

**COUNTY OF WASHTENAW**

At a \_\_\_\_\_ meeting of the Board of Commissioners of the County of Washtenaw, Michigan, held on the \_\_\_ day of \_\_\_\_\_, 2008, at \_\_:\_\_ .m., Eastern Daylight Savings Time, at the County \_\_\_\_\_ Building in Ann Arbor, Michigan there were:

PRESENT: \_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_

The following ordinance was offered by \_\_\_\_\_ and seconded by \_\_\_\_\_:

**AN ORDINANCE TO CONFIRM AND RESTATE WASHTENAW COUNTY’S EXISTING CONTRACTUAL OBLIGATIONS TO PROVIDE FOR MEDICAL BENEFITS FOR CERTAIN RETIRED COUNTY EMPLOYEES AND THEIR ELIGIBLE DEPENDENTS**

THE COUNTY OF WASHTENAW ORDAINS:

**Section 1. Title of ordinance.**

This ordinance shall be known and may be cited as the Retiree Medical Benefits Contractual Obligations Ordinance.

**Section 2. Intent and purpose.**

The Washtenaw County Board of Commissioners is empowered by statute to provide group health care benefits for County retirees and their dependents (“retiree medical benefits”) and has done so since 1948. The County’s longstanding contractual obligations to provide retiree medical benefits to eligible retired and active employees of the County are documented in contracts, ordinances, resolutions, booklets and other documents and written communications available to County active and retired employees, but not collectively in one place. The intent and purpose of this ordinance are to provide a clear, comprehensive confirmation, reaffirmation and restatement of the County’s contractual obligations to provide retiree medical benefits, as befits these important County obligations.

**Section 3. History of the County’s obligations for retiree medical benefits.**

A. The County has provided retiree medical benefits to eligible County retirees and their dependents continuously since 1948. In a resolution, the Washtenaw County Board of Commissioners recognized that the established rights of eligible County retirees and employees to receive retiree medical benefits should not be subject to repudiation by future Boards of Commissioners. Later in 1996, the County transferred the funds which were to cover these costs (then deposited in separate accounts as a part of the Washtenaw County Retirement System), in the newly established voluntary employees benefit association trust (“VEBA trust”) under Section 501(c)(9) of the Internal Revenue Code which was restated in 1998 to replace the prior trust accounts as a vehicle for funding its obligation to provide retiree medical benefits. At significant expense, the County has funded this ongoing, long-term liability continually since 1948.

B. Since their inception, these legally binding County contractual obligations for current and future retiree medical benefits have been expressly subject to the County’s reserved right to reasonably modify from time to time the portion of the total cost to be borne by retirees for receiving such benefits (*e.g.*, co-pays and deductibles) and the scope and details of the provided retiree medical benefits, as appropriate to comport with evolving changes in medical research, technology, drug development, the practice of medicine, health care delivery and the costs thereof, but not modifications tantamount to providing less than an appropriate core package of retiree medical benefits. At various times, accordingly, the County has increased and/or decreased the cost of coverage to its retirees and the scope and details of the retiree medical benefits provided.

C. Throughout its long history of performing its retiree medical benefits obligations, including currently, the County has maintained various negotiated agreements with health care insurers, health care providers, managed care organizations and others that specify at any given time the medical benefits then available to County retirees and their families.

D. The documentation for the County’s contractual obligations to provide retiree medical benefits to eligible retired and active employees of the County, and a chronological listing of the County’s actions, practices and continuous course of dealing in providing retiree

medical benefits since 1948, are described in Exhibits A through F at the end (and hereby made a part) of this ordinance.

E. In recognition of the magnitude and financial significance of many governmental employers' unfunded liabilities for retiree medical benefits, which previously were not reported in their financial statements under generally accepted governmental accounting principles, the Government Accounting Standards Board has recently required that employers, such as the County, must now report in their financial statements the reasonably estimated true cost of their unfunded accrued actuarial liabilities for post-employment medical benefits. This has presented an independent, additional reason for this ordinance to bring desirable clarity to identifying the same binding contractual commitments that the County has always acknowledged and paid when due since their inception and for which it has established, funded and maintained the VEBA trust since 1997.

