

ARTICLE I

4.001 Retirement system effective date; continuation; purpose.

Sec. 1. The Bay County Employees' Retirement System, established on January 1, 1947, under the authority of Section 12a of Act No. 156, of the Public Acts of 1851, as amended, being MCLA 46.12a et seq. is created to provide retirement income to qualifying employees and former employees, survivor income to their qualifying beneficiaries, and limited death and disability benefits; to provide for the administration and maintenance of the retirement system; to create a retirement board and prescribe the powers and duties of the retirement board; to establish certain reserves for the retirement system; and to provide remedies.

4.002 Short title; application; effective date of restatement.

Sec. 2.

(a) This Ordinance may be cited as the Bay County Employees' Retirement System Ordinance.

(b) This restatement will apply to persons employed by the County on and after the effective date of this restatement. The rights of persons whose County employment terminated before the effective date of this restatement shall be governed by the provisions of the Retirement System Ordinance in effect on the date the person last terminated employment.

(c) This Ordinance shall become effective upon final passage by the Board of Commissioners of the County of Bay and approval by the County Pension Plan Committee as directed under Section 12a (12) of Act No. 156, of the Public Acts of 1851, as amended, being MCLA 46.12a(12).

4.003 Definitions.

Sec. 3. For the purposes of this Ordinance, the words and phrases defined in this article shall have the meanings ascribed to them in those sections.

4.004 Definitions.

Sec. 4.

(1) "*Elected Officials and Department Heads Group*" means all elected officials, their deputies, and P.A. 139 Department Heads.

(2) "*Judges Group*" means all judges of Bay County Courts.

(3) "*General County Group*" means all members not included in another benefit group defined in this section.

(4) "*General Circuit Court Group*" means all employees of the Eighteenth Judicial Circuit Court who are not within the Judges Group and are not within the "Circuit Court U.S.W.A. Group."

(5) "*General District Court Group*" means all employees of the Seventy-Fourth Judicial

District Court who are not within the Judges Group and are not within the District Court A.F.S.C.M.E. Group.

(6) "*General Probate Court Group*" means all employees of the Probate Court who are not within the Judges Group, and are not within the Probate Court Division U.S.W.A. Group.

(7) "*B.C.A.M.P.S. Group*" means all members of the Bay County Association of Managers, Professionals and Supervisors (B.C.A.M.P.S.).

(8) "*U.S.W.A. General Unit Group*" means all members of the United Steelworkers of America, AFL-CIO-CLC Local Union 15157 Bay County Full-Time Employee Unit.

(9) "*U.S.W.A. Part-time Employee Unit Group*" means all members of the United Steelworkers of America, AFL-CIO-CLC Local Union 15157 Bay County Part-Time Employee Unit.

(10) "*Nurses Group*" means all members of the Bay County Public Health Registered Nurses Organization.

(11) "*Road Patrol Group*" means all members employed who are represented by the Bay County Sheriff Deputies Association, Unit 11 in the Bay County Sheriff Department.

(12) "*Sheriff Correctional Facility Officers Group*" means all members who are represented by Local #3523 American Federation of State, County and Municipal Employees AFL-CIO Michigan Council 25 including Bay County Sheriffs Department correctional facility officers and records specialists.

(13) "*Dispatchers Group*" means all members who are represented by the Bay County Sheriff Deputies Association Dispatchers (Unit 1) who are employed as dispatchers in the 911 Central Dispatch Department.

(14) "*Circuit Court U.S.W.A. Group*" means all members of the Circuit Court Unit of the United Steelworkers of America.

(15) "*District Court A.F.S.C.M.E. Group*" means all employees of the Seventy-Fourth Judicial District Court who are members of the Michigan American Federation of State, County and Municipal Employees Council 25, AFL-CIO and its affiliated Local No. 3524-02.

(16) "*Probate Court U.S.W.A. Group*" means all employees of the Bay County Probate Court who are members of the United Steelworkers of America and its Local No. 15157, Probate Court Unit.

(17) "*Housing Commission Group*" means all employees of the Bay County Housing Commission.

(18) "*Library-Employee Members of UWUA Local 542 Group*" means all employees of the Bay County Library System who are members of the Utility Workers Union of America 542 affiliated with the AFL-CIO.

(19) "*General Library Group*" means all other employees of the Bay County Library System.

(20) "*Medical Care Facility United Steelworkers Local 15301 Group*" means all employees of the Bay County Medical Care Facility who are members of United Steelworkers Local 15301.

(21) "*Medical Care Facility R.N. and LPN Nursing Council Group*" means all registered nurses and licensed practical nurses employed by the Bay County Medical Care Facility who are members of the Bay Medical Care Facility R.N. and LPN Nursing Council.

(22) "*General Medical Care Facility Group*" means all other employees of the Bay

County Medical Care Facility.

(23) "*Behavioral Health AFSCME Group*" means all employees of the Bay Arenac Behavioral Health Authority who are members of the American Federation of State, County and Municipal Employees.

(24) "*Behavioral Health General Group*" means all other employees of the Bay Arenac Behavioral Health Authority.

(25) "*Road Commission AFSCME Local 1096 Group*" means all employees of the Bay County Road Commission who are members of the American Federation of State, County and Municipal Employees Local 1096.

(26) "*Road Commission Class I Supervisory and Administrative Employees Group*" means all employees of the Bay County Road Commission who are members of the Class I Supervisory and Administrative Employees Group.

(27) "*Road Commission Class II Supervisory and Administrative Employees Group*" means all employees of the Bay County Road Commission who are members of the Class II Supervisory and Administrative Employees Group.

(28) "*Water and Sewer UWUA Local 546 Group*" means all employees of the Bay County Water and Sewer Department who are members of the Utility Workers Union of America Local 546.

(29) "*Water and Sewer General Group*" means all other employees of the Bay County Water and Sewer Department.

(Res. No. 99-307 adopt. 11-9-99; Res. No. 2002-237 adopt. 10-8-02; Res. 2003-21 adopt. 2-4-03)

4.005 Definitions.

Sec. 5.

(a) "*Accumulated member contributions*" means the balance in a member's individual account in the reserve for member contributions and regular interest that has been credited to the member's account annually as prescribed by the Board.

(b) "*Actuarial Equivalence*" means two (2) or more amounts which have the same actuarial present value using the interest rate and mortality tables adopted by the Board of Trustees.

(c) "*Board*" means the Board of Trustees as provided in Section 8 [Section 4.008] of this Ordinance for the management and administration of the Retirement System.

(d) "*Compensation*" means the salary or wages paid an employee for service rendered to the County while a member of the Retirement System. Salary and wages shall include: longevity pay; cost-of-living allowance; overtime pay; shift differentials; workers' compensation, (excluding medical payments in their entirety and lump-sum settlement payments to the extent provided in Section 7(f) [Section 4.007(f)]); deferred compensation that is paid in lieu of health insurance; pay for periods of absence from work by reason of vacation, holiday, and sickness; and payments in consideration of unused sick leave and vacation time. Compensation shall not include any remuneration or reimbursement not specifically stated in this section, including but not limited to short term disability sickness and accident payments, and that portion, if any, of salary paid to judges that is converted over to the Judges' Retirement System (MCL 38.2101 et seq.).

Annual compensation in excess of the following amounts shall not be taken into account for any purpose of the Retirement System:

- (i) \$200,000 for calendar years beginning after December 31, 1988 but before January 1, 1994;
- (ii) \$150,000 for calendar years beginning after December 31, 1993, but before January 1, 2002, and
- (iii) \$200,000 for calendar years beginning after December 31, 2001.

