

**OAKLAND COUNTY EMPLOYEES'**

**RETIREMENT SYSTEM**

**RESTATED RESOLUTION**

**April 2018**

(Defined Contribution)

*Final  
Copy - all  
amendments  
incorporated*

2015 OAKLAND COUNTY EMPLOYEES RETIREMENT SYSTEM  
DEFINED CONTRIBUTION RESOLUTION

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**Resolution of  
Oakland County Employees Retirement System  
(Formerly Oakland County Employees Retirement System Defined Benefit Plan)**

The County of Oakland resolves that the Oakland County Employees Retirement System Resolution of 1996 as amended in 2001 is hereby further amended and restated, effective December, 2015, in its entirety to read as follows:

**WITNESSETH:**

**WHEREAS**, the Oakland County Employees Retirement System was established on January 1, 1946 under the authority of Section 12a of Act No. 156, Public Acts of 1851 (M.C.L. §46.12a, M.S.A. 5-333(1), (as amended, "Retirement System"). As it existed before January 1, 1994, the Retirement System consisted solely of a defined benefit plan ("DB Part"). Effective as hereafter defined, the Retirement System was amended for all Employees hired after an appropriate Effective Date to consist of a defined contribution part ("DC Part"). Effective as hereinafter identified, Members of the Retirement System who were hired before the appropriate Effective Date had an election, as described in Section 9.1, to become a member of the DC Part of this Retirement System. This Retirement System is continued for the purpose of providing retirement income, not health insurance, to qualifying Employees and former Employees, and survivor income to their qualifying Beneficiaries.

**WHEREAS**, the Trustees have resolved to provide retirement benefits to eligible Oakland County Employees (and their Beneficiaries) in the event of death, such benefits being paid from the Trust, and being maintained for the exclusive benefit of the eligible Employees and their Beneficiaries. It being further understood, that except as provided in Section 4.12 and 14.03, no part of the corpus or income of the Trust shall revert to the County of Oakland, as the Employer, or with be used for or diverted to purposes other than the exclusive benefit of eligible Participants and their Beneficiaries.

**WHEREAS**, the Trustees wish this Defined Contribution Plan to enjoy the benefits of qualification under the Internal Revenue Code of 1986 ("IRC" or "the Code," interchangeably) and, to that end, have agreed and resolved to establish and maintain said Plan to comply with the Code, as amended, as well as any other applicable statutes, acts, revenue rulings and regulations.

**WHEREAS**, the Trustees wish to amend and restate the prior Plan, including the 1996 and 2001 Oakland County Employees Retirement System Defined Contribution Resolutions to reflect accumulated changes, remove references to obsolete language, comply with applicable state and federal law, and to further separate the DC Part of the Plan from the DB Part.

**WHEREAS**, the provisions set forth in this restatement shall only relate to the DC Part of the Plan.

**NOW THEREFORE**, the Trustees of the Oakland County Retirement System Defined Contribution Plan, pursuant to the powers and duties vested in them by the Agreement and Declaration of Trust, as amended from time to time, published the Defined Contribution Plan, originally effective on January 1, 1994. Subsequently, they adopted, at different times, various

amendments and resolutions to the Plan, which have been incorporated in this Restated Oakland County Retirement System Defined Contribution Plan, effective as of December, 2015. This Restated Plan applies to all service and benefits accrued after its effective date. Those individuals who ceased participating in this Plan prior to its restatement date shall have their rights and obligations determined under the terms of the applicable prior plan(s).

**Article I - Definitions**

As used in this Resolution, these terms shall have the following meanings unless the context clearly indicates or requires otherwise:

**Section 1.1.** **Account** means a separate record which shall be established and maintained under the Trust for each Participant or Beneficiary, plus any Participant Loan Account created pursuant to Section 5.7.

**Section 1.2.** **Account Balance** means the retirement benefit a Participant is eligible to receive on the date of determination, based on the fair market value of his individual account, reduced in accordance with the vesting provisions of the DC Plan.

**Section 1.3.** **Administrator** means the person, committee or organization selected to administer the Plan.

**Section 1.4.** **Age** means for the purpose of determining normal retirement age, the chronological age of a person. Otherwise, age means age at nearest birthday.

**Section 1.5.** **Allocation** means allocation of the County's contribution to the DC Part. The amount of the County's allocation on behalf of a Member depends on whether the Member is represented or non-represented; hired or had received an offer of employment from the County before the Effective Date of the DC Part of the retirement system ("current Member") or was hired or received an offer of employment from the County after the Effective Date of the DC Part of the retirement system ("new Member"); or made an irrevocable election to participate in the "pick up part" of the DC Part ("picked up Member") or had not ("non-picked up Member"). No new Member can be a picked up Member before January 1, 2000.

(1) The allocation to the Provisional Account of each non-represented new Member shall be 5% of such Member's compensation for the Plan Year through the Plan Year ending December 31, 1999 ("pre-year 2000 contribution level"). The allocation to the Provisional Account of each such non-represented new Member after December 31, 1999 shall be determined by each such non-represented new Member in the following manner:

Effective January 1, 2000, each non-represented new Member shall irrevocably elect whether to continue at the pre-year 2000 contribution level or to participate in the "year 2000 pick-up part" of the DC Part. Such irrevocable election for each non-represented new Member shall require a Member contribution of 2% of Compensation for the remainder of such Member's period of employment with the County unless

he/she elects to participate in the year 2001 pick-up part of the DC Part. The County's Contribution for each such electing non-represented new Member shall be 7% of Compensation for the remainder of such Member's period of employment with the County unless he/she elects to participate in the "year 2001 pick-up part" of the DC Part.

Effective January 1, 2001, each non-represented new Member shall irrevocably elect to continue at the pre-year 2000 contribution level, the year 2000 pick-up part or to participate in the "year 2001 pick-up part" of the DC Part. Such irrevocable election for each non-represented new Member shall require a Member contribution of 3% of Compensation. The County's Contribution for each such electing non-represented new Member shall be 8% of Compensation.

If a participant described in this subparagraph does not elect to be part of either the "year 2000 pick-up part" or the "year 2001 pick-up part", then the County's Contribution on their behalf shall continue at the 5% of compensation level.

(2) Picked Up Member. Notwithstanding anything contained herein to the contrary, effective January 1, 2000, each non-represented current Member who elected to participate in the DC Part of the retirement system in accordance with Section 9.1 shall be given the opportunity to irrevocably elect to participate in the "year 2000 pick-up part" of the DC Part. Such irrevocable election for each non-represented current Member shall require an additional Member contribution of 1% of Compensation (4% total). The County's Contribution for such electing non-represented current Member shall be 10% of Compensation.

Notwithstanding anything contained herein to the contrary, effective January 1, 2001, each non-represented current Member shall be given the opportunity to irrevocably elect to participate in the "year 2001 pick-up part" of the DC Part. Such irrevocable election for each non-represented current Member shall require an additional Member contribution of 1% of Compensation (5% total). A non-represented current Member shall require an additional Member contribution of 1% of Compensation (5% total). A non-represented current Member who did not make an irrevocable election of 1% for the "year 2000 pickup part" may make an irrevocable election to participate in the "year 2001 pick-up part" at only the 2% additional level (5% total). The County's Contribution for such electing non-represented current Member shall be 11% of Compensation.

If a non-represented current Member does not elect to participate in either the "year 2000 pick-up part" or the "year 2001 pick-up part" of the DC Part, then the irrevocable 3% election initially made shall continue and the County shall continue to contribute 9% of Compensation for each such non-represented current Member.

(3) The irrevocable election and the County's Contribution for represented Members shall be determined by their respective collective bargaining agreement.

(4) Nothing contained herein shall authorize or grant a Member the option of choosing to receive the contributed amounts of the "pick up part" directly instead of having them paid by the County to the DC Part of the Retirement System. Notwithstanding anything contained herein to the contrary, if a Member irrevocably elects to participate in the "pick up part" of the DC Part, the amounts identified as a Member contribution shall be paid by the County to this System and not paid to the Member. Nor shall anything contained herein authorize such electing Member to attempt to make contributions to the System that qualify as a "pick up" contribution.

(5) Non-picked up Member. The Allocation to the Provisional Account of each non-represented Member who elected to participate in the DC Part of the Retirement System in accordance with Section 9.1 and who did not irrevocably elect to participate in the "pick up part" of the DC Part shall be 6% of such Member's Compensation for the Plan Year. Such non-electing Member can contribute up to 10% of Compensation in accordance with Section 3.4. If a Member elects to make both a Pick-up Contribution and a Non Pick-up Contribution, the Non-pick up Contribution shall be limited to 10% of IRC Section 415 Compensation.

**Section 1.6. Anniversary Date** means December 31.

**Section 1.7. Annual Addition** as defined in IRC Section 415(c)(2), means the sum of the following that are credited to a Participant's Account for the Plan Year:

- (1) County Contributions,
- (2) Voluntary Employee Contributions to the extent permitted by the DC Plan,
- (3) Forfeitures, and
- (4) Amounts allocated to an individual medical account, if any, as defined in IRC Section 415(l)(2), which may be a part of a pension or annuity plan established by the County, are treated as Annual Additions hereunder. Amounts derived from Contributions which are attributable to post-retirement medical benefits, allocated to the expense account of a key employee, as defined in IRC Section 419(A)(d)(3) under a welfare benefit fund, as defined in IRC Section 419(e), maintained by the County, shall also be treated as annual additions hereunder.

Effective after December 31, 2001, and pursuant to IRC Section 415(c)(1), as amended from time to time, the Annual Addition that may be contributed or allocated to an Employee's account for a limitation year may not exceed the lesser of:

- (1) \$40,000, as adjusted for increases in the cost of living under IRC Section 415(d); or
- (2) 100% of the Employee's Compensation within the meaning of IRC Section 415(c)(3).



Subsection (f)(2) shall not apply to any amount treated as an Annual Addition under IRC Section 419(A)(d)(2).

For the purposes of the foregoing, Voluntary Employee Contributions are determined without regard to any rollover contributions, as defined in IRC Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16) without regard to Voluntary Employee Contributions to a simplified Employee pension which are excludable from gross income under IRC Section 408(k)(6). Contributions are subject to the maximum Annual Addition limits set forth in IRC Section 415(c)(1), as amended from time to time.

**Section 1.8.** **Beneficiary** means the person or persons (including a trust) designated by the Participant who shall receive any benefits payable hereunder in the event of the Participant's death. A Participant may designate primary and contingent Beneficiaries by completing a form provided by and filed with the Retirement Board. The designated Beneficiary may be changed or the election revoked at any time. Where no designated Beneficiary survives the Participant or no Beneficiary is otherwise designated by the Participant, the Participant's Beneficiary shall be the first of the following classes of successive preference Beneficiaries then remaining:

The Participant's:

- (1) Spouse,
- (2) Children,
- (3) Parents,
- (4) Brothers and Sisters, or
- (5) Estate.