**Section 4. Confirming existing contractual obligations for retiree medical benefits.**

A. The County Board of Commissioners hereby confirms, reaffirms and restates the County's existing contractual obligations to provide retiree medical benefits to eligible retired and active County employees and their dependents, and acknowledges and agrees that these are binding contractual obligations of the County to eligible retired and active County employees and their dependents that future County Boards of Commissioners cannot repudiate.

B. The retired and the currently active County employees who are eligible to receive County-provided retiree medical benefits are described in Exhibits A through F at the end (and hereby made a part) of this ordinance. They perform their side of the County's contractual commitments to provide retiree medical benefits to them and their dependents by providing their services to the County as its employees and by meeting the applicable age and length-of-service criteria described in these exhibits.

C. The scope of benefits currently included in the County's retiree medical benefits program ("RMB Program") is summarized in Exhibits A through F at the end (and hereby made a part) of this ordinance. In addition, the County is obligated to pay the Medicare Part B premiums for certain designated groups of retirees. Such scope of benefits

shall continue to be the core package of retiree medical benefits in the RMB program that will be provided by the County for eligible current and future retirees in fulfillment of its existing, binding, contractual obligations which are confirmed, reaffirmed and restated in this ordinance; provided, that the County has the right, subject to and strictly limited to the extent of any conflicting collective bargaining agreement obligation, to reasonably modify from time to time the RMB program, taking into account then prevailing customs and standards for governmental employers reasonably comparable to the County: (1) with respect to the amounts retirees may have to contribute to the costs of their and their dependents' coverage (for example and without limitation, co-pays and deductibles) and the scope of coverage and range of benefits provided, as appropriate to comport with evolving changes in medical research, technology, drug development, the practice of medicine, health care delivery and the costs thereof (for example and without limitation, if developments in medical treatment and technology allow for replacing certain services and treatments that are currently provided with different services and treatments that are better suited to achieve the intended clinical results), but not modifications tantamount to providing less than an appropriate core package of retiree medical benefits, and (2) to introduce programs designed to help participants in the RMB program better maintain their health, encourage preventive care and better control and manage chronic conditions; and provided, further, that any modifications by the County to the RMB program's scope of coverage shall maintain a level of coverage after their implementation reasonably comparable to the level of coverage immediately prior to their implementation.

D. Notwithstanding anything to the contrary in this ordinance, in the event that any other health care benefits plan, program or arrangement becomes effective which, at no further expense to the County and with no lapse in coverage for any retirees or their dependents, incontrovertibly provides comparable or superior retiree medical benefits coverage in any respect to the persons then covered under the County's RMB program, the County's existing, binding, contractual obligations which are confirmed, reaffirmed and restated in this ordinance may be satisfied to that extent, in whole or in part, by such other retiree medical benefits provided by such other plan, program or arrangement.

## **Section 5. Dispute resolution.**

In the event that any person with standing asserts that any necessary provision is missing from the County's contractual commitment to provide retiree medical benefits to any eligible person, either side may require the other to submit the reasons for its position, in writing, and to then enter into good faith negotiations to attempt to agree on supplying the allegedly missing provision. If, however, they subsequently cannot so agree, the County and such other side shall each select one arbitrator to determine the issue. If the two arbitrators still disagree, then the two arbitrators originally selected shall select a third arbitrator, and the decision of the majority of the arbitrators shall be binding. Such arbitration shall proceed in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Rules") insofar as such Rules are not inconsistent with the provisions expressly set forth in the County's contractual commitments to provide retiree medical benefits, unless the parties mutually agree otherwise, and pursuant to the following procedures:

(i) Notice of the demand for arbitration by either side shall be filed in writing with the other side and with the American Arbitration Association ("Association"). Each side shall appoint an arbitrator, and those party-appointed arbitrators shall appoint a third neutral arbitrator within 10 days. If the party-appointed arbitrators fail to appoint a third, neutral arbitrator within 10 days, such third, neutral arbitrator shall be appointed by the Association in accordance with the governing Rules. A determination by a majority of the panel shall be binding.

(ii) Reasonable discovery shall be allowed in arbitration.