The limitations in (i), (ii), and (iii) above shall be adjusted for cost-of-living in such a manner as the Secretary of the Treasury may prescribe pursuant to Section 401(a)(17) of the Internal Revenue Code.

If the period for determining compensation used in calculating a member's accrual for a determination period is less than a full calendar year (i.e. shorter than 12 months), the annual adjusted limitation is an amount equal to the otherwise applicable annual limitation multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12.

In determining the compensation of a member for purposes of this limitation for Plan Years beginning before January 1, 1997, the family aggregation rules under Section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the member who have not attained age 19 before the close of the Plan Year. If, as a result of the application of such rules, the adjusted limitation is exceeded, then the limitation shall be prorated among the affected individuals in proportion to each such individual's compensation as determined under this section prior to the application of this limitation. Effective for Plan Years beginning on or after January 1, 1997, the family aggregation rules under Section 414(g) of the Internal Revenue Code shall not apply in determining a member's compensation for purposes of this limitation.

(e) "*Contingent Survivor Beneficiary*" means a person designated by a member or retirant to receive a retirement benefit in accordance with Section 47 [Section 4.047].

(f) "*County*" means the County of Bay of the State of Michigan and its various offices, boards, agencies, and departments, including but not limited to the Bay County Road Commission, the 18th Judicial Circuit Court, the 74th District Court, the Bay County Probate Court, the Bay County Medical Care Facility, the Bay County Housing Commission, the Bay County Library System, the Bay County Department of Water and Sewer. "County" also means the Bay-Arenac Behavioral Health Authority.

(g) "*Credited Service*" means the service credited a member as provided in Section 29 and Section 32 [Section 4.029 and Section 4.032].

(h) "*Employee*" means a person employed by the County for personal services. The term "Employee" shall not include any individual who is paid for services as an independent contractor reported on Form 1099, whether or not such individual is actually performing services as a common law employee of the County or is retroactively characterized as an employee of the County through a judicial or administrative determination.

For purposes of this Section 5(h) [Section 4.005(h)], a "leased employee" means any person (other than an Employee of the County) who, pursuant to an agreement between the County and any other person ("leasing organization"), has performed services for the County (or for the County and related persons determined in accordance with Section 414(n)(6) of the Internal Revenue Code) on a substantially full-time basis for a period of at least one year, and --

- (i) for services rendered prior to January 1, 1997, such services are of a type historically performed by employees in the business field of the County, or
- (ii) for services rendered on or after January 1, 1997, such services are performed under the primary direction or control of the County.

A leased employee shall not be considered an Employee if:

(i) such leased employee is covered by a money purchase pension plan providing:

(1) a nonintegrated employer contribution rate of at least 10% of compensation, as defined in Section 415(c)(3) of the Internal Revenue Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Section 125, Section 402(a)(8), Section 402(h) or Section 403(b) of the Internal Revenue Code;

(2) immediate participation; and

(3) full and immediate vesting; and

(ii) leased employees do not constitute more than 20% of the County's nonhighly compensated workforce.

Contributions or benefits provided to a leased employee by the leasing organization which are attributable to services performed for the County shall be treated as provided by the County.

(i) "*Excluded position*" means a position of employment described in Section 26 [Section 4.026], which excludes an employee from membership in the Retirement System.

(Amend. adopted 2-4-98; Res. No. 2002-12 adopt. 2-5-02; Res. No. 2002-237 adopt. 10-8-02; Res. No. 2003-21 adopt. 2-4-03; Res. No. 2005-119 adopt. 7-12-05)

4.006 Definitions.

Sec. 6.

(a) "*Final average compensation*" means the average of the annual compensation paid to a member during any five years of credited service producing the highest average if the member has at least five years of credited service. If the member has less than five years of credited service, final average compensation means the aggregate amount of compensation paid to the member divided by the member's years and fractions of a year of credited service.

(b) "*Included position*" means a position of employment as described in Section 26 [Section 4.026].

(c) "*Member*" means an employee who is employed in an included position as described in Section 26 [Section 4.026].

(d) "*Refund Beneficiary*" means a person designated by the member to receive any accumulated member contributions under Section 25 and/or Section 52 [Section 4.025 and/or Section 4.052] of this Ordinance.

(e) "*Retirement Benefit(s)*" means an annual benefit payment, paid monthly, to a retirant or beneficiary by the Retirement System for a temporary period or throughout the future life of a retirant member and/or beneficiary.

(f) "*Regular Interest*" shall mean rate or rates of interest per annum, compounded annually, which the Board shall adopt annually.

4.007 Definitions.

Sec. 7.

(a) "*Retirant*" means a person who retired with a retirement allowance payable from the reserves of the Retirement System.

(b) "*Retirement System*" means the Bay County Employees' Retirement System as established by this Ordinance.

(c) "*Service*" means personal service performed for the County by a member of the Retirement System or any service credited by a specific Board resolution consistent with applicable law. Service does not include Sickness and Accident leave.

(d) "*Survivor Beneficiary*" means a person other than the retirant who receives or in the future is entitled to receive a retirement allowance or other benefits as provided by this Ordinance.

(e) "*Vested Former Member*" means a person who is a former member of the Retirement System who is eligible for a retirement allowance under Sections 36 [Section 4.036].

(f) "*Worker's Compensation Benefit*" means a periodic worker's compensation benefit, as prescribed by law, paid to a member, retirant, or beneficiary, on account of disability or death arising out of and in the course of a member's or retirant's employment by the County, as determined by the Board. In the event a lump-sum settlement of a worker's compensation claim is made, the Board shall determine the applicable periodic payment. Payments in consideration of medical expenses shall be disregarded in the determination of a worker's compensation benefit. In settlements where no allocation between weekly wage loss and medical expenses is specified, the Board shall attribute 75% of the lump sum to wage loss and 25% of the lump sum to medical expenses.

(g) "*Worker's Compensation Period*" means the period for which worker's compensation is paid to a member, retirant, or beneficiary on account of disability or death arising out of and in the course of employment by the County, as determined by the Board. In the event periodic worker's compensation benefits are redeemed or a settlement of a worker's compensation claim is made, "worker's compensation period" means the period for which the periodic worker's compensation benefits are paid plus the period obtained by dividing the redemption or settlement by the applicable worker's compensation periodic benefit, as determined by the Board. Payments made in consideration of medical expenses shall be disregarded in the determination of a worker's compensation period. In settlements where no allocation between weekly wage loss and medical expenses is specified, the Board shall attribute 75% of the lump sum to wage loss and 25% of the lump sum to medical expenses.

(Res. No. 2001-130 adopt. 5-8-01)

4.007.1 One-time annual increase to each annual retirement benefit.

For all Retirement Benefit recipients of record as of May 11, 1999, the effective date of this Amendment, a one-time annual increase of two hundred twenty-five dollars (\$225.00), payable in equal installments, shall be added to each annual Retirement Benefit. For those eligible as defined above, this increase shall be applied to the Retirement Benefit in all subsequent years, so that the amount of two hundred twenty-five dollars (\$225.00), without increase, shall remain part of their Retirement Benefit.