Presumption that a Designation is Revoked by Divorce. In the event of a divorce, it is presumed that the Participant intended to revoke any designation of his divorced Spouse as the Participant's designated Beneficiary, unless

- (1) The Judgment of Divorce affirmatively states that the divorced Spouse will remain the designated Beneficiary, or
- (2) An Eligible Domestic Relations Order affirmatively states that the divorced Spouse will remain the designated Beneficiary, or
- (3) The Participant completes a new designation of Beneficiary after entry of the Judgment of Divorce, which names the divorced Spouse as the Participant's designated Beneficiary.

**Section 1.9. Benefit Groups:** The following benefit groups are designated for the purpose of determining benefit eligibility conditions and benefit amounts:

- (1) Benefit Group General - option A. All Members not included in Benefit Group Sheriff's Department whose employment agreements with the County indicate that they are option A Employees.
- (2) Benefit Group General - option B. All Members not included in Benefit Group Sheriff's Department whose employment agreements with the County indicate that they are option B Employees.
- (3) Benefit Group Sheriff's Department - Deputy Sheriff's Association - option C. All Members employed by the Sheriff's Department who are covered by a bargaining agreement between the County and the Oakland County Deputy Sheriffs' Association.
- (4) Benefit Group Sheriff's Department - Command Association – option D. All Members employed by the Sheriff's Department who are covered by a bargaining agreement between the County and the Command Officers' Association.

**Section 1.10. Code or IRC** means the Internal Revenue Code of 1986, as now or hereunder amended, or as suspended by laws of similar effect.

**Section 1.11. Compensation** as defined by IRC Section 415(c)(3) and Treasury Regulation 1.415-2(d)(2)(i), means the amount of money actually paid to the Employee for personal services rendered the County as reflected on his/her W-2 while a Member of the Retirement System, including: wages, salary, professional fees, percentage of profits, commissions, tips and bonuses paid or made available to the Employee for personal services actually rendered in the course of employment, any elective deferral, as defined in IRC Section 402(g)(3), and any amount which is contributed or deferred by the County at the election of the Employee and which is not includible in the gross income of the Employee by reason of IRC Sections 125, 132(f)(4) or 457. Notwithstanding the above, Compensation shall include any amount which is contributed by the County pursuant to a salary reduction agreement and which is not includible in the gross income of the Employee under IRC Sections 125, 402(e)(3), 402(h), 403(b), 414(h)(2) or 457. For Plan Years ending before December 31, 1995 but after December 31, 1993, same shall not exceed \$200,000 subject to the following adjustment. This limitation shall be adjusted by the Secretary of the Treasury at the same time and in the same manner as under Code Section 415(d), except that the dollar increase in effect on January 1 of any calendar year shall be effective the Plan Years beginning in such calendar year. The annual Compensation of each Member taken into account for any Plan Year beginning on or after January 1, 1996 shall not exceed the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") annual compensation limit. For Plan Years beginning on or after January 1, 1996, any reference in this Retirement System to the limitation under Code Section 401(a)(17) shall mean the OBRA '93 annual compensation limit set forth in this provision. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with IRC Section 401(a)(17)(B). The cost of living adjustment in effect for a calendar year applies to any period, not exceeding 12

months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit shall be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

**Section 1.12. Contribution** means only those Contributions made by the County, pursuant to the terms of its applicable collective bargaining agreement or other written document, unless otherwise indicated. The amount of the County's Contribution to the DC Part shall be the amount necessary to fund the Allocation of all active Members entitled to an Allocation for each pay period.

The County shall reduce its Contribution to the DC Part by the amount forfeited since the last anniversary date.

**Section 1.13. County or Employer** means Oakland County, State of Michigan, and its various offices, boards and departments, including the Board of County Road Commissioners.

**Section 1.14. Credited Service Year or Credited Service** means a period of 12 consecutive months during which an Employee has worked not less than 1,000 hours.

**Section 1.15. Direct Rollover** means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**Section 1.16. Distributee** includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under an Eligible Domestic Relations Order ("EDRO"), as defined in M.C.L. Section 38.1701 *et seq.*, (the "EDRO ACT") are Distributees with regard to the interest of the spouse or former spouse.

**Section 1.17. Effective Date** of the DC Part of this Retirement System as it applies to different benefits groups shall be determined by either the Oakland County Merit System or the applicable collective bargaining agreement with each separate collective bargaining unit that covers County Employees.

**Section 1.18. Eligible Rollover Distribution** means any distribution of all or any portion of the Account Balance to the credit of the Distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under IRC Section 401(a)(9); any distribution made upon hardship, or unforeseen emergency distributions of excess Contributions made because legal limits on certain Contributions were exceeded, loans treated as distributions, and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

**Section 1.19. Eligible Retirement Plan** means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in IRC Section 408(b), an annuity plan described in IRC Section 403(a), or a qualified trust described in IRC Section 401(a), that accepts the Distributee's Eligible Rollover Distribution.

**Section 1.20. Employee** shall mean a natural person characterized by the Plan Administrator, in its sole and absolute discretion, as a "full-time eligible employee" or "part-time eligible employee," as such is defined in the County's Merit System Rules. Employee shall include natural persons who are covered by a collective bargaining agreement. Employee shall not include part-time non-eligible or leased Employees (as defined by IRC Section 414(n)), or individuals classified by the County as independent contractors (as evidenced by the County considering Internal Revenue Service and Department of Labor guidelines for defining independent contractors, and as may be amended and/or modified from time to time) even if such individuals are subsequently deemed to be the County's common law employees.

**Section 1.21. Entry Date** for the DC Part means for Employees hired before December 1, 1999, the date six (6) months after a Member incurs his first hour of compensated employment for the County. The Entry Date for Employees hired after November 30, 1999 or existing Employees who elected into the DC Part after December 1, 1999, shall be the date the Member incurs his first hour of compensated employment for the County, or the first hour of compensated pay after making the election to participate in the DC Part of the Retirement System.

**Section 1.22. Excess Amount** for a Limitation Year means the excess, if any, of (1) the Annual Additions which would be credited to a Member's Account under the terms of the DC Part without regard to the IRC Section 415 limitations over (2) the maximum Annual Addition as limited by Section 3.5.

**Section 1.23. Fiscal Year, Limitation Year or Plan Year** means the calendar year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year that the amendment is made.

**Section 1.24. Fixed or Nonforfeitable Account** means an Account in the DC Part that has become nonforfeitable and segregated, regardless of whether same is commingled with any other Accounts. Such Fixed or Nonforfeitable Account shall include all accounts maintained in the DC Part for the Employee.

**Section 1.25. Loans** Notwithstanding any provision herein to the contrary, this Retirement System allows Loans to Members.

**Section 1.26. Lump Sum** means one or more payments made within a single taxable year to the recipient.

**Section 1.27. Participant or Member** means a person who is eligible, and participates herein.

- (1) A Non-vested Participant or Member means a Member who does not have any nonforfeitable right to an Account.

- (2) A Partially-Vested Participant or Member means a Member who has a nonforfeitable right to an Account.
- (3) A Fully Vested Participant or Member means a Member who has a nonforfeitable right to his entire Account, regardless of whether there has been a termination of employment.
- (4) A Represented Member means a Member who is a Represented Employee.

**Section 1.28.** **Plan** means the Oakland County Employees Retirement System Plan.

**Section 1.29.** **Provisional Account** means an account which has not become fixed pursuant to Section 4.3.

**Section 1.30.** **Represented Employee** means an Employee who is represented by a group or entity certified as a collective bargaining representative by the Michigan Employment Relations Commission.

**Section 1.31.** **Retired Member** means an individual who is or was paid a benefit because of the individual's membership in the Retirement System.

**Section 1.32.** **Section 415 Suspense Account** means an unallocated amount equal to the sum of "Excess Amounts" for all Members during the Limitation Year. The "Section 415 Suspense Account" shall not share in any earnings or losses.

**Section 1.33.** **Service** means personal service rendered the County while a Member of the Retirement System, and qualifying military service pursuant to Section 4.4.

**Section 1.34.** **Spouse** means the husband or wife or a Participant who shall have been legally married to Participant, including an individual married to a person of the same sex if the individuals are lawfully married in a state that recognizes such marriages, but who are domiciled in a state that does not recognize such marriages.. A former Spouse will be treated as a spouse to the extent provided under the EDRO Act.

**Section 1.35.** **Trust** means the Trust created under Section 14.7 of the Plan which shall consist of all of the assets of the Plan derived from County and Voluntary Employee contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

**Section 1.36.** **Valuation Date** means the point in time the Member's account is assigned a value.

**Section 1.37.** **Voluntary Employee Contributions** means Contributions by an Employee to the DC Part of this Retirement System. This Retirement System allows nondeductible Voluntary Employee Contributions to the DC Part.

## Article 2 - Eligibility Requirements

### **Section 2.1. Membership in Retirement System**

An individual who is employed by the County, its offices or departments in a permanent position normally requiring 1,000 or more hours of work per year shall be a Member of the Retirement System unless employed in an excluded position enumerated in Section 2.2. In case of doubt, the Retirement Board shall have the discretion to decide who is a Member.

### **Section 2.2. Excluded Positions**

The following positions are ineligible to participate in this Plan:

- (1) Positions as employees of the Board of County Road Commissioners.
- (2) Positions which are compensated on a basis not subject to the withholding of Federal income taxes or FICA taxes by the County or eligible for existing fringe benefits provided by the County.
- (3) Positions filled by temporary employees.
- (4) Any position held by a Retired Member of the DB Part of the Retirement System.
- (5) Any position held by a person who is included by law in any other pension or Retirement System by reason of the compensation paid by the County, except the Federal Old Age, Survivors and Disability Insurance program.
- (6) Positions for which the County pays less than 30 percent of all compensation received by the employee from all governmental units.
- (7) Employees who are in Benefit Group General - Option B.
- (8) New hires after December 31, 1996 as Oakland County Road Commissioners.

### **Section 2.3. Break in Service**

(a) **Hours Required.** A Break in Service shall occur on the last day of the Plan Year in which an Employee accrues less than 1000 hours of work per year. No Break in Service shall be deemed to have occurred during the initial Plan Year in which the Employee first commences employment merely because he fails to accrue at least 1000 hours of service. No Break in Service shall occur during any qualified Leave of Absence or after the Participant has become eligible for Disability, Early or Normal Retirement.

