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TO: Conan Smith, Chair
Ways & Means Committee

FROM: Robert E. Guenzel
County Administrator

DATE: November 18, 2009

SUBJECT: A Resolution Authorizing the Chair of the Board of Commissioners to Send a Written Notice to the 22nd Circuit Court, 14a District Court and Washtenaw County Probate Court Terminating the Existing Memorandum of Understanding between These Courts and Washtenaw County

BOARD ACTION REQUESTED:

It is requested that the Board of Commissioners authorize the Chair of the Board of Commissioners to send a written notice to the 22nd Circuit Court, 14a District Court and Washtenaw County Probate Court indicating that Washtenaw County is terminating the Memorandum of Understanding which currently governs budgetary, personnel and other issues involving the Courts and the County.

BACKGROUND:

Under Michigan law, the State-wide Court System, including local court systems, are treated as a separate, co-equal branch of government under the Constitution. Funding for local courts, however, is the responsibility of various local governmental entities which are referred to as the "funding units" for those courts. It is also important to note that the Michigan Supreme Court has held that individuals working for local courts are employees of that court, not the local governmental entity which is the funding unit for that court.

Washtenaw County is the "funding unit" for the 22nd Circuit Court, 14a District Court and the Washtenaw County Probate Court (collective referred to as the "Courts"). The relationship between local courts and their funding units has, on occasion, spurred funding disputes, especially as it concerns budgetary and operational issues. To avoid such disputes, local court and their funding units will often enter into a written agreement to govern how budgetary, financial,

personnel and other issues pertaining to the relationship between the courts and their funding units are to be addressed.

On October 3, 1990, Washtenaw County and the Courts first executed an Agreement to address these important budgetary and operational issues. That Agreement, which was commonly referred to as the "Lump Sum Agreement," remained in effect for more than thirteen years. It was ultimately terminated and replaced by an updated "Memorandum of Understanding" which the Board of Commissioners approved on January 21, 2004 (Resolution #04-0016). This Memorandum of Understanding is still in effect today. Under this Memorandum of Understanding, any party may terminate the Agreement by giving the other parties to the Agreement, one year written notice of its intent to terminate the Agreement.

DISCUSSION:

During all of 2009, County Administration has been working diligently with all County Departments and the Courts to fashion an acceptable budget which would adequately address the budget shortfalls projected for 2010/2011. To that extent, County Administration has engaged in a series of discussions throughout the year with the Courts concerning their budgetary needs for the new budget. As these talks progressed, it became apparent to the County, as well as the Courts, that the existing Memorandum of Understanding was outdated and did not adequately address some of the challenging budgetary issues faced by both the County and the Courts.

As noted above, the existing Memorandum of Understanding between the County and the Courts permits any party to the Agreement to terminate the Agreement by giving the other parties to the Agreement one year's written notice of its intent to terminate.

At the most recent meeting of County Administration and the Courts to discuss budget issues, the County Administrator notified the Courts that he would ask the Board of Commissioners to terminate the Agreement by giving the one year's written notice required under the Memorandum of Understanding. It is important to note that the Courts did not object to the County's termination of the Memorandum of Understanding, and, in fact, stated that they looked forward to renegotiating a new Agreement with the County during the one-year termination notice period.

The proposed Resolution requests the Board of Commissioners to authorize the Chair of the Board to send the written notice to the Courts terminating the existing Memorandum of Understanding, which would be effective one year from the date of the letter. This will give the County and the Courts a full year to renegotiate a new Agreement which is more germane to the current economic climate.

IMPACT ON HUMAN RESOURCES:

Approval of this Resolution will have no impact on the County's human resources.

IMPACT ON BUDGET:

Approval of the Resolution will have no impact on the County's general fund budget.

IMPACT ON INDIRECT COSTS:

There are no indirect costs associated with approval of this Resolution.

IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:

None.

CONFORMITY TO COUNTY POLICIES:

The requested Board action is in conformity with all County policies.

A RESOLUTION AUTHORIZING THE CHAIR OF THE BOARD OF COMMISSIONERS TO SEND A WRITTEN NOTICE TO THE 22nd CIRCUIT COURT, 14a DISTRICT COURT AND WASHTENAW COUNTY PROBATE COURT THAT WASHTENAW COUNTY IS TERMINATING THE MEMORANDUM OF UNDERSTANDING BETWEEN THESE COURTS AND THE COUNTY, EFFECTIVE ONE YEAR FROM THE DATE OF THE LETTER

WASHTENAW COUNTY BOARD OF COMMISSIONERS

December 2, 2009

WHEREAS, under Michigan law, the State-wide Court system, including the local courts, are a separate, co-equal branch of government under the Constitution; and

WHEREAS, under Michigan law, local courts are funding by various local governmental entities known as “funding units;” and

WHEREAS, Washtenaw County is the funding unit for the 22nd Circuit Court, 14a District Court and the Washtenaw County Probate Court (collective referred to as the “Courts”); and

WHEREAS, the Michigan Supreme Court has held that individuals working for the Courts are employees of the Courts, not the County; and

WHEREAS, to avoid potential budgetary and operational issues that might arise from the relationship between the County and the Courts, the parties have, since 1990 executed an Agreement to address these potential issues; and

WHEREAS, the current Agreement between the County and the Courts was approved by the Board of Commissioners on January 21, 2004 (Resolution #04-0016); and

WHEREAS, as part of the budget process for completing the County’s 2010/2011 budget, County Administration has met with the Courts on a number of occasions throughout the year; and

WHEREAS, these discussions have underscored for both the County and the Courts that the existing 2004 Agreement is outdated, does not address the challenges of a weak local economy and needs to be renegotiated; and

WHEREAS, the 2004 Agreement provides that any party to the Agreement may terminate the Agreement by giving the other parties to the Agreement one year’s written notice of its intent to terminate; and

WHEREAS, a notice of intent to terminate the 2004 Agreement would not be effective until one year from the date of the letter (December, 2010); and

WHEREAS, the one-year termination period gives the parties the opportunity to renegotiate a new Agreement; and

WHEREAS, the Courts have indicated during conversations with County Administration that they look forward to renegotiating a new Agreement with the County during calendar year 2010.

NOW THEREFORE, BE IT RESOLVED that the Washtenaw County Board of Commissioners authorizes the Chair of the Board to send a written notice to the 22nd Circuit Court, 14a District Court and the Washtenaw County Probate Court that the County is terminating the "Memorandum of Understanding entered into by the County and the Courts and approved by the Board of Commissioners on January 21, 2004.

BE IT FURTHER RESOLVED that the Board of Commissioners directs the County Administrator to use the one-year termination period to renegotiate a new Agreement with the 22nd Circuit Court, 14a District Court and the Washtenaw County Probate Court.