(Res. No. 99-115, 5-11-99)

4.007.2 One-time annual increase to Retirants of Record on December 31, 2000.

A one-time annual increase shall be applied to Retirement Benefits of all Retirants of record on December 31, 2000, in response to increases in the cost of living. Each of these Retirants shall receive a one-time annual increase to the respective retiree's base pension valued at \$1 (one dollar) per point and proportionate to the following point structure: Two points shall be allotted for each full year the individual has been retired, and, in addition, one point shall be allotted for each full year of County service in excess of fifteen (15) years. This Amendment shall become effective and shall commence application upon issuance of the Retirant's third monthly payment subsequent to the date when the State of Michigan County Pension Plan Committee approves the Amendment.

(Res. No. 2001-255 adopt. 10-9-01; Res. No. 2002-12, adopt. 2-5-02)

4.007.3 Definitions.

(a) "*Eligible Rollover Distribution*" means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

- (1) any distribution that is one of a series of substantially equal periodic payments (paid not less frequently than annually) paid over any one of the following periods: the life of the member (or the joint lives of the member and the member's designated beneficiary), the life expectancy of the member (or the joint life and last survivor expectancy of the member and the member's designated beneficiary), or a specified period of 10 years or more;
- (2) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code relating to the minimum distribution requirements;
- (3) except as provided below, the portion of any distribution that is not includable in gross income (i.e., the part of a member's distribution which is related to after-tax contributions made prior to April 1, 1979); and
- (4) similar items designated in revenue rulings, notices, and other guidance from the Treasury Department of general applicability.

Effective January 1, 2002, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

(b) "*Eligible Retirement Plan*" means as follows:

- (1) an individual retirement account described in Section 408(a) of the Internal Revenue Code;
- (2) an individual retirement annuity (other than an endowment contract) described in Section 408(b) of the Internal Revenue Code;
- (3) a qualified plan described in Section 401(a) of the Internal Revenue Code if it is a defined contribution plan which permits the acceptance of rollover distributions;
- (4) an annuity plan described in Section 403(a) of the Internal Revenue Code;

(5) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code; or

(6) effective January 1, 2002, an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Retirement System.

Effective January 1, 2002, the definition of an Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under an Eligible Domestic Relations Order, as defined in Section 57(a)[4.057(a)].

(c) *Distributee*: A "Distributee" includes a Member or former Member. In addition, the Member's or former Member's surviving spouse and the Member's or former Member's spouse or former spouse who is the alternate payee under an Eligible Domestic Relations Order, as defined in Section 57(a)[4.057(a)] are Distributees with regard to the interest of the spouse or former spouse.

(d) *"Direct Rollover"* means a payment by the Retirement System to the Eligible Retirement Plan specified by the Distributee.

(Res. No. 2002-12 adopt. 2-5-02)

4.007.4 Interlocal agreement relating to the Bay County Employees' Retirement System.

Effective October 1, 2001, this Interlocal Agreement Relating to the Bay County Employees' Retirement System was executed pursuant to the reorganization of Bay-Arenac Community Mental Health Services as the Bay-Arenac Behavioral Health Authority and under authority of MCL 38.691 et seq. to allow continuing participation in this Retirement System.

(Res. No. 2002-237 adopt. 10-8-02)

ARTICLE II

4.008 Board of Trustees--Creation; composition; compensation.

Sec. 8.

(a) The Bay County Retirement System Board of Trustees is hereby created. The Board shall consist of the following seven (7) trustees:

(i) The chairperson of the Bay County Board of Commissioners ex-officio or his/her designee. Any designee appointed by the Chairman of the Bay County Board of Commissioners must also be a member of the Bay County Board of Commissioners;

(ii) The chairperson of the Bay County Road Commission ex-officio or his/her designee. Any designee appointed by the Chairman of the Bay County Road Commission must also be a member of the Bay County Road Commission;

(iii) The chairperson of the Ways and Means Committee of the Bay County Board of Commissioners ex officio or his/her designee. Any person appointed by the chairperson of the Ways and Means Committee of the Bay County Board of Commissioners must also be a member of the Bay County Board of Commissioners;

(iv) The chairperson of the Bay County Board of Social Services ex officio or his/her designee. Any person appointed by the chairperson of the Bay County Board of Social Services must also be a member of the Bay County Board of Social Services;

(v) A member of the Retirement System who is employed by the Bay County Road Commission or the Department of Water and Sewer, as long as the Department of Water and Sewer remains under the jurisdiction of the Bay County Road Commission, and is elected as a trustee as provided in Subsection (b) of this section;

(vi) A member of the Retirement System who is employed by the Bay County Medical Care Facility and is elected as a trustee as provided in Subsection (b) of this section;

(vii) A member of the Retirement System who is employed by a county department or agency that is not the Bay County Road Commission, the Department of Water and Sewer or the Bay County Medical Care Facility and is elected as a trustee as provided in Subsection (b) of this section.

(b) The Board shall establish rules and regulations for trustee elections required by subsections (v), (vi), and (vii).

(c) The Bay County Board of Commissioners may establish the per diem compensation for trustees. Trustees shall also be reimbursed, as determined by the Board, for actual and necessary expenses incurred, to attend meetings of the Board and to perform services required by the Board.

4.009 Board of Trustees--Term of office; oath of office; vacancies.

Sec. 9.

- (a) The term of office of each elected trustee shall be for three (3) years. One (1) term shall expire each year and shall be filled as provided in Section 8(b) [Section 4.008(b)] of this Ordinance.
- (b) Each trustee shall, prior to taking office, take an oath of office administered by the County Clerk.
- (c) A vacancy shall occur on the Board if an elected trustee:
 - (i) ceases to be a member of the Retirement System;
 - (ii) becomes employed in a County department or agency which is represented by another elected trustee;
 - (iii) fails to attend three (3) consecutive meetings unless excused for cause by the trustees attending the meetings.
- (d) A vacancy shall occur on the Board if any ex-officio or elected trustee resigns or is removed from office.
- (e) A vacancy shall be filled within 90 days, for the unexpired term, in the same manner as the position was previously filled.

4.010 Board of Trustees--Meetings; quorum; voting; officers.

Sec. 10.

- (a) The Board shall hold meetings regularly, at least one in each calendar quarter, and shall adopt its own rules of procedure.
- (b) Four trustees shall constitute a quorum of the Board.
- (c) Each trustee shall be entitled to one vote on each question before the Board. At least four concurring votes shall be required for a valid action by the Board.
- (d) At the first Board meeting for each calendar year, the Board shall elect from its membership a chairperson and a vice chairperson. The chairperson and vice chairperson shall take office immediately upon election.
- (e) The Bay County Executive or his/her designee shall serve as the Secretary to the Retirement System.

4.011 Board of Trustees--Rights and duties of the board; public meetings and notices; public records.

Sec. 11.

- (a) The Board has the responsibility, right, authority, and discretion to administer and manage the Retirement System according to the provisions of this Retirement Ordinance.
- (b) The Board shall conduct its business at a public meeting held in compliance with the Open Meetings Act, Act No. 267 of Public Acts of 1976, as amended, being MCLA 15.261 to 15.275. The Board shall give public notice of a time, date, and place of meeting of the Board in a manner required by Act No. 267 of the Public Acts of 1976.
- (c) The Board shall make a writing prepared, owned, used, in the possession of, and/or retained by the Board in the performance of an official function available to the public in compliance with the Freedom of Information Act, Act No. 442 of the Public Acts of 1976,

as amended, being MCLA 15.231 to 15.246.

4.012 Board of Trustees; administrative services.

Sec. 12.