(b) **Qualified Leaves of Absence.** No Break in Service shall occur during the following Qualified Leaves of Absence:

- (1) During a period of disability which prevents the Participant from working in County Employment.
- (2) During any military service covered by the Uniform Services Employment Rights Act of 1994 (USERRA), provided the Participant complies with the notice, record keeping and reemployment (90 days) requirements of the Act. The hours of work accrued during said military service shall be equal to the hours of work the Participant would have accrued during said period had he worked in County Employment, based on the average number of hours of work accrued in the three plan years prior to said service, *pro rated* during said period of military service.
- (3) During any separation from employment by reason of a maternity or paternity leave of absence, provided such absence results:
  - (i) by reason of the pregnancy of the Participant,
  - (ii) by reason of the birth of a child of a Participant,
  - (iii) by reason of the placement of a child in connection with adoption of the child by the Participant, or
  - (iv) for purposes of caring for the child during the period immediately following the birth or placement for adoption.

During the period of maternity or paternity leave of absence, a Participant shall be credited with such hours of work as are necessary to prevent a Break in Service. The hours of work which are required to be credited under this subsection shall be credited only in the Plan Year in which the absence begins if a Participant would be prevented from incurring a one-year Break in Service in such year, or in any other case, in the immediately following Plan Year. If required during a maternity or paternity leave of absence, a Participant is treated as having completed the number of work hours that normally would have been credited, or if the normal work hours are unknown, eight hours of work for each normal workday during the authorized absence.

**(c) Reemployment.** If an employee was a vested Participant in the Plan and terminates his/her employment or incurs a Break in Service and is subsequently reemployed in a position eligible for membership in the plan, he/she shall participate immediately upon return to County Employment, and his/her prior credited service shall count in determining his/her vested Account Balance.

#### **Section 2.4. Termination of Employment**

(a) An individual shall cease to be a Member upon termination of employment by the County, or upon ceasing to be employed in a position normally requiring 1,000 or more hours of work per year, or upon becoming employed in an Excluded Position. Upon re-employment by the County,

or transfer into a position that is not an Excluded Position, the individual shall again become a Member.

(b) The Retirement Board shall determine the nonforfeitable interest of a Member who terminates his employment for reasons other than death, disability, or attainment of Normal Retirement Age. Nothing contained herein shall be interpreted as allowing the forfeiture of a Member's otherwise nonforfeitable benefits for cause.

(c) That part of a Member's Account that he is not entitled to under Subparagraph (b) shall be allocated as a Forfeiture as soon as administratively feasible after the Distribution Date but as of the Valuation Date immediately preceding the Distribution Date.

In the event the terminated Member dies before receiving his Nonforfeitable Fixed Account, same shall be paid in accordance with Section 5.2. If any former Member was reemployed by the County and such former Member received, or was deemed to have received, a distribution of his entire Vested Interest before his reemployment, his forfeited Account shall be reinstated only if he repays the full amount distributed to him before the earlier of five (5) years after the first date on which the Member is subsequently reemployed by the County or, in the event of a deemed distribution, upon the reemployment of such former Member. In the event the former Member does repay the full amount distributed to him, or in the event of a deemed distribution, the undistributed part of the Member's Account must be restored in full, unadjusted by any gains or losses occurring subsequent to the Anniversary Date or other Valuation Date coinciding with or preceding his termination. The source for such reinstatement shall first be any Forfeitures occurring during the Plan Year. If such source is insufficient, then the County shall contribute an amount necessary to restore any such forfeited Accounts.

### Article 3 - Accounts and Contributions

#### **Section 3.1. Separate Account**

The Trustees shall establish and maintain an account for each Participant, to which all contributions made on his behalf, and the *pro rata* amount of all earnings, losses and forfeitures thereon shall be allocated. All accounts shall be maintained primarily for accounting purposes and shall not require a segregation of assets to such account. The valuation of the account, forms and accounting methods used in the administration of the Trust shall be at the sole discretion of the Trustees.



### **Section 3.2. Provisional Accounts**

The Retirement Board shall require that its third party Plan Administrator maintain separate Provisional Accounts for each Member of the DC Part. Each Provisional Account shall reflect Allocations, forfeitures, earnings, losses, payments, withdrawals and expenses. Separate Provisional Accounts shall be maintained in each of the following categories:

1. Non-Directed County Contributions (Provisional Account);
2. Transferred Account;
3. Voluntary Employee Contributions;
4. Matched Employee Contributions; and
5. Directed County Contributions.

### **Section 3.3. Adjustment to Accounts**

(a) Earnings, losses, appreciation, depreciation. As of each succeeding Anniversary Date, or other Valuation Date, the third party Plan Administrator providing services to the Retirement Board shall adjust the Provisional Accounts of all Members to reflect:

- (1) The net earnings or losses of the Trust (determined on an accrual basis for purposes of this Paragraph 3.3) and
- (2) The net increase or decrease in the value of the Trust.

For this purpose, all assets shall be valued at their fair market value as of the Valuation Date. Unless an Account is invested at the direction of the Member, adjustment shall be made to each Account in the same proportion as each Account, at the beginning of the period bears to the aggregate balances of all such Accounts at the beginning of the period, but recognizing only those accounts which are active and have not become Fixed Accounts and segregated during such period.

(b) Accounting for Allocations. The Retirement Board's third party Plan Administrator shall establish accounting procedures for the purpose of making the Allocations to Members' Accounts provided for in this Paragraph 3.3.

(c) Expenses. The expenses of the Trust (including but not limited to legal fees, administrative costs and Retirement Board's compensation) shall (unless paid by the County or taken from Forfeitures) be paid and accounted for as part of the earnings and losses above.

Notwithstanding the preceding sentence, any expenses which the third party Plan Administrator and/or the Retirement Board may incur with special reference to any Member or his Account shall first be charged against that part of the Account which is attributable to County Contributions to the extent same is sufficient. Any unpaid balance shall be accounted for as part

of the expenses, but shall, if possible, be later reimbursed to the other affected Accounts out of future credits to such Member's Account.

(d) Distributions of Benefits. The Retirement Board's third party Plan Administrator shall reduce each Account for any distributions or benefits.

#### **Section 3.4. Voluntary Employee Contributions**

(a) Voluntary Employee Contributions. At the discretion of the Retirement Board as to when same shall be available, each Member of the DC Part may make voluntary Contributions to the DC Part of the Retirement System ("Voluntary Employee Contributions"). The sum of such Contributions for all years of service are subject to the IRC Section 415 limits, as amended from time to time. Investment of the Voluntary Employee Contributions shall be directed by the Member. Any Contributions made by a Member shall, in all events be the independent voluntary act of such Member and shall not be dependent upon or alter or affect the obligations of or Contributions by the County except as otherwise provided in Section 1.5.

(b) Method of Contribution. Each Member may make such Voluntary Employee Contributions only by periodic payroll withholdings. The Member shall deliver written instructions to the Retirement Board expressing such intent. Same shall indicate the specific amount per payroll period to be voluntarily contributed.

(c) Administration of Voluntary Employee Contributions. Upon the Retirement Board's receipt of such voluntary Contributions, the Retirement Board shall establish a Voluntary Employee Contribution Account for such Member. Same shall have periodic memorandum credits and debits made to it to reflect the amounts of Voluntary Employee Contributions and the allocation of net earnings or losses from investments. This adjustment shall be for earnings and re-evaluation of assets in the same manner as County Contributions. The adjusted Voluntary Employee Contribution Accounts shall at all times be fully vested and Nonforfeitable. The withdrawal of part of such amounts from the Trust shall be permitted once during the Plan Year. All withdrawals of such amounts from the Trust must consist of a *pro rata* portion of Voluntary Employee Contributions and net earnings. Notwithstanding the foregoing, while the Member is employed by the County, withdrawals from the Voluntary Employee Contribution Account shall be limited to an amount equal to the aggregate of Voluntary Employee Contributions made by the Members. No forfeiture shall be deemed to have occurred solely as a result of such withdrawal.

#### **Section 3.5. County Contributions**

(a) A County Contribution to the DC Part for any Plan Year shall be made only if same would be an allowable deduction under IRC Section 404 if the County were a taxable entity. The conditions of tax deductibility shall conclusively be presumed to be a condition of such Contribution.

(b) Notwithstanding anything contained herein to the contrary, and pursuant to Section 1106(h) of the Tax Reform Act of 1986, this Retirement System hereby incorporates the limitations of IRC Section 415 by this reference. Pursuant to this incorporation by reference:

(1) Any Member who participates or participated in both defined benefit plan(s) [as defined in ERISA Section 3(35)] and/or defined contribution plan(s) shall have their Annual Addition further limited. In no event shall the sum of the defined benefit fraction and the defined contribution fraction exceed 1.0 ("Combined Plan Fraction").

(2) (i) The defined benefit fraction is a fraction - (a) the numerator of which is the Member's projected annual benefit in all defined benefit plans maintained by the County (whether or not terminated) (determined as of the close of the Plan Year), and (b) the denominator of which is the lesser of -

(I) the product of 1.25 multiplied by the IRC Section 415(b)(1)(A) dollar limitation for such Plan Year, or

(II) the product of -

(A) 1.4, multiplied by

(B) the amount which may be taken into account under IRC Section 415(b)(1)(B) for such individual for the Plan Year.

(ii) Notwithstanding the above, if the Member participated in a plan in existence on July 1, 1982, the denominator of this fraction shall not be less than 125% of the sum of the annual benefits under such plan which the Member had accrued as of the later of September 30, 1983 or the end of the last limitation year beginning before January 1, 1983. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of IRC Section 415 as in effect at the end of the 1982 limitation year.

(iii) Notwithstanding the limitations in (2)(i), if the Member was a Participant as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the County which were in existence on May 6, 1986, the denominator of this fraction will not be less than 125 percent of the sum of the annual benefits under such plan which the Member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of IRC Section 415 for all limitation years beginning before January 1, 1987.

(3) The defined contribution fraction is a fraction - (a) the numerator of which is the sum of the annual additions as of the close of the Plan Year for all defined contribution plans (whether or not terminated) maintained by the County for the current and all prior limitation years (including the annual additions attributable to the Member's nondeductible contributions to all defined benefit plans, whether or not terminated, maintained by the County), and the annual additions attributable to all welfare benefit funds, as defined in IRC Section 419(e), and individual medical accounts, as defined in IRC Section 415(i)(2),

maintained by the County) and (b) the denominator of which is the sum of the lesser of the following amounts determined separately for such Plan Year and for each prior Credited Service Year with the County (regardless of whether a defined contribution plan was maintained by the County):

(i) The product of 1.25, multiplied by the applicable dollar limitation for such Plan Year [determined without regard to IRC Section 415(c)(6)], or

(ii) the product of -

(I) 1.4, multiplied by -

(II) the amount which may be taken into account under IRC Section 415(c)(1)(B) for the Member for that Plan Year.