(iii) All proceedings before the arbitrators shall be held in Washtenaw County, Michigan, and the governing law shall be the law of Michigan.

(iv) The costs and fees of the arbitration shall be borne by each side to the extent each side incurs costs and the other side shall only be asked to share the actual administrative costs of the neutral arbitrator in accordance with the rules of the Association.

(v) The decision rendered by the arbitrators shall be final and judgment may be entered in accordance with applicable law and in any court having jurisdiction thereof.

**Section 6. Severability.**

If any provision of this ordinance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision.

**Section 7. Authority to adopt ordinance.**

The Washtenaw County Board of Commissioners is granted authority by Section 11 of Public Act No. 156 of the Public Acts of Michigan of 1851, as amended, to adopt ordinances necessary for the conduct of county business which relate to county affairs.

**Section 8. Effective Date.**

This ordinance shall become effective upon adoption by the Board of Commissioners and upon publication in the Ann Arbor News unless, within 50 days after the County Board of Commissioners adopts this ordinance, a petition signed by not less than 20% of the electors residing in the County is filed with the County Clerk asking that the ordinance be submitted to electors of the County for approval or rejection, then this ordinance shall not take effect until it is approved by a majority of the electors of the County voting on that issue at a regular or special election called for that purpose.

Las.r1-was180

A roll call vote on the foregoing Ordinance was then taken, and was as follows:

YES: \_\_\_\_\_

\_\_\_\_\_

NO: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

The Ordinance was declared adopted.

STATE OF MICHIGAN     )  
  )ss.  
COUNTY OF WASHTENAW   )

**CERTIFICATION**

The undersigned, being the Clerk of the County of Washtenaw, hereby certifies that the foregoing is a true and complete copy of an Ordinance duly adopted by the County of Washtenaw Board of Commissioners at its \_\_\_\_\_ meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, at which meeting a quorum was present and remained throughout and that an original thereof is on file in the records of the County. I further certify that the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, as amended, and that minutes of such meeting were kept and will be or have been made available as required thereby.

\_\_\_\_\_  
**COUNTY CLERK**

DATED: \_\_\_\_\_, 2008

Las.r1-was180

## EXHIBIT A

This Exhibit A describes the criteria for retired Washtenaw County employees (whether retired or active, each called “Employee” below) to be eligible to receive County provided retiree medical benefits as of the effective date of the ordinance of which this exhibit is a part (“Effective Date”), who are covered as set forth below:

1. AFSCME Local 2733:(Unit A, B, C, Family Division-Juvenile Center, Juvenile Detention, and Non-Union)
  - a. Effective January 1, 1988 –December 31, 1988
    - i. Benefits are payable upon normal retirement at any time after age sixty. Any employee who works until retirement and is over sixty must have eight years of service to qualify for pension.
    - ii. Benefits are based on salary and length of service, being equal to one and two tenths (1.2) percent of final average salary up to four thousand two hundred (4,200) dollars, one and seven tenths (1.7) percent of salary above four thousand two hundred (4,200) dollars, multiplied by the number of years of service upon retirement. The result of this computation is the amount of annual retirement benefit.
    - iii. Employees may retire at the age Fifty-five with reduced benefits providing he/she has twenty-five or more years of service.
  - b. Effective January 1, 1989
    - i. Current employees have the option to: Remain in the Employees Retirement Plan (Plan A), freeze their benefits in Plan A and participate in the Washtenaw County Money Purchase Pension Plan (MPPP), or withdraw from Plan A and participate in the MPPP.
    - ii. On the Effective date, all employees hired on January 1, 1989 and thereafter will be covered by the MPPP and not Plan A.
    - iii. Employers agree to pay premiums for Blue Cross Blue Shield Medical Supplement Insurance and for \$2,000 of life insurance for employees retiring. The employer also agrees to pay Blue Cross Blue Shield for the retiree’s spouse when it pays for the retiree’s medical insurance.
  - c. The Employees Retirement Plan (Plan A) will be modified for those employees who retire or leave Plan A after January 1, 1989, as follows:
    - i. Benefits are based on salary and length of service, being equal to two percent of salary, multiplied by the number of years of service upon retirement. The result of this computation is the amount of annual retirement benefit.
    - ii. The employer agrees to pay the premium for Blue Cross and Blue Shield hospital insurance presently in effect for regular county employees, for retirees from the date of their retirement until they reach their 65<sup>th</sup> birthday.