- (a) The Bay County Treasurer shall serve as treasurer of the Retirement System. The Treasurer shall be custodian of the assets of the Retirement System, except those assets that the Board may place with a chosen custodian, which may be a nationally chartered bank, the Federal Reserve System, a clearing corporation, a custodian bank which is a member of the Federal Reserve System or other "financial institution" as defined at Section 20(c) of P.A. 1965, No. 314 being the Public Employee Retirement System Investment Act, as amended from time to time.
- (b) The County Corporation Counsel shall serve as legal advisor to the Board.
- (c) The Medical Director shall serve as medical advisor to the Board. The Board shall appoint as Medical Director a physician who is not eligible to participate in the Retirement System as a member, retired member, or beneficiary.
- (d) The Actuary shall provide actuarial services to the Board. The Board shall designate a certified actuary who is a member of the American Academy of Actuaries. A partnership or corporation may be designated as Actuary if the duties of the Actuary are performed by or under the direct supervision of a person who meets the requirements described in this section.
- (e) The Board is authorized and empowered to employ other professional services that may be required for the proper discharge of its responsibilities. Compensation for services shall be fixed by the Board. The Board may utilize the services of County employees if made available.

(Res. No. 2002-12, adopt. 2-5-02)

4.013 Board of Trustees--Records; reports.

Sec. 13.

- (a) The Board shall keep a written record of its proceedings and other data, reports, and records that may be required to properly manage and report the operations of the Retirement System, including but not limited to those records recommended by the actuary as necessary for the operation of the Retirement System on a sound actuarial basis.
- (b) The Board of Commissioners shall cause to be prepared an annual report for each fiscal year within 180 days of the close of each fiscal year. The annual report shall contain information about the financial and other activities of the Retirement System during the fiscal year.
- (c) The Board shall cause to be prepared an annual actuarial report for each fiscal year. The actuarial report shall contain information about the actuarial experience of the Retirement System during the fiscal year. A copy of the actuarial report shall be furnished to the Bay County Board of Commissioners annually.
- (d) The Board shall furnish the Bay County Board of Commissioners with other information about the Retirement System as requested.

4.014 Board of Trustees investment authority; restrictions.

Sec. 14.

- (a) The Board are the trustees of the assets of the Retirement System.
- (b) The Board shall have the authority and power to invest and re-invest the assets of the Retirement System subject to all terms, conditions, limitations and restrictions of an investment policy adopted by the Board subject to the provisions of Act 314 of the Public Acts of 1965, as amended, being MCLA 38.1132 to 38.1140(I) and the standard of care set forth in MCLA 38.1133(2) and (3).

4.015 Board of Trustees--Use of assets; prohibited actions.

Sec. 15.

- (a) All assets of the Retirement System shall be held and invested for the sole purpose of meeting legitimate obligations of the Retirement System as established by this Ordinance and shall be used for no other purpose.
- (b) Members of the Board and employees who assist in the administration of the Retirement System are prohibited from:
 - (i) Having a beneficial interest, direct or indirect, in an investment of the Retirement System;
 - (ii) Borrowing money or assets of the Retirement System;
 - (iii) Receiving any payment from any individual or organization providing service to the Retirement System, other than compensation for personal services or reimbursement of authorized expenses paid by the Retirement System.

4.016 Board of Trustees--Experience tables; regular interest.

Sec. 16. The Board shall from time to time adopt mortality and other tables of actuarial experience, and a rate or rates of regular interest, that are necessary to manage the Retirement System on a sound actuarial basis.

4.017 Retirement system; reserve for member contributions.

Sec. 17.

- (a) The reserve for member contributions is hereby created. This is the reserve into which the Retirement System shall deposit any member contributions which are accumulated and from which the Retirement System shall make transfers and refunds of accumulated member contributions. The Retirement System shall maintain one (1) or more separate subaccounts for each person having an interest in this reserve.
- (b) The County shall cause applicable member contributions to be deducted from the compensation of each member, or otherwise paid to the Retirement System by the member or by the County on the member's behalf. The Board will determine the frequency by which contributions are paid by the County. These contributions shall be credited to each member's individual account in the member contribution reserve.

Continuation of employment by the member shall constitute consent and agreement to the deduction of the member contributions where applicable. Payment of compensation less the

deduction shall be full and complete discharge of all claims and demands for compensation for personal service rendered by the member to the County.

(c) The Retirement System shall transfer each member's accumulated contributions from the reserve for member contributions to the reserve for retirement benefits if retirement benefits become payable on account of the member's retirement or death.

(d) The Retirement System shall transfer from the reserve for member contributions to the reserve for employer contributions any member contributions which have been paid on the member's behalf by the County and are not otherwise refundable to the member whose employment with the County has been terminated.

4.018 Retirement system; reserve for employer contributions.

Sec. 18.

(a) The reserve for employer contributions is hereby created. The Retirement System shall credit the reserve for employer contributions with County contributions, excluding member contributions made on behalf of employees which are credited to the reserve for member contributions.

(b) The Retirement System shall transfer funds from the reserve for employer contributions to the reserve for retirement benefits equal to the amount of County contributions made for the benefit of the member if retirement benefits become payable on account of a member's retirement, death, or as provided in Section 19(c) [Section 4.019(c)].

(c) The Retirement System shall credit to the reserve for employer contributions any member contributions which are made on behalf of the member and not otherwise refundable as provided in Section 17(d) [Section 4.017(d)].

4.019 Retirement system; reserve for retirement benefits.

Sec. 19.

(a) The reserve for retirement benefits is hereby created. The Retirement System shall pay all retirement benefits and refunds of residual accumulated contributions of deceased retirees from the reserve for retirement benefits. The Retirement System shall credit to the reserve for retirement benefits the total amount of a member's accumulated employee and employer contributions at the time of retirement or death as provided in Section 17(c) and Section 18(b) [Section 4.017(c) and Section 4.018(b)].

(b) If the Board terminates a disability retirement under Section 44 [Section 4.044], and the retirant again becomes a member or vested former member of the Retirement System, the present actuarial value of the retirant's retirement benefits at the date of the termination of the member's disability retirement shall be transferred from the reserve for retirement benefits to the reserve for member contributions and the reserve for employer contributions in the proportion that transfers were made from such reserves upon the retirant's disability retirement.

(c) Each year following receipt of the report of the annual actuarial valuation, the Board shall transfer to or from the reserve for retirement benefits from or to the reserve for employer contributions an amount equal to the actuarial present value of the future benefit payments which exceed or fall below the current value in the reserve for retirement benefits.

The pending transfer shall be taken into account by the actuary when making the actuarial

valuation.

4.020 Retirement system; reserve for undistributed investment income.

Sec. 20.

(a) The reserve for undistributed investment income is hereby created. The Retirement System shall credit the reserve for undistributed investment income with all interest, dividends, and other income from the investment of Retirement System assets; all gifts and bequests; and, any other monies received by the Retirement System for which there is no specific disposition.

(b) The Retirement System shall annually transfer from the reserve for undistributed investment income to the reserve for administrative expenses an amount equal to the administrative expenses of the Retirement System. Thereafter, the Retirement System shall annually credit regular interest to the reserve for member contributions, the reserve for employer contributions, and the reserve for retirement benefits, as determined by the Board.

(c) If the Board determines that the balance in the reserve for undistributed investment income is not sufficient to support a transfer to the reserve for administrative expenses under Subsection (b) of this section and Section 21 [Section 4.021] of this Ordinance, an amount equal to the insufficiency shall be transferred from the reserve for employer contributions to the reserve for undistributed investment income.