(c) If the Combined Plan Fraction exceeds 1.0, the Annual Additions to the employer's defined contribution plans shall be limited notwithstanding any formula or provision, to such amount as will reduce such sum to 1.0. Steps to reduce such fraction shall first be by limiting or eliminating any Voluntary Employee Contributions; second by reallocating any forfeitures to other Members; and lastly by reducing the Contribution formula.

(d) "Section 415 Compensation." For purposes of the limitation contained in this section, the following shall apply: "Section 415 Compensation" is a Member's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the County (including, but not limited to, commissions paid to salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following:

(1) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or employer contributions under a simplified Employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation regardless of whether such amounts are includible in the gross income of the Employee when distributed.

(2) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(3) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(4) Other amounts which received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in IRC Section 403(b) (whether or not the amounts are actually excludible from the gross income of the Employee).

(5) Other items of remuneration that are similar to any of the items listed in subsections (1) – (5) of this Section 3.5.

### **Section 3.6. Investment Options (Directed Investment)**

Effective January 1, 2000, each Member of the DC Part shall designate how his County Contribution Account shall be invested. The Retirement Board shall determine which investment funds shall be available. The Retirement Board shall select at least four (4) such investment funds.

Each Member shall advise the Retirement Board how he wants his County Contribution Account invested. If a Member fails to notify the Retirement Board, it shall be presumed that he has elected that his County Contribution Account be invested at the direction of the Retirement Board. If a Member wishes to utilize more than one fund, he shall notify the Retirement Board of the percentage of his County Contribution Account to be invested in each fund, and, except as provided in the last paragraph of this section, such percentage must either be in exact multiples of 1% or whole dollar amounts or such other multiples determined by the third party Plan Administrator maintaining the records of each Member's accounts.

A Member of the DC Part may change his election of investment funds, provided that all Members are treated uniformly.

A Member of the DB Part who transferred the present value of the lump sum Actuarial Equivalence of his accrued benefit to the DC Part pursuant to Section 9.1 shall control the choice of investments of his transferred account within the choices made available by the Retirement Board.

The Retirement Board shall adopt such rules and procedures as it deems advisable as to all matters relating to the selection and use of the investment funds. If there is any inconsistency between such rules and any provisions above, the above provisions shall be disregarded.

A Member may direct that County Contributions be invested in one fund and his Member Contributions and transferred account be invested in another fund or funds.

**Section 3.7. Limitations** The amount of Annual Additions, as amended from time to time, which may be credited to a Participant's account for any Plan Year, may not exceed the lesser of:

- (1) \$40,000.00 or such larger amount as may be determined by the Secretary or
- (2) 100% of the Participant's Compensation, within the meaning of Section 415(c)(3) of the Code, as amended from time to time.

For purposes of this Section, all qualified defined benefit plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined benefit plan, and all qualified defined contribution plans (whether terminated or not) ever maintained by the Employee shall be treated as one defined contribution plan. "Compensation" shall have the meaning set forth in Section 1.11.

### Section 3.8. Excess Annual Additions

If due to a reasonable error in estimating a Participant's annual Compensation, an Excess Amount exists, such excess will be disposed of as follows:

- (1) Nondeductible, Voluntary Employee Contributions, if any, will be returned to the Participant to the extent necessary to reduce the Excess Amount.
- (2) If an Excess Amount still exists, the Excess Amount will be held in a "Section 415 Suspense Account."
- (3) Allocate and reallocate the Section 415 Suspense Account in the next Limitation Year (and succeeding Limitation Years if necessary) to all Members in the Retirement System before any County or Voluntary Employee Contributions are made to the Retirement System for such Limitation Year.
- (4) Notify the County to reduce the County Contributions to the Retirement System for such Limitation Year by the amount of the "Section 415 Suspense Account" allocated and reallocated during such Limitation Year.

The Retirement System may not distribute Excess Amounts except on the Retirement System's termination. Upon the Retirement System's termination, only Members who do not have a one (1) year Break in Service or have not received a distribution of their Fixed Account shall share in the Excess Amount.

### Section 3.9. Vesting Schedule

The following vesting schedule applies to active Participants as well as a Member of the DC Part of the Retirement System who ceases to be a Member for a reason other than eligibility for Normal Retirement, duty-related disability, duty-related death, or post-Normal Retirement Age ("NRA") distribution. A Participant shall be entitled to the following percentage of his/her Account based upon years of credited service:

<u>Years of Credited Service</u>	<u>Percentage Vested</u>
Less than 2	0%
2 but less than 3	20%
3 but less than 4	40%
4 but less than 5	60%
5 but less than 6	80%
6 years or more	100%

## Article 4 - Credited Service

### **Section 4.1. Credited Service**

Service rendered by a Member shall be credited to the Member's individual Credited Service account in accordance with rules the Retirement Board shall prescribe. In no case shall:

- (1) More than one year of Credited Service be credited on account of all service rendered by a Member in any one calendar year.
- (2) Less than ten days of service in a calendar month be credited as a month of service.
- (3) Less than ten months of service in a calendar year be credited as a Credited Service Year.

### **Section 4.2. Non-Forfeiture of Credited Service**

Members who have only participated in the DC Part shall never forfeit Credited Service for the service requirements for Normal Retirement.

### **Section 4.3. Fixed Accounts**

When a Member of the DC Part's employment terminates, he shall continue to be a Member solely for the purpose of receiving benefits payable or distributable hereunder; provided further that:

- (a) If a Member of the DC Part requests a post-Normal Retirement Age distribution, his Account shall become Fixed and Nonforfeitable as of the close of the day of such termination or such request.
- (b) If a Member of the DC Part's employment terminates for any reason other than death, disability, Normal or Late Retirement, his Account shall become Fixed and Nonforfeitable only after application of the Vesting Schedule contained in Section 3.9.
- (c) The balance of a Fixed Account shall include any contributions or other items which have been or should be credited or debited to such Account as of the Anniversary Date or Valuation Date or prior thereto.

Thereafter no further credits or debits shall be made to said Account, except for:

- (1) Distributions,
- (2) Special expenses chargeable to the Account, and
- (3) Adjustments per subparagraphs (d) and (f).

(d) The Retirement Board shall take the following steps when a Provisional Account becomes Fixed. If assets equal to the Fixed Account can be segregated without detriment or financial loss to the other Members, then same shall be segregated and/or pooled with other Fixed Accounts. The Fixed Account assets shall be administered as follows:

- (1) As of each Valuation Date, the Retirement Board shall adjust all Fixed Accounts to reflect the earnings or losses, appreciation or depreciation of the Fixed Account assets;
- (2) These adjustments shall be in the same proportion as the balance each Fixed Account bears to the aggregate balances of all Fixed Accounts, both as of the previous Valuation Date.

(e) Unless the Account is a Directed Investment Account as provided in Section 3.6, if the Fixed Accounts have been segregated, same shall be deposited in interest-bearing savings accounts and/or invested and reinvested in direct obligations of the United States government and/or in obligations, the principal of which is guaranteed by such government, including money market accounts invested primarily in government backed securities. If the Fixed Account is a Directed Investment Account, same shall be invested at the Member's direction.

(f) A Member's Fixed Account:

- (1) Shall be distributed no later than sixty (60) days after (a) the termination of employment or (b) the Member requests a post NRA distribution.
- (2) Distributions shall be made in a Lump Sum.
- (3) If the Member dies before his Fixed Account has been distributed, the balance remaining shall be distributed pursuant to Section 5.4.

However, if a Member's Fixed Account cannot be determined by the third party Plan Administrator by the date on which such distribution should commence, or if the Member cannot be located, distribution of his Fixed Account shall be made sixty (60) days after the date that his Fixed Account can be determined or after the date the Retirement Board locates the Member. Nothing contained herein shall allow a Member to defer receipt of the commencement of distribution past April 1 of the calendar year following the later of the Plan Year he attains Age 70 ½ or retires from employment with the County, the State of Michigan or any of its political subdivisions.

#### **Section 4.4. Conditions for Credited Service in Case of an Intervening Military Service**

A Member who leaves the employ of the County to enter any armed service of the United States during any period of compulsory military service shall be entitled to Credited Service for vesting purposes only, for periods of active duty lasting 30 or more days, if each of the following conditions are satisfied:



- (1) The individual is re-employed by the County within 90 days from and after the date of termination of active duty;
- (2) No more than 5 years of credited service shall be granted on account of all military service of the Member;
- (3) Credited service shall not be granted for periods of military service which are or could be used for obtaining or increasing a benefit from another retirement system.

### Article 5 – Benefits

#### **Section 5.1. Normal Retirement; Age and Service Requirements**

The age and/or service requirements for Normal Retirement are:

- (a) Benefit group general - option A. The individual has attained age 55 years and has 25 or more years of Credited Service, or the individual has attained Age 60 years and has 8 or more years of Credited Service.
- (b) Benefit group Sheriff's Department - Command - option D. The individual has 25 or more years of Credited Service with the Sheriff's Department regardless of age, or has attained Age 60 and has 8 or more years of Credited Service.
- (c) Benefit Group Sheriff's Department - Deputies - option C. The individual has 25 or more years of Credited Service with the Sheriff's Department, regardless of age or has attained Age 60 and has 8 or more years of Credited Service.

Upon satisfying the requirements for Normal or Disability Retirement a terminated Member shall be paid the value of the Member's Fixed Account.

#### **Section 5.2. Normal Retirement**

If a Member's employment terminates on or after his Normal Retirement Age he will be deemed to have retired. The Retirement Board, at the election of the Participant, shall instruct the Trustee to pay over or distribute the Fixed Account in one of the optional forms listed in Section 5.7.

### **Section 5.3. Late Retirement**

A Member who continues in the employ of the County, the State of Michigan or any of its political subdivisions past his Normal Retirement Age shall remain a Member of the Retirement System for all purposes, and shall be fully vested in his Account and in any subsequent additions upon his attaining Normal Retirement Age but no retirement benefits shall be payable to him until his actual retirement. At the time of his actual retirement, benefits shall be paid to the Member as if he had retired on his Normal Retirement Date except that his actual retirement date shall be substituted for any reference to the Normal Retirement Date. Notwithstanding the foregoing, effective January 1, 1997 a Member who continues in the employ of the County, the State of Michigan or any of its political subdivisions past April 1 of the calendar year immediately following his attainment of Age 70 ½ may elect to receive all or any part of his account at any time (post-Normal Retirement Age distribution) and continue to have ongoing contributions credited to his account.