- d. Effective date June 9,1999(Date of BOC Approval)--MPPP:
  - i. The Employer will provide medical insurance for retirees starting at age 60 until 65 if employed for 8 years.
  - ii. Insurance coverage is not provided if the employee or spouse has similar coverage from another source.
  - iii. At age 65, the County will provide Medicare Supplemental Insurance under the same minimum years service rules as applied to age 62.
- e. Effective date June 9,1999 (Date of BOC Approval)—WCERS:
  - i. Implement “Rule of 75”. Employees may retire at age 50 with full benefits providing he/she has twenty-five or more years of service.
  - ii. In the event employment with the Employer is severed for any reason before an employee qualifies for retirement benefits, a refund of all contribution made by the employee, plus interest compounded annually, will be made on request.
  - iii. Deferred retirees will be allowed to participate, at their own expense in the Blue Cross/Blue Shield program, once they are placed on the County retirement rolls.
  - iv. During 1988 the Employer will calculate the present value of benefits for each employee in the Employees Retirement Plan (Plan A).
  - v. Those employees who are now on disability retirement or those who go on disability retirement before January 11,1989 will receive Blue Cross and Blue Shield hospitalization insurance.
- f. Effective 1/1/2009
  - i. Tiered retiree healthcare eligibility / premium share commensurate with years of services. For each year of service, employees shall be credited with 5% employer contribution toward retiree healthcare
- g. Effective 1/1/2010
  - i. Employees would begin contributing 0.5% toward retiree healthcare with a sunset at 12/31/2010. Employee contributions for VEBA / Retiree Healthcare are held in a trust separate from the official VEBA trust for retiree healthcare use ONLY. At such time the employee retirees, his/her contributions and interest shall be officially deposited in the VEBA trust.

## EXHIBIT B

This Exhibit B describes the criteria for retired Washtenaw County employees (whether retired or active, each called “Employee” below) to be eligible to receive County provided retiree medical benefits as of the effective date of the ordinance of which this exhibit is a part (“Effective Date”), who are covered as set forth below:

2. Assistant Prosecutors Association, Teamsters Local #214 Clerical Unit and Probation Agents/Supervisors Unit (ALL OF THE ABOVE INFORMATION FROM EXHIBIT A APPLIES WITH THE ADDITIONS LISTED BELOW)
  - a. Employees must retire at age sixty-five unless extension of service is granted.
  - b. Effective January 1, 1998
    - i. Employer will provide medical insurance for retirees starting at age 60 with a minimum of eight years of service.
    - ii. Employees may retire at age 55 with a minimum of eight years for service, with medical insurance commencing at age 60.
  - c. The following information from Exhibit A is **NOT** included within these bargaining Units.
    - i. Those employees who are now on disability retirement or those who go on disability retirement before January 11, 1989 will receive Blue Cross and Blue Shield hospitalization insurance.
    - ii. At age 65, the County will provide Medicare Supplemental Insurance under the same minimum years service rules as applied to age 62.
    - iii. The employer also agrees to pay Blue Cross Blue Shield for the retiree’s spouse when it pays for the retiree’s medical insurance.

## EXHIBIT C

This Exhibit C describes the criteria for retired Washtenaw County employees (whether retired or active, each called “Employee” below) to be eligible to receive County provided retiree medical benefits as of the effective date of the ordinance of which this exhibit is a part (“Effective Date”), who are covered as set forth below:

3. AFSCME Local 3052:(Family Division-Juvenile Center, Supervisors, Public Defenders Association,
  - a. Two retirement plans for employees within the bargaining unit
    - i. The Washtenaw County Retirement System
    - ii. The Washtenaw County 401(a) Money Purchase Pension Plan
  - b. Employees who were employed on August 28,1986 will continue to be members of the Washtenaw County Retirement System unless they exercise their option to withdraw from said system and exercise an option to participate in the Washtenaw County 401(a) Money Purchase Pension Plan
  - c. Employees who are hired on or after August 29, 1986 shall be part of the Washtenaw County 401(a) Money Purchase Pension Plan.
  - d. Benefits are based on salary and length of service, being equal to 2% of the final average compensation times the number of years of service upon retirement with a maximum of 75% of the final average compensation, for all those employees who retire, terminate membership in the plan or terminate county employment on or after January 1, 1987.
  - e. The provisions of the Washtenaw County 401(a) Money Purchase Pension Plan as set forth in the “Washtenaw County Option C Retirement Plan Primary features of 401(a) ‘Money Purchase’ Pension Plan” and the “Washtenaw County Money Purchase Pension Plan” both adopted by the Washtenaw County Board of Commissioners on December 19,1984, are incorporated herein and made a part thereof.
  - f. Effective January 1, 1998:
    - i. The employer agrees to pay the premium for Blue Cross and Blue Shield hospitalization insurance presently in effect for regular county employees
    - ii. For retirees from the date of their retirement until they reach their 65<sup>th</sup> birthday.
    - iii. Employers agree to pay premiums for Blue Cross Blue Shield Medical Supplement Insurance and for \$2,000 of life insurance for employees retiring.Effective January 1, 1993, the life insurance benefit will be \$3,500.
  - g. Effective January 1, 1998—MPPP
    - i. The Employer will provide medical insurance for retirees starting at age 60 until 65 if employed for 10 years.
    - ii. Insurance coverage is not provided if the employee or spouse has similar coverage from another source.

- iii. At age 65, the County will provide Medicare Supplemental Insurance under the same minimum years service rules as applied to age 62.

## EXHIBIT D

This Exhibit D describes the criteria for retired Washtenaw County employees (whether retired or active, each called “Employee” below) to be eligible to receive County provided retiree medical benefits as of the effective date of the ordinance of which this exhibit is a part (“Effective Date”), who are covered as set forth below:

4. Police Officers Association of Michigan
  - a. Effective date, January 1, 2002 to December 31, 2006
    - i. Two Retirement Plans in Effect.
      1. The Washtenaw County Employees Retirement System (WCERS) as set forth in the current retirement by-laws.
      2. Municipal Employees Retirement System (MERS).
    - ii. Employees hired prior to January 1, 1988, receive the WCERS Benefits.
      1. All other employees receive the MERS Benefits.
    - iii. WCERS Benefits:
      1. To be eligible for normal retirement benefits an employee must obtain twenty (20) years of service or at age Fifty-Five (55) with ten (10) years of service.
      2. The employer will pay the full premium for medical insurance, in effect for employees, for the retiree and dependents, until such time as the retiree shall become eligible for Medicare and then the Employer shall pay the premium for Blue Cross and Blue Shield Medicare Supplement.
        - a. To be eligible for such coverage the retiree shall not be eligible for this coverage if they or their dependents have available coverage by any other source.
        - b. At the time a retiree submits application for this coverage and each year thereafter, he/she must certify that such other coverage is not available.
    - iv. MERS Benefits:
      1. Employees retiring under the MERS plan shall receive full health coverage for the retiree, spouse and dependents
      2. The Employer shall pay full cost of the MERS plan and health insurance.

## EXHIBIT E

This Exhibit E describes the criteria for retired Washtenaw County employees (whether retired or active, each called “Employee” below) to be eligible to receive County provided retiree medical benefits as of the effective date of the ordinance of which this exhibit is a part (“Effective Date”), who are covered as set forth below:

5. Michigan Nurse Association Unit 1 and 2 (The above information from Exhibit A applies with a few adjustments/additions.)
  - a. Employees must retire at age 70 unless extension of service is granted.
  - b. Effective January 1, 1993 the life insurance benefit will be \$3,500.
  - c. When the employee retires or leaves County employment, he/she receives the employer and employee contributions in the account plus any interest/dividends that the contributions may have earned or minus any losses.
  - d. The employer will provide medical insurance for retirees starting at age 62 until 65 if employed for 10 years, and age 62 or older, or if employed for 12 years and age 60 and over, or if employed 15 years and age 55 or older.