4.021 Retirement system; reserve for administrative expenses.

Sec. 21. The reserve for administrative expenses is hereby created. The Retirement System shall annually transfer from the reserve for undistributed investment income to the reserve for administrative expenses an amount equal to the administrative expenses of the Retirement System as determined by the Board or as provided in Section 20(c) [Section 4.020(c)].

4.022 Retirement system; reserves; assets not segregated.

Sec. 22. The descriptions of the reserves in Sections 17, 18, 19, 20, and 21 [Section 4.017, 4.018, 4.019, 4.020, 4.021] of this Ordinance shall be interpreted to refer to the accounting records of the Retirement System and not to the physical separation or investment of assets by reserve.

4.023 Retirement system; financial objective; actuarial determinations; county contributions.

Sec. 23.

(a) The financial objective of this Ordinance is to require annual member and County contributions to the Retirement System so that all obligations of the Retirement System are sufficiently funded.

(b) The Board shall direct the actuary to do all of the following:

(i) Determine the annual level percentage of payroll contribution to finance the benefits provided under this Ordinance by actuarial valuation pursuant to (ii) and (iii) of this subsection, and upon the basis of the risk assumptions that the Board adopts after consultation with the actuary.

(ii) Make an annual actuarial valuation of the Retirement System in order to determine the actuarial condition of the system and the required annual contribution to the system.

(iii) Make an annual actuarial gain-loss experience study of the Retirement System in order to determine the financial effect of variations of actual retirement system experience from projected experience.

(c) The actuary shall compute the contribution rate for benefits using an individual projected benefit entry age normal actuarial cost method.

(d) The Board shall determine and adopt the annual County contribution necessary to meet the financial objectives of the Retirement System, after consultation with the actuary, and the County shall annually appropriate and cause the annual County contribution to be paid to the Retirement System.

(e) The Board may establish and alter actuarial valuation assumptions for the Retirement System after consulting with the actuary.

(Res. No. 2002-12, adopt. 2-5-02)

4.024 Member contributions; amounts.

Sec. 24. Each member shall contribute 4% of his/her compensation to the Retirement System as provided in Section 17(b) [Section 4.017(b)], unless otherwise provided in the terms of an applicable collectively-bargained or other employment agreement between the County and members.

4.025 Member contributions; refunds; direct rollover.

Sec. 25.

(a) Except as provided in Subsection (b) of this section, a member's accumulated member contributions (as defined in Section 5(a) [Section 4.005(a)]) shall be refunded to the member if the member applies for a refund, on a form as prescribed as the Board, and any of the following conditions are met:

(i) A member terminates membership with the Retirement System, and the member has met the applicable age and service conditions for normal retirement as provided in Section 36 [Section 4.036] of this Ordinance or for early retirement as provided in Section 38 [Section 4.038] of this Ordinance.

(ii) A member dies and retirement benefits are not or will not become payable due to the member's death, whereby the member's accumulated member contributions shall be refunded to the member's refund beneficiary or, if the member has not chosen a refund beneficiary, to the legal representative of the member's estate. A member may choose a refund beneficiary by filing a form provided by the Retirement System with the Board for this purpose.

(b) A member may receive a refund of accumulated member contributions actually made on the member's behalf by the County if the conditions in Subsection (a) of this section and the following conditions for each benefit group are met:

(i) The member has met the conditions for refund, if any, included in an applicable collective bargaining agreement or personnel policy-applying to the:

(aa) "Elected Officials and Department Heads Group"

(bb) "Judges Group"

- (cc) "General County Group"
 - (dd) "General Circuit Court Group"
 - (ee) "General District Court Group"
 - (ff) "General Probate Court Group"
 - (gg) "B.C.A.M.P.S. Group"
 - (hh) "U.S.W.A. General Unit Group"
 - (ii) "U.S.W.A. Part-time Employee Unit Group"
 - (jj) "Nurses Group"
 - (kk) "Road Patrol Group"
 - (ll) "Library-Employee Members of UWUA Local 542 Group"
 - (mm) "General Library Group"
 - (nn) "Circuit Court U.S.W.A. Group"
 - (oo) "District Court A.F.S.C.M.E. Group"
 - (pp) "Probate Court U.S.W.A. Group"
 - (qq) "Housing Commission Group"
 - (rr) "Road Commission Class I Supervisory and Administrative Employees Group"
 - (ss) "Road Commission A.F.S.C.M.E. Local 1096 Group"
 - (tt) "Road Commission Class II Supervisory and Administrative Employees Group"
 - (uu) "Water and Sewer UWUA Local 546 Group"
 - (vv) "Water and Sewer General Group"
 - (ww) "Behavioral Health A.F.S.C.M.E. Group"
 - (xx) "Behavioral Health General Group".
- (ii) "Sheriff Correctional Facility Officers Group": The member's date of hire is on or before January 1, 1991, or the member has 8 or more years of credited service;
- (iii) "Dispatchers Group": The member's date of hire is on or before January 1, 1991;
- (iv) "General Medical Care Facilities Group": The member's date of hire is on or before January 1, 1993, or the member has 8 or more years of credited service;
- (v) "Medical Care Facility United Steelworkers Local 15301 Group": The member's date of hire is on or before January 1, 1993, or the member has 8 or more years of credited service;
- (vi) "Medical Care Facility R.N. and LPN Nursing Council Group": The member's date of hire is on or before January 1, 1993, or the member has 8 or more years of credited service.
- (c) A Member or Distributee otherwise eligible for a refund, may elect a Direct Rollover with regard to distributions made on or after January 1, 1993 as follows:

Application: Notwithstanding any provision of this Ordinance to the contrary that would otherwise limit a Distributee's election under this section, a Distributee may elect, at any time and in the manner prescribed by the 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.

(Res. No. 99-307 adopt. 11-9-99; Res. No. 2002-12 adopt. 2-5-02; Res. No. 2002-237 adopt. 10-8-02; Res. 2003-21 adopt. 2-4-03)

ARTICLE III

4.026 Membership; included positions; excluded positions.

Sec. 26.

- (a) Each person who is employed in an included position is a member of the Retirement System. Each person employed in an excluded position is not a member of the Retirement System.
- (b) For purposes of this section, included positions shall be:
- (i) Seats on the Bay County Board of Commissioners;
 - (ii) Seats on the Bay County Board of Road Commissioners;
 - (iii) All positions held by persons who are employed by the County, its offices, boards, agencies or departments, in a permanent position. For purposes of this section, a permanent position is defined as a position which normally requires service of 800 or more hours per calendar year.
 - (iv) All positions held by persons who are employed by the County, its offices, boards, agencies, or departments, in a temporary position in which the person served for more than one (1) year with no break in service from that position in that one (1) year period and in which the person served at least 800 or more hours per calendar year. A member under this subsection is not entitled to credited service for his/her first year of service as a temporary employee, but may accumulate credited service thereafter.
 - (v) All positions held by persons who are employed by the Bay-Arenac Behavioral Health Authority in a permanent position. For purposes of this section, a permanent position is defined as a position which normally requires service of 800 or more hours per calendar year.
 - (vi) All positions held by persons who are employed by the Bay-Arenac Behavioral Health Authority in a temporary position in which the person served for more than one (1) year with no break in service from that position in that one (1) year period and in which the person served at least 800 or more hours per calendar year. A member under this subsection is not entitled to credited service for his/her first year of service as a temporary employee, but may accumulate credited service thereafter.
- (c) For the purposes of this section, excluded positions shall be:
- (i) Positions which are compensated on a basis not subject to federal, state, or local income withholding taxes, social security taxes, or Medicare withholding taxes by the County;
 - (ii) Positions which are held by persons who do not participate in the fringe benefits provided by the County; (this subsection (ii) shall not apply to any individual described in Section 26(b)(v) or Section 26(b)(vi)).
 - (iii) Any position held by a retirant pursuant to Section 54 [Section 4.054];
 - (iv) Members of boards and commissions paid exclusively on a per diem basis;
 - (v) 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;

(vi) Temporary positions except as provided for in Subsection (b) (iv) of this section. For purposes of this section, a temporary position is defined as a position which is of short duration and does not intend to provide continuous employment with the County.