### **Section 5.4. Defined Contribution Disability Retirement**

If a Member becomes disabled while employed, the Member can apply for a Non-Duty Defined Contribution or Duty Defined Contribution Disability Retirement based on satisfaction of all of the criteria below:

- a. Application for any (Duty or Non-Duty Defined Contribution) Disability Retirement must be made with the Retirement Unit while the Member is still employed by the County (prior to separation from employment), *and*
- b. Member must have a minimum of 10 years Credited Service for Non-Duty Defined Contribution Disability. A Duty Defined Contribution Disability Retirement is not subject to the 10 years Credited Service requirement. Credited Service as of the date a Duty Disability Retirement is granted shall include years and months, if any, between the effective date of the Duty Disability Retirement and the date the Member would attain age 60, *and*
- c. Approval of the Application for (Duty or Non-Duty) Disability Retirement by the Oakland County Retirement and Deferred Compensation Board.

A Member is eligible for a Non-Duty Defined Contribution Disability Retirement if Member is mentally or physically totally incapacitated for continued employment by the County and the injury or condition is likely to be permanent. The County Retirement Board may accept the certification of any duly licensed medical practitioner acceptable to County Retirement Board or the County Retirement Board will require the applicant to submit to an examination by a physician or physicians selected by the County Retirement Board.

A Member is eligible for a Duty Defined Contribution Disability Retirement if Member is mentally or physically totally incapacitated for continued employment by the County and the injury or condition was sustained while performing duties required by the Member's County job. The County Retirement Board may accept the certification of any duly licensed medical practitioner acceptable to County Retirement Board or the County Retirement Board will require the applicant to submit to an examination by a physician or physicians selected by the County Retirement Board.

A Member shall be 100% vested if approved for Duty or Non-Duty Disability.

#### Appeal Process

If the Member does not concur in the opinion of the physician appointed by the Retirement Board, a physician will be co-selected by both the Member's physician and the physician appointed by the Retirement Board, and the selected physician's opinion of the Member's eligibility for either a Non-Duty or Duty Defined Contributions Disability Retirement will prevail.

#### Re-evaluation process

At least once each calendar year during the first 5 calendar years following a Member's approval of Defined Contribution Disability Retirement and at least once in every 3 calendar year period thereafter, the Retirement Board shall require the Member to undergo a medical or other re-evaluation until the Member reaches Normal Retirement Age. If the Member refuses to submit to re-evaluation or is no longer mentally or physically totally incapacitated for employment by the County, the Retirement Board may revoke a Member's Non-Duty or Duty Disability Retirement status.

### **Section 5.5. Death**

If a Member dies after termination of employment, but before distribution of his Fixed Account, the Fixed Account shall be distributed to his designated Beneficiary in accordance with the Vesting Schedule set forth in Section 3.9 and in accordance with Sections 5.2 and 5.5. The amount shall be one hundred percent (100%) of the Member's Account Balance. Distributions shall be made within sixty (60) days after the Member died unless the Retirement Board receives conflicting claims.

### **Section 5.6. Death Benefit; Amount of Benefit to Beneficiary**

The benefit for the Beneficiary of a deceased Member of the DC Part shall depend on the cause of death. If the cause of death was duty-related, 100% of the value of the Member's Fixed Account shall be paid to the Beneficiary in a lump sum, notwithstanding the percentage by which the Account Balance is vested. If the cause of death was not duty-related, the Beneficiary shall be paid the vested percent of the Member's Fixed Account, pursuant to the Vesting Schedule set forth in Section 3.9.

Any surviving spouse or dependent(s) who were eligible to receive health care benefits prior to the employees' death shall have the option to receive future health benefits as eligible under the retirement healthcare eligibility schedules, as if the employee retired the day prior to death. Duty related deaths for this purpose will receive credited years of service through age 60. Dependents may remain on retiree coverage through the same age as active employee dependents.

### **Section 5.7. Modes and Manner of Payment of Fixed Account**

Whenever it is provided that a Fixed Account is to be paid out, the Retirement Board, at the election of the Participant, shall instruct the Trustee to pay over or distribute the same in one of

the following optional forms of benefit. All such payments shall be made according to the provisions of law, this Resolution and the procedures approved by the Retirement Board.

- (a) Payment of the Fixed Account in a single lump sum payment; or
- (b) Substantially equal amounts or installments over such period of time as the Participant shall in his sole discretion select not exceeding the life expectancy of the Participant if the Participant is not married, or the joint life expectancy of the Participant and his spouse, if the Participant is married; or
- (c) Partial distributions as may be requested by the Participant from time to time.

### **Section 5.8. Loans to Members**

#### **(a) Availability of Loans to Members.**

- (1) A Member may apply for a loan from the Retirement System subject to the limitations and other provisions of this Section.
- (2) The County shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by a designee of the Retirement Board and are not inconsistent with the provisions of this Section, and that loans are made available to all Members on a reasonably equivalent basis (as a percent of Account Balance).

#### **(b) Terms and Conditions of Loans to Members.** Any loan by the Retirement System to a Member under Section 5.7(a) shall satisfy the following requirements:

- (1) Availability. Loans shall be made available to all Members on a reasonably equivalent basis.
- (2) Security and Interest Rate. Loans must be adequately secured and bear a reasonable interest rate.
- (3) Loan Limit. No Member loan shall exceed fifty percent (50%) of the Member's Vested Account Balance.
- (4) Foreclosure. In the event of default, acceleration of the note and attachment of security will not occur until a distributable event occurs in the DC Part of the Retirement System.
- (5) Reduction of Account. Notwithstanding any other provision of this Resolution, the part of the Member's vested Account Balance used as security held by the Retirement System by reason of a loan outstanding to the Member shall be taken into account for purposes of determining the amount of the Account Balance payable at the time of death or distribution. If less than one hundred percent (100%) of the Member's Nonforfeitable Account Balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account Balance shall be adjusted by first reducing the

Nonforfeitable Account Balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse and other beneficiaries.

- (6) Application for Loan. The Member must give the Retirement System adequate written notice, as determined by the Retirement Board of the amount and desired time for receiving a loan. No more than five (5) loans may be made by the Retirement Board to a Member in any calendar year. No loan shall be approved if an existing loan from the Retirement System to the Member is in default to any extent.
- (7) Amount of Loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Member by the Retirement System shall be at least \$2,000 and shall not exceed the least of:
  - (i) \$50,000, reduced by the excess (if any) of:
    - (A) The highest outstanding balance of loans from the Retirement System during the twelve (12) month period ending on the day before the date that the loan is made, over
    - (B) The outstanding balance of loans from the Retirement System on the date that such loan is made; or
  - (ii) The greater of:
    - (A) \$10,000, or
    - (B) One-half (½) of the value of the Member's nonforfeitable interest in all of his/her Accounts under this Retirement System.

For the purpose of the above limitation, all loans from all plans of the County and other Members of a group of employers described in IRC Sections 414(b), 414(c) and 414(m) and (o) are aggregated.

- (8) Length of Loan. The terms of any loan shall require the Member to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Member to acquire any dwelling unit that is to be used within a reasonable time after the loan is made as the principal residence of the Member, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a fifteen (15) year amortization period or such other reasonable period determined by the Retirement Board. Principal installments and interest payments otherwise due may be suspended during an authorized leave of

absence, if the promissory note so provides, but not beyond the original term permitted under this Subsection (9), with a revised payment schedule (within such term) instituted at the end of such period of suspension.

- (9) Prepayment. The Member shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (10) Note. The loan shall be evidenced by a promissory note executed by the Member and delivered to the Retirement Board and shall bear interest at a reasonable rate determined by the Retirement Board.
- (11) Security. The loan shall be secured by an assignment of that part of the Member's right, title and interest in and to his/her vested Account.
- (12) Assignment or Pledge. For the purposes of Subsections (7) and (8), assignment or pledge of any part of the Member's interest in the Retirement System shall be treated as a loan.
- (13) Other Terms and Conditions. The Retirement Board shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain tax qualification of the Retirement System under Code Section 401(a), or to prevent the treatment of the loan for tax purposes as a distribution to the Member. The Retirement Board, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Section.
- (14) Member Loan Accounts.

(i) Upon approval of a loan to a Member by the Retirement Board, an amount not in excess of the loan shall be transferred from the Member's other investment fund(s) to the Member's Loan Account as of the Valuation Date immediately preceding the agreed upon date that the loan is to be made.

(ii) The assets of a Member's Loan Account may be invested and reinvested only in notes received by the Retirement Board from the Member as consideration for a loan permitted by this Section 5.7 or in cash. Uninvested cash balances in a Member's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Retirement System shall be liable for any loss, or by reason of any breach, that results from the Member's exercise of such control.

(iii) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, as of the next Valuation Date after payment thereof to the Retirement System. The amount so invested shall be deducted from the Member's Loan Account.

(iv) The Retirement Board shall have the authority to establish other reasonable rules, not inconsistent with the provisions of this Resolution, governing the establishment and maintenance of Member Loan Accounts.

#### **Section 5.9. Required Minimum Distribution**

(a) All plan distributions shall be determined and made in accordance with the regulations under IRC Section 401(a)(9), including the minimum distribution incidental benefit requirement of IRC Regulation 1.401(a)(9)-2.

(b) The required beginning date of distributions to a Member shall be the later of April 1 of the calendar year following the calendar year in which the Member attains Age 70½ or April 1 of the calendar year following the calendar year in which the Employee retires from employment with the County, the State of Michigan or any of its political subdivisions.

(c) In the event of termination or partial termination of this Retirement System, the rights of all affected Employees to benefits accrued to the date of such termination or partial termination (to the extent funded as of such date) shall be Nonforfeitable.

#### **Section 5.10. Voluntary Withdrawals**

A Participant who (a) has met the age and service requirements for Normal Retirement as provided in Section 5.1, and (b) ceases to be a Member in accordance with Section 2.4(a) may take an in-service withdrawal of all or a portion of his or her Vested Account. Any such withdrawal shall be made in accordance with procedures established by the Retirement Board.

### **Article 6 - Rollovers**

#### **Section 6.1. Eligible Rollover Distributions**

This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Retirement System to the contrary that would otherwise limit a Distributee's election under this section, a Distributee may elect, at the time and in the manner prescribed by the Retirement Board, to have any portion of an eligible rollover distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover.

### **Article 7 - Forfeitures**

#### **Section 7.1. Forfeitures**

The Retirement Board shall maintain a "Forfeiture Account" for the DC Part of the Retirement System. "Forfeiture Account" means the account held by the Retirement Board of amounts in excess of the Member's Nonforfeitable amount where employment has terminated and years of service do not entitle him to the full benefit of his Provisional Account. The "Forfeiture

Account" shall first be used to pay expenses incurred by the Retirement Board for the DC Part of the Retirement System and then used to reduce the County's Contribution.