## EXHIBIT F

This Exhibit F describes the criteria for retired Washtenaw County employees (whether retired or active, each called “Employee” below) to be eligible to receive County provided retiree medical benefits as of the effective date of the ordinance of which this exhibit is a part (“Effective Date”), who are covered as set forth below:

6. Voluntary Employees’ Beneficiary Association (VEBA)
  - a. Established December 27, 1996
    - i. Established by the county to fund retiree health benefits with requirements
      1. Non union members are not both required to participate and also required to make contributions.
      2. The trustees of the VEBA meet the independent trustee requirement.
      3. Benefits do not discriminate in favor of highly compensated employees.
    - ii. Code section 401(h) states that a pension or annuity plan may pay for retiree health benefits under certain conditions, such as:
      1. Retiree health benefits must be subordinate to the pension benefits.
      2. contributions to fund retiree health benefits must be deposited into a separate account
      3. The employer’s contributions must be reasonable and necessary.
      4. the assets in the separate account cannot be used for any purpose other than retiree health benefits(until all such benefits are paid in full)
      5. Once all retiree health benefits are paid in full, any excess assets must revert to the employer, and
      6. Benefits for key employees must be paid from a separate account established to provide such benefits. (This requirement does not apply to the County because the definition of key employee excludes all governmental employees).
7. Washtenaw County Retiree Health Care Plan
  - a. Effective date December 27, 1996
    - i. In order to eligible for health care coverage during any Plan Year, an individual must retire under one of the following:
      1. WCERS
      2. MPPP
      3. MERS
    - ii. .Subject to all applicable provisions of the contract, a Retiree shall commence participation in the plan on the first day he satisfies the

eligibility requirements above, provided the individual has enrolled for coverage on such date.

1. The covered employee becoming entitled to Medicare benefits.
  2. The covered employee becoming disabled.
  3. The terminated employee is not able to enroll in another employer's plan due to pre-existing condition.
- iii. Continuation coverage must be identical to the coverage provided to similarly situated beneficiaries who are covered under the plan.
- iv. Insured Health Plans- The employer may require payment of the full premium for any period of continuation of coverage. The premium may not, however, exceed 100% of the actual premium cost for the period of coverage continuation. An additional 2% may be added to the premium amount to compensate the employment for administrative costs. In the case of disability, the premium may be up to 150% of the actual premium cost for coverage past the initial 18 months.
- v. Beginning on the Effective date, the employer shall provide medical and health care benefits to each participant and, if elected to his eligible Spouse and eligible dependents.
- vi. Amended and Restated effective June 12, 2002:
1. Each employee shall become eligible to participate in the Plan when the employee retires from employment with the County and meets the requirements described.
  2. Notwithstanding the forgoing, an employee or former employee of the County shall not be eligible to participate in this Plan unless such employee or former employee:
    - a. Has completed at least eight years of service, and
    - b. Is at least age 50 and who age plus ten years equals at least 75.
    - c. For this purpose, years of service means years of actual employment with the County, not including purchased service or service with another county or other municipality under the Reciprocal Retirement Act.
- vii. Effective January 1, 2000:
1. A participant (but not a dependent) who is eligible for Medicare Part B before attaining age 65 by reason of determination of disability by the Social Security Administration, shall be eligible to be reimbursed for the cost of Medicare Part B premiums for each month the Participant
    - a. Pays such premium and
    - b. Continues to be eligible for Medicare Part B by reason of disability, until the Participant attains age 65.



- c. This plan shall be secondary to Medicare Part A and B, Medicare + Choice, Medicare Advantage or any similar program for any Participant and Dependent eligible for Medicare.
  - i. If a participate is eligible to receive similar benefits under any group source of coverage available as a result of active employment of the Participate or Participate Spouse or any other coverage required by law or provided through any government program, such other plan shall be deemed to pay benefits to the extent provided therein before any benefits become payable under the plan.
  - ii. If a Participant receives benefits under the Plan and is reimbursed for the Expense giving rise to such benefits from any other source at any time, he shall remit the amount of such reimbursement to the County.

Las.r1-was180