(vii) Positions filled by part-time employees. For purposes of this section, a part-time employee is an employee who is employed in a position which normally requires service of fewer than 800 hours per calendar year.

(d) The Board shall have the final authority to decide upon membership status if there is any ambiguity under the provisions of this Ordinance.

(Res. No. 2002-237 adopt. 10-8-02)

4.027 Membership; termination.

Sec. 27. Except as provided in Section 28 [Section 4.028], a person shall cease to be a member of the Retirement System upon termination of employment or upon becoming employed in an excluded position.

Upon reemployment by the County in an included position, a person shall again become a member of the Retirement System except as provided in Section 54 [Section 4.054] of this Ordinance.

4.028 Membership; vested status.

Sec. 28. A person who terminates employment for any reason other than retirement or death, who does not withdraw his or her member contributions under Section 25 [Section 4.025], and who has eight (8) or more years of credited service shall be a vested former member.

ARTICLE IV**4.029 Credited service; earned.**

Sec. 29. The Board shall credit each member with the number of years and months of service for which the member has performed service as defined in Section 7(c) [Section 4.007(c)]. The Board shall credit one month of service for each calendar month in which a member serves 65 or more hours. Under no circumstances shall a member be credited with more than twelve (12) months of service in any one calendar year.

4.030 Credited service; forfeiture; forfeiture of vested retirement benefit.

Sec. 30. Except as provided in Section 49(b) [Section 4.049(b)], credited service shall be forfeited if a person, including, but not limited to a former vested member, receives a refund of his/her accumulated contributions. Withdrawal of accumulated contributions shall result in loss of credited service, which shall constitute forfeiture of all rights to any benefits provided under this Ordinance.

Notwithstanding anything to the contrary in this section, a Member who becomes vested in all or part of his accrued benefit pursuant to a Qualified Transfer under Section 4.066, who does not receive a cashout pursuant to Section 4.067, shall be entitled to a Retirement Benefit from the Retirement System subject to all other terms and conditions of the Retirement Ordinance. If such Member withdrew his Accumulated Member Contributions, the amount of his Retirement Benefit shall be determined by subtracting the actuarial equivalent of his Accumulated Member Contributions from his accrued benefit.

(Res. No. 2002-273 adopt. 12-10-02)

4.031 Credited service; reinstatement.**Sec. 31.**

(a) A member who has received a refund of his/her accumulated member contributions and has forfeited credited service may have his/her forfeited credited service reinstated upon satisfaction of each of the following conditions:

(i) The member files with the Board a written request for reinstatement on a form prescribed by the Board;

(ii) The member acquires three (3) months of credited service after returning to membership if the break is less than five (5) years. If the break in membership is for five (5) or more years, the member must acquire one (1) year of credited service after returning to membership.

(iii) The Retirement System is paid the total amount of accumulated member contributions previously withdrawn by the member, if any, plus compound interest at a rate which shall be determined by the Board from the date of withdrawal.

(iv) The repayment is initiated and completed upon approval by the Board, but not later than one year from the approval date, but in no case later than the member's date of retirement.

(b) A member who was not eligible to receive a refund of accumulated member contributions pursuant to Section 25 [Section 4.025] may have his/her forfeited credited service reinstated upon satisfaction of one of the following conditions:

- (i) The member becomes employed in a membership position.
 - (ii) The member files a written request for reinstatement on a form prescribed by the Board.
- (c) If a member has his/her forfeited credited service reinstated in accordance with Subsection (b) (i) or (ii) of this section the Retirement System shall transfer from the reserve for employer contributions to the reserve for member contributions any member contributions which were transferred pursuant to Section 17(d) [Section 4.017(d)].
- (d) Effective for transfers of benefits after December 31, 2001, a member who wishes to have forfeited credited service reinstated pursuant to Subsection (a) of this section may make a direct trustee-to-trustee transfer of benefits, as permitted by Sections 413(b)(13)(B) and 457(e)(17)(B) of the Internal Revenue Code, from--
- (i) an annuity contract described in Section 403(b) of the Internal Revenue Code; or
 - (ii) an eligible plan under Section 457(b) or 401(k) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of the state

to repay to the Retirement System the accumulated member contribution previously withdrawn by the member.

(Res. No. 2002-12 adopt. 2-5-02; Res. No. 2004-209 adopt. 10-12-04)

4.032 Credited service; military service; conditions.

Sec. 32.

- (a) A member who has served in any branch of the Armed Forces of the United States shall be entitled to credited service for periods of active duty lasting 30 or more days, if each of the following conditions is satisfied:
- (i) The member performed the military service in question ("Non-Intervening Military Service") before becoming an Employee;
 - (ii) The member files with the Board an application for the purchase of military service on a form prescribed by the Board;
 - (iii) The member submits his/her application and proof of the military service to the Bay County Board of Commissioners;
 - (iv) The member has at least eight (8) years of credited service, not including any service credited under this section;
 - (v) The member pays to the Retirement System five (5%) percent of his/her annual rate of compensation which the member is earning at the time of the approval of the member's application by the Bay County Board of Commissioners, multiplied by the period of service being purchased; and
 - (vi) The Bay County Board of Commissioners approves the purchase through resolution by an affirmative vote of a majority of its members.
- (b) A member shall not be credited with more than five (5) years of Non-Intervening Military Service, including any credited military service purchased under former sections of this Ordinance.
- (c) Credited service shall not be granted for periods of Non-Intervening Military Service which are or could be used for obtaining or increasing a benefit from another retirement

system. Unless extenuating circumstances are presented to the Board's satisfaction, a member may request only one (1) purchase for Non-Intervening Military Service credit and must fully pay for the service credit within one (1) year from the date of approval by the Bay County Board of Commissioners, but not later than the member's retirement date. Failure to comply with these payment requirements shall foreclose any further request and shall result in refunding without interest to the member any partial payments made for the purchase of Non-Intervening Military Service credit.

(d) Effective for transfers of benefits after December 31, 2001, a member who wishes to be credited with credited service corresponding to Non-Intervening Military Service pursuant to Subsection (a) of this section may make a direct trustee-to-trustee transfer of benefits from --

- (i) an annuity contract described in Section 403(b) of the Internal Revenue Code; or
- (ii) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

to purchase credited service, as permitted by Sections 403(b)(13)(A) and 457(e)(17)(A) of the Internal Revenue Code, respectively.

(e) Effective December 12, 1994, any member who is on a leave of absence by reason of military duty with the Armed Forces of the United States shall receive contributions, benefits, and service credit with respect to qualified military service ("Intervening Military Service") in accordance with the Uniformed Services Employment and Reemployment Rights Act ("USERRA") and Section 414(u) of the Internal Revenue Code. Upon such member's reemployment by the County within the period prescribed by USERRA, the member shall be treated as having received the compensation and credited service that would have been paid or credited to the member as an active employee for the entire period of the member's armed service.