**Section 7.2. Restoration of Forfeitures of Members who converted from DB Part to DC Part**

Terminated, Partially and Fully Vested Members who converted from the DB Part to the DC Part of the Retirement System shall participate, vest, have forfeitures restored and have a Contribution level and match (if any) on reemployment by the County in a position involving Membership in the Retirement System as follows:

(a) A Fully Vested Member:

- (1) May repay the amount of any previously distributed funds within five (5) years after rehire;
- (2) Shall participate immediately in the Retirement System;
- (3) Shall receive credit for all prior Credited Service Years for vesting purposes;
- (4) Shall resume coverage at the conversion rate level and match (if any) at the time of rehire if he returns within five (5) years of termination of employment;
- (5) Shall resume coverage at the new hire contribution rate and match (if any) at the time of rehire if he returns more than 5 years after termination of employment.

(b) A Partially Vested Member:

- (1) May repay the amount of any previously distributed funds within 5 years after rehire;
- (2) Have previously forfeited amounts restored to his Account only if he is rehired within 5 years of termination of employment;
- (3) Shall participate immediately in the Retirement System on rehire;
- (4) Shall receive credit for all prior Credited Service Years for vesting purposes;
- (5) Shall resume coverage at the conversion rate level and match (if any) at the time of rehire if he returns within 5 years of termination of employment;
- (6) Shall resume coverage at the new hire contribution rate and match (if any) at the time of rehire if he returns more than five (5) years after termination of employment.

**Section 7.3. Forfeitures; Restoration of Forfeitures for DC Members Only**



Terminated, Non-Vested, Partially and Fully Vested Members who only participated in the DC Part of the Retirement System shall participate, vest, have forfeitures restored and have a Contribution level and match (if any) on reemployment by the County in a position involving membership in the Retirement System as follows:

(a) A Fully Vested Member:

- (1) May repay the amount of any previously distributed funds within five (5) years after rehire;
- (2) Shall participate immediately in the Retirement System;
- (3) Shall receive credit for all prior Credited Service Years for vesting purposes;
- (4) Shall resume coverage at the new hire rate at the time of rehire.

(b) A Partially Vested Member:

- (1) May repay the amount of any previously distributed funds within five (5) years after rehire;
- (2) Have previously forfeited amounts restored to his Account only if he is rehired within five (5) years of termination of employment;
- (3) Shall participate immediately in the Retirement System on rehire;
- (4) Shall receive credit for all prior Credited Service Years for vesting purposes;
- (5) Shall resume coverage at the new hire rate at the time of rehire;

(c) A Non Vested Member:

- (1) May repay the amount of any previously distributed funds within 5 years after rehire;
- (2) Have previously forfeited amounts returned to his Account only if he is rehired within 5 years of termination of employment. If no funds were previously distributed, previously forfeited amounts shall be restored within 90 days after the close of the Plan Year following rehire.
- (3) Shall participate immediately in the Retirement System;
- (4) Shall receive credit for all prior Credited Service Years for vesting purposes;
- (5) Shall resume coverage at the new hire rate at the time of rehire.

## Article 8 - Claims

### **Section 8.1. Denial of Claim for Benefits; Appeal to Retirement Board**

(a) A benefit claimant shall be notified in writing, within 30 days of a denial of a claim for benefits. The notification shall contain the basis for denial. The benefit claimant may appeal the denial and request a hearing before the Retirement Board. The appeal shall be in writing and filed with the Retirement Board within 90 days of the date of the notification of denial. The request for appeal shall contain a statement of the claimant's reasons for believing the denial to be improper. The Retirement Board shall schedule a hearing of the appeal within 60 days of receipt of the request for appeal.

(b) Protection from Reprisal. No person may be discharged, fined, suspended, expelled, disciplined, or otherwise discriminated against for exercising any right that he is entitled to or for cooperation with any inquiry or investigation under the provisions of this Retirement System or any governing law or regulations.

No person shall, directly or indirectly, through the use or threatened use of fraud, force or violence, restrain, coerce or intimidate any Member or Beneficiary for the purpose of interfering with or preventing the exercise of or enforcement of any right, remedy or claim that he is entitled to under the Retirement System or any governing law or regulations.

## Article 9 - Transition Rules

### **Section 9.1. Transition Rules Relating to First Plan Year and Employees Transferring from the Oakland County Employees Retirement System as Restated June, 1991**

(a) Plan Adjustment to Account Balances. The present value of the lump sum actuarial equivalent ("Actuarial Equivalent") of each Member's Accrued Benefit in the DB Part shall be determined as of the date established by the Merit System or applicable Collective Bargaining Agreement ("Transferred Account"). In determining the present value of the Lump Sum Actuarial Equivalent of each Member's Accrued Benefit in the DB Part, notwithstanding anything contained herein to the contrary, the following shall control:

- (1) Final Average Compensation ("FAC") shall be calculated as though the Member were leaving the County's employ;
- (2) The maximum transfer shall be based on a Normal Retirement Benefit of 75% of Final Average Compensation;
- (3) The present value of a Member's Accrued Benefit shall be calculated as of the first day the Member would satisfy the Normal Retirement Age and service requirements of Section 5.1;
- (4) No redetermination shall be made to give credit for any future raises or interest rate changes in the definition of Actuarial Equivalence;
- (5) The Retirement Board shall include in FAC such additional items of earned or accrued employment related compensation as it determines to be reasonable and non-discriminatory.

Each such Member shall be provided with written notice of said amount and given twelve (12) months in which to elect to either participate in the DC Part or continue as a Member of the DB Part of the Retirement System. A Member who elects to participate in the DC part shall have the ability to enter same on any Entry Date during the twelve (12) month period following receipt of notice of the present value of the Actuarial Equivalent of such Member's Accrued Benefit. Such participation shall commence as of the Entry Date that the Member has elected to participate in the DC Part. Such Member may elect to have his participation in the DC Part effective retroactively to the first day of the Plan Year that occurs during the twelve (12) month election period by contributing to the Plan for the period from the beginning of the Plan Year to the appropriate Entry Date. The Actuarial Equivalent of the Accrued Benefit for any Member whose Entry Date is other than the first day of the Plan Year shall be increased from the date used to determine its present value to the date of transfer to the DC Part at the interest used in determining the Actuarial Equivalent. A Member who does not make a contribution to the Plan for the period from the first day of the Plan Year to the applicable Entry Date shall receive a County Contribution of 6% of Compensation from the first day of the Plan Year but no additional credited service for the DB Part for such Plan Year.

(b) Establishment of Account Balances. Those Members of the June, 1991 Restated Retirement System who elect to participate in the DC part of the Retirement System shall have separate accounts established for the transfer of assets to this DC Part of the Retirement System and be 100% vested in the Transferred Account but subject to the vesting schedule of Section 3.9 as to the County's Contribution after the applicable Entry Date.

(c) Effect on 415. Amounts transferred pursuant to this Section shall not be taken into account in determining the component of the Annual Addition attributable to Employee Contributions.

(d) Withdrawals or Distributions.

- (1) Amounts in a Member's Transferred Account may not be withdrawn by, or distributed to the Member, in whole or in part, except as provided in Subparagraph (2).
- (2) At the Member's Normal Retirement Date, or such other date when the Member is receiving a distribution from the DC Part of the Retirement System, or otherwise shall be entitled to receive benefits, the fair market value of the Member's Transferred Account shall be added to the amounts otherwise available.
- (3) The Member's Transferred Account shall share in income earned, investment gains and losses attributable thereto, less any expenses in the same manner as any other account.

## Article 10 - Incentive Retirement Programs

### **Section 10.1. 2002 Incentive Retirement Program**

The Retirement Board shall undertake the following for all Members of the Oakland County Retirement System, regardless of whether they are a Member of the DB Part or DC Part if they satisfy the following conditions:

- (1) This program shall be open to non-represented Members and all represented Members excluding Employees represented by the Oakland County Deputy Sheriff's Association, the Oakland County Command Officers' Association and elected officials of the County ("covered class");
- (2) The covered class shall be further limited to those Members who are eligible to retire by December 31, 2002 or whose age and service, including military service credits and Michigan reciprocal retirement act service time totals 75 by that date, with a minimum of twenty (20) years of service and a minimum age of fifty (50);

- (3) Those Members of the covered class who so qualify must file written application with the Retirement Board not less than thirty (30) days in advance of their requested retirement date, on the appropriate form, but in no event later than January 31, 2003, with the proposed retirement date being no sooner than November 15, 2002 and no later than March 31, 2003;
- (4) Those Members who file such application for payment of the incentive retirement from the Retirement System shall receive lump sum retirement incentive pay of 26 weeks salary determined as of September 30, 2002 (i.e. base salary + longevity pay but not including overtime or shift premium pay);
- (5) This lump sum retirement incentive pay shall not be included in either the final average compensation (FAC) for Employees in the DB part of the Retirement System or in the amount of either Employee or County contribution to the DC part of the retirement system.

#### **Section 10.2. 2008 Incentive Retirement Program**

The Retirement Board shall undertake the following for all Members of the Oakland County Retirement System, regardless of whether they are a Member of the DB Part or DC Part if they satisfy the following conditions:

- (1) This program shall be open to non-represented Members and all represented Members excluding Employees represented by the Oakland County deputy sheriff's Association, the Oakland County Command Officers' Association and elected officials of the County ('covered class');
- (2) The covered class shall be further limited to those Members who are eligible to retire by August 31, 2008 or whose age and service, including military service credits and Michigan reciprocal retirement act service time totals 75 by that date, with a minimum of twenty (20) years of service and a minimum age of fifty (50);
- (3) Those Members of the covered class who so qualify must file written application with the Retirement Board not less than thirty (30) days in advance of their requested retirement date, on the appropriate form, but in no event later than January 31, 2008, with the proposed retirement date being no sooner than April 1, 2008 and no later than August 31, 2008;
- (4) Those Members who file such application for payment of the incentive retirement from the Retirement System shall receive lump sum retirement incentive pay of one (1) week of base salary plus service increment (maximum of thirty five (35) weeks), determined as of December 31, 2007, for each full year of retirement service as of December 31, 2007;
- (5) This lump sum retirement incentive pay shall not be included in either the FAC for Employees in the DB part of the Retirement System and no

additional contributions will be made to an Employee's defined contribution plan by the County or the Employee as a result of this lump sum payment.

## **Article 11 - Administration**

### **Section 11.1. Assignments Prohibited**

(a) The right of an individual to a pension, to a refund of accumulated Member Contributions, the pension itself, or any other right accrued or accruing to any individual, and the monies and assets of the Retirement System, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or other process of law, except as specifically required by Michigan or Federal law and shall be unassignable except as provided in subsection (b) or (c) of this Section 11.1, or as required by Michigan or Federal law.

