this Agreement shall not constitute a waiver of the right to enforce such term or terms or any other term of this Agreement in the future.

## **14. MISCELLANEOUS**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective representatives, successors, or assigns, and the terms of this Agreement shall survive and be enforceable following the execution of this Agreement.

This Agreement shall be governed by, construed, enforced in accordance with, and subject to the laws of the State of Michigan.

The Parties agree to cooperate fully and execute, acknowledge and deliver any and all additional documentation and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

This Agreement may be executed in multiple counterparts, which together shall constitute a single original instrument, respectively. Any executed signature page to this Agreement may be transmitted by facsimile transmission and/or e-mail to the other party, which shall constitute an original signature page for all purposes. Each party nonetheless shall thereafter be obligated to provide an original executed Agreement to the other party within 10 business days from the date of final approval by the County Commission or Court, whichever is later. The resolution of the County Commission approving this Agreement shall be attached as Exhibit B to this Agreement upon approval.

**[SIGNATURES ON THE FOLLOWING PAGES]**

AFSCME Retiree Sub-Chapter

By: Henry Lykes

Its: president

Date: 6/2/15

Charter County of Wayne

By: Warren C. Evans

Warren C. Evans

Its: Chief Executive Officer

Date: 6/2/15

Named Plaintiffs

By: Hugh MacDonald  
Hugh MacDonald

Its: CLASS REPRESENTATIVE

Date: 06/02/2015

By: Lawrence Verbiest  
Lawrence Verbiest

Its: CLASS REPRESENTATIVE

Date: 06-01-15

By: Gilbert Cox  
Gilbert Cox

Its: CLASS REPRESENTATIVE

Date: 06/02/2015

County Commission approved and execution authorized by Resolution

No. \_\_\_\_\_

Date: \_\_\_\_\_

#301990

#302015

EXHIBIT A

Non-Medicaid/Medicare Eligible Monthly Stipend Schedule

Adjusted Gross Income	Stipend
<b>Retiree</b> c	
Less than \$30,000 l	\$100
\$30,000 to \$45,000	\$200
\$45,000 or more a	\$400
<b>Retiree and Spouse (or 1 dependent)</b>	
Less than \$35,000 s	\$150
\$35,000 to \$65,000	\$300
\$65,000 or more	\$750
<b>Family</b> l	
Less than \$40,000 f	\$150
\$40,000 to \$55,000	\$300
\$55,000 to \$70,000	\$400
\$70,000 or more t	\$800