(Res. No. 2002-12 adopt. 2-5-02; Res. 2003-21 adopt. 2-4-03)

4.033 Credited service; transfer from other governmental unit.

Sec. 33. The following conditions shall apply in the event an employee of a department, board, or commission of the state or a political subdivision of the state, hereinafter called a governmental unit, is transferred to the employ of the county by reason of the transfer of a function or functions, of the governmental unit to the county, and become a member of the retirement system:

- (a) The individual shall be credited with county service for the amount of credited service in force in the retirement system of the governmental unit from which transferred.
- (b) The accumulated contributions of the individual are left on deposit in the retirement system of the governmental unit from which transferred if the applicable service and/or age requirements for a deferred (vested) retirement benefit are met.

Otherwise the individual shall pay, as provided by Board rule, the accumulated contributions to the Retirement System for credit to his/her individual account in the reserve for member contributions.

- (c) The amount of any retirement allowance determined according to the provisions of this Retirement System shall be reduced by the amount of any retirement allowance or similar benefit payable by the retirement system of the governmental unit from which the individual was transferred.

(Res. No. 2002-12 adopt. 2-5-02)

ARTICLE IV [V]

4.034 Benefit groups; composition; effect on retirement eligibility; effect on retirement benefit amount.

Sec. 34.

- (a) For the purposes of this article, benefit group membership shall be defined by Section 4(1) to (29) [Section 4.004(1) to (29)] and are designated for the purposes of determining benefit eligibility, conditions, and amounts.
- (b) Benefit eligibility conditions shall be those applicable to the member's benefit group at the time of membership termination.
- (c) A member retirement allowance shall be separately determined for each benefit group for which the member has credited service, based on the provision(s) in effect at the time of membership termination, provided that no accrued or vested benefits shall be diminished thereby.

4.035 Normal retirement; age and service requirements.

Sec. 35. Except as provided in Section 38 [4.0038], a member may retire and shall be paid a retirement allowance according to Section 37 [Section 4.037] upon satisfaction of the following conditions:

- (a) The member files with the Board a written application for retirement, on a form prescribed by the Board, not more than ninety (90) and not less than thirty (30) days before the member's retirement date;
- (b) The member terminates employment immediately prior to his or her retirement date;
- (c) A member of one of the following groups meets the following benefit group age and/or service requirements:
 - (i) The member must attain at least age 55 years and 30 or more years of credited service or, at least age 60 years and 8 or more years of credited service:
 - (1) "Elected Officials and Department Heads Group"
 - (2) "Judges Group"
 - (3) "General County Group"
 - (4) "General Circuit Court Group"
 - (5) "General District Court Group"
 - (6) "General Probate Court Group"
 - (7) "B.C.A.M.P.S. Group"
 - (8) "U.S.W.A. General Unit Group"
 - (9) "U.S.W.A. Part-time Employee Unit Group"
 - (10) "Nurses Group"
 - (11) "Housing Commission Group"
 - (12) "Library-Employee Members of UWUA Local 542 Group"

- (13) "General Library Group"
- (14) "Circuit Court U.S.W.A. Group"
- (15) "District Court A.F.S.C.M.E. Group"
- (16) "Probate Court U.S.W.A. Group"
- (17) "Road Commission Class II Supervisory and Administrative Employees Group"
- (18) "Behavioral Health AFSCME Group"
- (19) "Behavioral Health General Group"

(ii) Sheriff Correctional Facility Officers Group: A member must attain at least age 55 years and 25 or more years of credited service or at least age 60 years and 8 or more years of credited service;

(iii) Road Patrol Group: A member must attain 25 or more years of credited service or at least age 60 years and 8 or more years of credited service;

(iv) A member must attain 30 or more years of credited service or a least age 55 years and 25 or more years of credited service or at least age 60 years and 8 or more years of credited service:

- (1) Dispatchers Group.
- (2) Medical Care Facility United Steelworkers Local 15301.
- (3) Medical Care Facility R.N. and LPN Nursing Council Group.
- (4) General Medical Care Facility Group.

(v) A member must attain 30 or more years of credited service or at least age 60 years and 8 or more years of credited service.

- (1) "Road Commission A.F.S.C.M.E. Local 1096 Group"
- (2) "Road Commission Class I Supervisory and Administrative Employees Group"
- (3) "Water and Sewer UWUA Local 546 Group"
- (4) "Water and Sewer General Group"

(d) The Board shall make the final determination to which benefit group a member belongs if there is any ambiguity under the provisions of this Ordinance.

(Res. No. 99-307 adopt. 11-9-99; Res. No. 2002-237 adopt. 10-8-02; Res. 2003-21 adopt. 2-4-03; Res. No. 2004-054 adopt. 4-13-04)

4.036 Normal and early retirement; vested former member; age and service requirements.

Sec. 36.

(a) A vested former member may retire and shall be paid a retirement allowance according to Section 37 [Section 4.037] upon satisfaction of each of the following conditions:

- (i) The vested former member files with the Board a written application for retirement, on a form prescribed by the Board, not more than ninety (90) and not less than thirty (30) days before the vested former member's retirement date;

(ii) The vested former member attains at least age 60 and 8 or more years of credited service.

(b) A vested former member may retire and shall be paid a retirement allowance according to Section 39 [Section 4.039] upon satisfaction of each of the following conditions:

(i) The vested former member files with the Board a written application for retirement, on a form prescribed by the Board, not more than ninety (90) and not less than thirty (30) days before the vested former member's retirement date;

(ii) The vested former member attains at least age 55 with and 8 or more years of credited service.

4.037 Normal retirement; amount of benefit.

Sec. 37. The amount of an annual retirement benefit payable under form of payment SL (Straight Life) shall be the percentage applicable to the respective membership group as enumerated in paragraphs (1) through (29) listed below multiplied by the member's final average compensation multiplied by the member's credited service, except that the amount of an annual retirement allowance financed by County contributions, including contributions paid by the County but credited to the member's contribution account, shall not exceed seventy-five percent (75%) of a member's final average compensation. If a member or vested former member has credited service with more than one benefit group, the retirement allowance amount shall be computed in accordance with the provisions of Section 34(c).

- (1) Elected Officials and Department Heads Group: employer funded
 - 2.25% effective 10/1/99
- (2) Judges Group: employer funded
 - 2.25% effective 7/1/00
- (3) General County Group: employer funded
 - 2.25% effective 10/1/99
- (4) General Circuit Court Group: employer funded
 - 2.25% effective 7/1/00
- (5) General District Court Group: employer funded
 - 2.25% effective 7/1/00
- (6) General Probate Court Group: employer funded
 - 2.25% effective 7/1/00
- (7) B.C.A.M.P.S. Group: employer funded
 - 2.25% effective 7/01/01
- (8) U.S.W.A. General Unit Group: employer funded
 - 2.25% effective 7/01/00
- (9) U.S.W.A. Part-Time Employee Unit Group: employer funded
 - 2.25% effective 1/1/02
- (10) Nurses Group: 2% employer funded