(b) If an individual is covered under a group insurance or prepayment plan participated in by the County, and makes a permitted election to continue such coverage as a retired Member or as a Beneficiary, the individual may authorize the Retirement Board to deduct from the individual's payments such amount as required to continue coverage under such group insurance or prepayment plan.

(c) The prohibition of subparagraph (a) shall not apply to the creation, assignment, or recognition of a right to any benefit payable to a Member pursuant to a domestic relations order, if such order is determined by the Retirement Board to be in accordance with the EDRO Act. Notwithstanding the foregoing, if the Retirement Board determines such order is an EDRO and if the Retirement Board determines that the EDRO applies to a Member in the DC Part of the Retirement System and requires payment before the Member would have otherwise been entitled to payment, the Retirement Board shall make distribution to the "alternate payee" identified in the EDRO from the DC Part only effective as of the first day of the month following the month that the domestic relations order was determined to be an EDRO, or the first day of the month following the month that a benefit is payable under the later of the date set out in the EDRO or the EDRO Act.

(d) No Rights Against County. Nothing contained herein shall be construed as giving an Employee or any other person, any legal or equitable rights against the County or the Retirement Board, except as expressly granted herein, or as giving any person the right to be retained in the service of the County, and an Employee shall remain subject to control and to discharge to the same extent as heretofore.

### **Section 11.2. Internal Revenue Code Qualification**

(a) The County intends the Retirement System to be a qualified pension plan under IRC Section 401, and that the Trust be an exempt organization under IRC Section 501. The Retirement Board may adopt, or recommend to the Board of County Board Members for adoption, such additional provisions to the Retirement System as are necessary to fulfill this intent.

The County shall not be entitled to receive or recover any part of its Contributions to the Trust or the earnings thereof.

(b) Retirement benefits provided under this Resolution shall not exceed the governmental plan limits set forth in IRC Section 415 and the regulations thereunder.

(c) The corpus of income of the Trust may not be diverted to or used for other than the exclusive benefit of the Members or their Beneficiaries.

### **Section 11.3. Repeal**

All resolutions or other provisions of law inconsistent with the provisions of this resolution are hereby repealed to the extent of such inconsistency as far as authority is vested in the Retirement Board Members to repeal same.

### **Section 11.4. Appraisals During Plan Year**

The third party Plan Administrator shall provide daily accounting of the value of the DC Part of the System. Such intervening appraisals and adjustments shall use the same procedures used for the annual appraisal and adjustments on each Anniversary Date.

### **Section 11.5. Execution of Instruments**

(a) Any instrument or document to be provided by the County shall be properly executed if executed in the name of the County by any officer or officers thereof; or where provided by the Retirement Board, if executed as follows:

- (1) If executed in the Retirement Board's name by either the Treasurer or Secretary of the Retirement Board, and
- (2) In the case of any corporate trustee (whether or not the sole trustee), if executed as trustee in the name of the corporation under its corporate name by any officer or officers thereof; provided, further that any interested parties shall be fully protected in relying upon any instrument or document so executed, and, such execution shall be conclusive proof that any signature is duly authorized and that any such information is true and correct.

(b) County Actions. Whenever the County is permitted or required to do or perform any act or execute any document, it shall be done, performed or executed by or at the direction of its Retirement Board Members or by officers or authorized agents of the County, and may be evidenced by resolutions certified by the County Clerk.

### **Section 11.6. Indemnification by County**

The County hereby agrees to indemnify and hold harmless any Member of the Retirement Board or any fiduciary against any liabilities incurred by any of them in the exercise and performance of their powers and duties, except where attributable to their fraud, gross neglect or malfeasance,

as judicially determined; if same can be done without affecting the IRC Section 401(a) qualification of the Retirement System, any amounts paid by the County shall be reimbursed to the County out of the Trust, if sufficient funds are available, and shall be an expense for purposes of Section 3.3(c) (Expenses).

#### **Section 11.7. Liability Insurance**

The Retirement Board may purchase, as an authorized expense of the Retirement System, liability insurance for the Retirement System and/or for its fiduciaries to cover liability or losses occurring by reason of an act or omission of a fiduciary. Such insurance contract may permit recourse by an insurer against the fiduciary for breach of a fiduciary obligation.

Any fiduciary may purchase insurance to protect himself in the event of a breach of fiduciary duty and the County may also purchase insurance to cover the potential liability of one or more persons who serve in a fiduciary capacity.

#### **Section 11.8. Service in Multiple Capacities**

Any person or group of persons may serve in more than one fiduciary capacity as to this Retirement System, specifically including service both as a trustee and as Plan Administrator.

#### **Section 11.9. Limitations on Fiduciary Liability**

Nothing in this Retirement System shall prevent a fiduciary from receiving any benefit that he is otherwise entitled to as a Member or Beneficiary. However, the benefit must be computed and paid consistent with the terms of this Retirement System as applied to all other Members and Beneficiaries. This Retirement System shall not be interpreted to prevent any fiduciary from receiving reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred in the performance of his duties with the Retirement System; except that no person so serving who already receives full-time pay from the County shall receive compensation from this Retirement System, except for reimbursement of expenses properly and actually incurred. A fiduciary is also entitled to serve in this capacity in addition to being an officer, Employee, agent, or other representative of any party-in-interest.

#### **Section 11.10. Investment Manager**

When an Investment Manager has been appointed, he is required to acknowledge in writing that he has undertaken a fiduciary responsibility with respect to the Retirement System.

In order to serve as an Investment Manager a person must qualify as:

- (1) A registered investment adviser under the Investment Adviser Act of 1940; or
- (2) A bank, as defined in that Act; or
- (3) An insurance company duly authorized to perform such services under the laws of more than one state; or



- (4) Be an individual or business entity, whether a corporation, partnership or limited liability company whose primary profession is acting as an investment counselor and advisor.

### **Section 11.11. Enforcement**

The Retirement Board shall consult with any Investment Manager, when acting, with respect to any and all investment decisions, other than ministerial decisions and shall cooperate with the Investment Manager to carry out such investment plans, programs, strategies and acts as may be conceived by the Investment Manager; provided, however, and notwithstanding the foregoing, upon receipt of written recommendations from the duly appointed Investment Manager, the Retirement Board shall be accorded a reasonable time to examine and review the overall investment plan and strategy, initially and from time to time, before implementing the same, and may refuse to implement the same, in whole or in part, if the Retirement Board shall determine, in the exercise of its fiduciary responsibility, that implementation of all or any part of said investment plan and strategy would not be reasonably prudent under the circumstances. Written notice of such determination shall be given by a trustee, the investment advisor and the other trustees. Notwithstanding anything else herein or as provided by statute or regulation to the contrary, no trustee shall be liable for any loss or detriment arising directly or indirectly from any act or omission to act as directed by an Investment Manager or from any sale, failure to sell, retention of assets or investment activity or failure of activity based upon a result, directly or indirectly from the directions from Investment Management or from the failure or refusal of any trustee, acting in discharge of its fiduciary responsibility hereunder, to implement all or any part of the investment plan and strategy of any Investment Manager. If necessary to protect the interests of the Retirement System or any Member or Beneficiary, a fiduciary shall seek the assistance of such civil or criminal courts of competent jurisdiction or such regulatory or administrative agencies as may be appropriate under the circumstances.

## **Article 12 - Termination and Amendment**

### **Section 12.1. Duration; Termination; Assumption**

- (a) Duration. This Retirement System shall continue until its assets have been paid out and distributed.
- (b) Termination; Assumption. It is the County's present intention to permanently maintain the Retirement System and continue to make contributions provided, however, that:
  - (1) The Retirement System shall automatically terminate upon the County's legal dissolution, or upon its adjudication as a bankrupt or insolvent, or upon its making a general assignment for the benefit of creditors, or upon a receiver being appointed for its assets.
  - (2) In the event of any termination, partial termination, or complete discontinuance of contributions, the County and the Retirement Commission shall give prompt notice thereof to the Commissioner of Internal Revenue;

and, subject to subparagraph (c) below each Member's Account shall become fully vested and Nonforfeitable. In the case of a partial termination, this Paragraph shall apply only to that portion of the Retirement System terminated.

(c) Liquidation of Retirement System. In the event of the DC Part of this Retirement System's termination, the Retirement Commission shall liquidate all investments and determine the value of each Member's Account under Section 4.3 (Fixed Accounts) as of the date of termination as follows:

- (1) Adjustment shall be made to each Account to cover any expenses of distribution and final liquidation. The Retirement Commission shall pay the balance of each Member's Account as described in Section 5.1 (Normal Retirement).
- (2) Before making any payments, distributions or assignments, however, the Retirement Commission and its legal counsel, shall first be paid their expenses and charges incidental to the operation of the Trust, and the termination thereof, by the County. If the County does not pay such expenses and charges, the Retirement Commission shall have a lien on the cash and other property remaining in its hands, the assets distributable to the Members being liable for a pro rata share thereof until the Retirement Commission and their counsel have been paid.
- (3) In any event, the Retirement Commission shall not be required to make any distributions until written evidence of approval by the Board Member of Internal Revenue of such termination and distribution has been submitted to the Retirement Commission.

(d) Termination of DC Part of Retirement System. Notwithstanding termination of the Retirement System, the Trust shall terminate when and if, but not until, the Trust Fund has been entirely paid out and distributed in accordance with this Resolution.

#### **Section 12.2. Correction of Errors; Power to Amend**

(a) The Retirement Commission shall correct errors in the records of the Retirement System. The Retirement Commission shall seek to recover overpayments and shall make up under payments. Recovery of overpayments may be accomplished by reducing the amount of future payments so that the actuarial present value of actual payments to the recipient is equal to the actuarial present value of the payments to which the recipient was correctly entitled.

(b) The County reserves the right to amend this Resolution. The County specifically reserves the right to amend the Retirement System retroactively in order to comply with IRC Section 401(a). No reason is necessary for the amendment, regardless of whether: (1) for reasons of business necessity; or (2) for the purpose of causing the Retirement System and trust to qualify, and continue to qualify, under the Code as set forth in the recitals. No such amendment, except upon written consent, shall increase the duties or liabilities of the Retirement Commission or

diminish its compensation, or deprive any Member or Beneficiary of any then vested equitable interest in the Retirement System. A decision of the Retirement Commission shall, except in the absence of good faith, be binding upon the Members, Beneficiaries, and all other persons interested, as to whether or not any amendment does deprive a Member or any other person of any vested interest already existing or does adversely affect such interest. In no event shall any amendment have the effect of vesting in the County any right, title or interest to any assets held as part of the Trust. Any amendment shall be effective when signed by the duly authorized officer or officers of the Board of Board Members, approved by the County Pension Plan Committee under M.C.L. § 46.12a, and filed with the Retirement Commission. If the County amends or has amended the vesting schedule, the percentage then Nonforfeitable or vested shall not be reduced as a result of such amendment. Any Member with three (3) years of service determined at the end of the election period shall have an irrevocable election to have the nonforfeitable percentage of his accrued benefit derived from County Contributions and forfeitures determined under the vesting schedule as amended or a prior vesting schedule. Such election shall commence on the date the amendment was adopted and shall terminate no later than sixty (60) days after the later of: (i) the Effective Date of the amendment; (ii) the date of adoption of the amendment to the vesting schedule; or (iii) the date each Member who is eligible to make such election receives written notice of the amended vesting schedule becoming operational.

Notwithstanding the preceding paragraph, a Member's Provisional Account may be reduced to the extent permitted under IRC Sections 412(c)(7) and 412(d)(2). For purposes of this paragraph, a Plan Amendment which has the effect of decreasing a Member's provisional account or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Further, no amendment to the Retirement System shall have the effect of decreasing a Member's vested interest determined without regard to such amendment as of the later of the date such amendment is adopted or the date it becomes effective.

### **Article 13 - Miscellaneous**

#### **Section 13.1. Fraud Penalty**

Whoever with intent to deceive shall make any statement or report under this Resolution which is untrue, or shall falsify or permit to be falsified any record or records of the Retirement System, or who shall otherwise violate the provisions of this Resolution as it may from time to time be amended, with intent to deceive, shall be guilty of a misdemeanor and upon conviction shall be fined not in excess of \$500, or shall be imprisoned for not more than 90 days, or both, in the discretion of the court, together with payment of costs of prosecution.

#### **Section 13.2. Severability**

To the extent not preempted by federal law, this Resolution shall be governed by the laws of the State of Michigan as to interpretation, enforcement, validity, construction and effect and in all other respects. Wherever necessary, pronouns of any gender shall be deemed synonymous, as shall singular and plural pronouns. The table of contents and the headings of sections and

paragraphs are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this resolution. If any section or part of a section of this Resolution is for any reason held to be invalid or unconstitutional, such holding shall not be construed as affecting the validity of the remaining sections of the Resolution or the Resolution in its entirety.

### **Section 13.3. Reciprocal Retirement System**

The DC Part of the Retirement System is not a reciprocal Retirement System under the provisions of the Michigan Reciprocal Retirement Act (M.C.L. § 38.1101 et seq).

## **Article 14 - Oakland County Retirement and Deferred Compensation Board**

### **Section 14.1. Authority and Responsibility**

The administration, management and responsibility for the proper operation of the Retirement System, and for interpreting and making effective the provisions of the Retirement Resolution are vested in the Oakland County Retirement and Deferred Compensation Board ("Retirement Board"). The Board shall have power to construe this Resolution, any such construction made in good faith shall be final and conclusive. The Board shall have the power to correct any defect, supply any omission, or reconcile any inconsistencies in such manner and to such extent as it shall deem proper to carry out the objectives of this Resolution. The Board shall be the sole, final and conclusive judge of such propriety and shall act in a uniform and non-discriminatory manner.

### **Section 14.2. Composition of Board**

The Board shall consist of the following nine individuals:

- (a) Board of Commissioners Chairperson or designee;
- (b) Finance Committee Chairperson or designee;
- (c) County Treasurer or designee;
- (d) County Executive or designee;
- (e) Three (3) elected employee members;
- (f) One (1) elected retiree member; and
- (g) One (1) citizen member appointed by the Retirement Board.

### **Section 14.3. Members' Term of Office, Members' Oath of Office and Vacancies**

(a) The terms of the elected County officials shall be consistent with their elected office positions. The elected employee members and the citizen member shall serve four (4) year terms; the elected retiree member shall serve a two (2) year term.

### **Section 14.4. Retirement Board Meetings; Quorum; Voting; Record of Proceedings**

(a) The Retirement Board shall hold meetings regularly, at least one in each calendar month and shall designate the time and place thereof. All meetings of the Retirement Board shall be public. Notice of the meetings will be posted in the County building prior to the meeting date.

(b) Five attending Board Members shall constitute a quorum at any meeting of the Retirement Board.

(c) Each attending Board Member shall be entitled to one (1) vote on each question before the Retirement Board. At least four (4) concurring votes shall be required for a valid action by the Retirement Board.

(d) The Retirement Board shall adopt its own rules of procedure and shall keep a written record of its proceedings.

### **Section 14.5. Officers and Services of Retirement Board**

(a) The Retirement Board shall elect a chairperson and a vice chairperson from its Membership.

(b) The Retirement Board shall appoint an individual who shall be the secretary to the Retirement Board and the administrative officer of the Retirement System.

(c) The County Treasurer shall be the treasurer of the Retirement System. The treasurer shall be custodian of the assets of the Retirement System except as to such assets as the Retirement Board may from time to time place in the custody of a nationally chartered bank or trust company.

(d) The Corporation Counsel shall be legal advisor to the Retirement Board.

(e) The Retirement Board shall designate as the medical director a physician who is not eligible to participate in the Retirement System as a Member, retired Member or Beneficiary. The medical director shall hold office at the pleasure of the Board.

(f) The Retirement Board shall designate an actuary who shall advise the Board on the actuarial operation of the Retirement System. "Actuary" shall mean a Member of the American Academy of Actuaries. A partnership or corporation may be designated as actuary if the duties of actuary are performed by or under the direct supervision of an individual who meets the preceding requirement.

(g) The Retirement Board is authorized and empowered to employ such professional and other services as it requires for the proper discharge of its responsibilities. Such services shall be engaged and compensated in the same manner that similar services are engaged and compensated by other departments of the County. The Retirement Board may utilize the services of County Employees if made available.

#### **Section 14.6. Retirement Board's Reports**

The Retirement Board shall prepare an annual report for each fiscal year. The annual report shall contain information about the financial, actuarial and other activities of the Retirement System during the fiscal year. A copy of the annual report shall be furnished to the Board of County Board Members. The Retirement Board shall furnish the Board of County Board Members such other information about the Retirement System as the Board of County Board Members may from time to time request.

#### **Section 14.7. Retirement Board's Investment Authority and Restrictions**

(a) The Retirement Board is the trustee of the monies and assets of the Retirement System. The Retirement Board has the authority and power to invest and re-invest the monies and assets of the Retirement System subject to all terms, conditions, limitations and restrictions imposed by the State of Michigan on the investments of public Employee Retirement Systems. The Retirement Board shall have full power to hold, sell, assign, transfer and dispose of any securities of the Retirement System. The Retirement Board may employ investment counsel to advise the Board in the making and disposition of investments.

In exercising its discretionary authority with respect to the management of the monies and assets of the Retirement System, the Retirement Board shall exercise the care, skill, prudence and diligence, under the circumstances then prevailing, that an individual of prudence acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and similar objectives. This shall include diversifying the Retirement System's investments so as to minimize the risk of large losses, unless under the circumstances it appears not prudent to do so. This standard shall not be applied to investments in isolation but rather in the context of the Retirement System's portfolio and as a part of the overall investment strategy, which shall incorporate risk and return objectives reasonably suited to the Retirement System.

(b) Except for fraud, gross neglect or malfeasance, judicially determined, no officer, director, or Employee of the County, fiduciary or Retirement Board shall be personally liable for acts done hereunder, or for the making, retention or sale of any investment or reinvestment made as provided herein, or for the failure to invest or reinvest any funds of the trust, or for any loss to or diminution of the trust nor shall the Retirement Board or any fiduciary be personally liable for or answerable to any Member or any other person in connection with the exercise of any discretion under this Retirement System. No trustee or other fiduciary shall be liable or responsible for the acts or omissions of any other trustee or fiduciary.

(c) Notwithstanding subparagraph (b), no fiduciary with respect to the Retirement System shall be excused from liability for a breach of fiduciary responsibility of another trustee or other fiduciary of the Retirement System in the following circumstances:

- (1) If he participates knowingly in, or knowingly undertakes to conceal, an act or omission of a trustee or fiduciary, knowing such act is a breach of fiduciary responsibility;
- (2) If, by his failure to comply with subparagraph (1) in the administration of his specific responsibilities as a fiduciary of the Retirement System, he has enabled the other fiduciary to commit a breach of fiduciary responsibility; or
- (3) If he has knowledge of a breach by another fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

**Section 14.8. Retirement Board's Use of Monies and Assets; Prohibited Actions**

(a) All monies and assets of the Retirement System shall be held and invested for the sole purpose of meeting the legitimate obligations of the Retirement System and shall be used for no other purpose.

(b) Members of the Retirement Board and its Employees are prohibited from:

- (1) Having a beneficial interest, direct or indirect, in an investment of the Retirement System.
- (2) Borrowing money or assets of the Retirement System except as otherwise provided by this Resolution for loans to Members.
- (3) Receiving any pay or emolument from any individual or organization providing services to the Retirement System other than compensation for personal services or reimbursement of authorized expenses paid by the Retirement System.

**Section 14.9. Retirement Board's Compensation**

The Commissioners, except for the Employee Member Commissioners elected by the Members of the Retirement System, shall be eligible to be paid a per diem for attending meetings of the Commission. The per diem shall be the same per diem established by the Board of County Commissioners for service on various boards and commissions. All Commissioners shall be reimbursed for the actual and necessary expenses they incur in performing their duties as Commissioners, except that the citizen Commissioner and retired Commissioner shall not be paid mileage for their attendance at published meetings.

**Section 14.10 Signature**

This Plan document is signed on May 11, 2018.

PLAN ADMINISTRATOR:

By: Julia See





Moved by Long supported by Quarles the resolutions (with fiscal notes attached) on the amended Consent Agenda be adopted.

AYES: Dwyer, Fleming, Gershenson, Gingell, Hoffman, Jackson, Kowall, Long, McGillivray, Middleton, Quarles, Spisz, Taub, Tietz, Weipert, Woodward, Zack, Berman, Crawford. (19)

NAYS: None. (0)

A sufficient majority having voted in favor, the resolutions (with fiscal notes attached) on the amended Consent Agenda were adopted.

OAK CITY HR

'18 MAY 11 P1:27

*Dwight D. Burn* 5/2/18

**I HEREBY APPROVE THIS RESOLUTION  
CHIEF DEPUTY COUNTY EXECUTIVE  
ACTING PURSUANT TO MCL 45.559A (7)**

STATE OF MICHIGAN)  
COUNTY OF OAKLAND)

I, Lisa Brown, Clerk of the County of Oakland, do hereby certify that the foregoing resolution is a true and accurate copy of a resolution adopted by the Oakland County Board of Commissioners on May 2, 2018, with the original record thereof now remaining in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the County of Oakland at Pontiac, Michigan this 2<sup>nd</sup> day of May, 2018.

*Lisa Brown*  
Lisa Brown, Oakland County