- 2.25% effective 7/1/01.
- (11) Road Patrol Group: Effective 4/15/05, a 2.50% multiplier with employees funding up to but not more than 2.0%; however, if any of the following Groups receives a 2.50% multiplier at a reduced rate to the Member, this Group's costs will, upon that effective date, be similarly reduced: Section 4.004(1), (3), (7), (8), (9), (10), (12), (13), or (17).
- (12) Sheriff Correctional Facility Officers Group: employer funded
- 2.25% effective 8/8/01
- (13) Dispatchers Group: employer funded
- 2.25% effective 7/1/01
- (14) Circuit Court U.S.W.A. Group: employer funded
- 2.25% effective 7/1/01
- (15) District Court A.F.S.C.M.E. Group: employer funded
- 2.25% effective 1/1/01
- (16) Probate Court U.S.W.A. Group: employer funded
- 2.25% effective 7/1/01
- (17) Housing Commission Group: 2% employer funded
- (18) Library-Employee Members of UWUA Local 542 Group: employer funded
- 2.25% effective 1/1/01
- (19) General Library Group: employer funded
- 2.25% effective 1/1/01
- (20) Medical Care Facility United Steelworkers Local 15301 Group: employer funded
- 2.25% effective 1/1/00
- (21) Medical Care Facility R.N. and LPN Nursing Council Group: employer funded
- 2.25% effective 1/1/00
- (22) General Medical Care Facility Group: employer funded
- 2% through 12-31-99
 - 2.25% effective 1/1/00
- (23) Behavioral Health AFSCME Group
- 2% employer funded
- (24) Behavioral Health General Group: employer funded
- 2.25% effective 10/1/00
- (25) Road Commission AFSCME Local 1096 Group: employer funded
- 2.50% effective 8/1/05
- (26) Road Commission Class I Supervisory and Administrative Employees Group: employer funded
- 2.50% effective 8/1/05
- (27) Road Commission Class II Supervisory and Administrative Employees Group

- 2.50% effective 8/1/05
- (28) Water and Sewer UWUA Local 546 Group: employer funded
 - 2.25% effective 1/1/99
- (29) Water and Sewer General Group employer funded
 - 2.25% effective 1/1/99

(Res. No. 99-207 adopt. 8-10-99; Res. No. 99-307 adopt. 11-9-99; Res. No. 2000-159 adopt. 6-13-00; Res. No. 2000-184 adopt. 6-20-00; Res. No. 2001-80 adopt. 4-10-01; Res. No. 2001-279 adopt. 11-13-01; Res. No. 2002-237 adopt. 10-8-02; Res. 2003-21 adopt. 2-4-03; Res. No. 2005-90 adopt. 5-10-05; Res. No. 2005-119 adopt. 7-12-05)

4.038 Early retirement; age and service requirements.

Sec. 38. Except as provided in Section 35 [Section 4.035], a member may retire early and shall be paid a retirement benefit according to Section 39 [Section 4.039] upon satisfaction of each of the following conditions:

- (a) The member files with the Board a written application for retirement, on a form prescribed by the Board, not more than ninety (90) days and not less than thirty (30) days before the member's date of retirement;
- (b) The member terminates employment immediately prior to his or her effective date of retirement;
- (c) The member meets the following benefit age and/or service requirements:
 - (i) *Sheriff Command Officers Group*: A member must attain at least 25 or more years of credited service, regardless of age; or at least age 55 and 8 or more years of credited service;
 - (ii) *Dispatchers Group*: A member must attain at least 25 or more years of credited service, regardless of age; or at least age 55 and 8 or more years of credited service;
 - (iii) *Road Patrol Group*: A member must attain at least age 55 with 8 or more years of credited service;
 - (iv) *Corrections Officers Group*: A member must attain at least 25 or more years of credited service, regardless of age; or at least age 55 and 8 or more years of credited service;
 - (v) *All other benefit groups*: A member must attain at least age 55 years and 8 or more years of credited service.

4.039 Early retirement; amount of benefit.

Sec. 39. For members who retire early under Section 38 [Section 4.038], the benefit amount under form of payment SL (Straight Life) is determined by computing a normal retirement benefit as determined under Section 37 [Section 4.037] as if the member had attained age 60 years on the member's early retirement date and reducing the normal retirement benefit to a present actuarial equivalent, for the member's actual age, of a retirement allowance deferred until the member reaches age 60 years.

4.040 Form of retirement benefit payment; survivor beneficiary selection; social security coordination; spousal sign-off; voidance of election after divorce.

Sec. 40.

(a) A member or vested former member may elect to have retirement benefit payments made under one (1) of the forms of payment described in Subsection (b) of this section and may name a survivor beneficiary under form of payment A, B, and C.

The election of a form of payment and the naming of a survivor beneficiary shall be in writing and filed with the Board, on a form prescribed by the Board, before the member's date of retirement. An election of a form of payment shall not be changed on or after the member's date of retirement. A survivor beneficiary shall not be changed on or after the member's date of retirement if form of payment B or C is elected. A survivor beneficiary may be changed and may be more than one (1) person only if form of payment A is elected. A survivor beneficiary must have an insurable interest in the life of the member or vested former member when named.

(b) The member or vested former member may elect one (1) of the following forms of payment:

(i) *Form of Payment SL--Straight Life Benefit:* Under form of payment SL, the retirant is paid a retirement benefit for life. Upon death of the retired member, no further retirement benefits will be provided.

(ii) *Form of Payment A--Life Payments with Ten Years Certain:* Under form of payment A, the retirant is paid a reduced retirement benefit for life. Upon the death of the retirant and if the retirant received fewer than 120 monthly retirement benefit payments, the survivor beneficiary is paid a retirement benefit for the remainder of the 120 months in the same amount the retirant was receiving. The actuarial present value of the remaining guaranteed retirement benefit shall be paid to the legal representative of the retirant or the survivor beneficiary, whichever survives the longest, if both the retirant and the survivor beneficiary die during the ten (10) year period.

(iii) *Form of Payment B--Life Payments with Full Continuation to Survivor Beneficiary:* Under form of payment B, the retirant is paid a reduced retirement benefit until either the retirant or the survivor beneficiary dies. Upon the death of the survivor beneficiary, the retirant is paid the form of payment SL retirement benefit over the retirant's remaining life. Upon the death of the retirant during the life of the survivor beneficiary, the survivor beneficiary is paid the full amount of the reduced form of payment B retirement benefit over the survivor beneficiary's remaining life.

(iv) *Form of Payment C--Life Payments with One-Half Continuation to Survivor Beneficiary:* Under form of payment C, the retirant is paid a reduced retirement benefit until either the retirant or the survivor beneficiary dies. Upon the death of the survivor beneficiary, the retirant is paid the form of payment SL retirement benefit over the retirant's remaining life. Upon the death of the retirant during the life of the survivor beneficiary, the survivor beneficiary is paid one-half (1/2) of the amount of the form of payment C retirement benefit over the survivor beneficiary remaining life.

(c) Under form of payment SL, A, B, and C, a member may choose to have his/her retirement benefits coordinated with his/her future social security benefits under the federal Old Age, Survivors, and Disability Insurance Act, commonly called the Social Security Act. Under Social Security coordination, the retirant is paid an increased retirement benefit until s/he is eligible to receive normal retirement benefits, at an age prescribed by the Social Security Act, and a reduced retirement benefit for life thereafter. The increased retirement benefit payable until the retirant reaches the normal retirement age as prescribed by the Social Security Act shall approximate the sum of the reduced

retirement benefit payable after that age and the retirant's estimated normal retirement age primary insurance payment under the Social Security Act. Social Security coordination is available only to members who retire before attaining the normal retirement age under the Social Security Act.

(d) The amount of the retirement benefit under forms of payment A, B, and C shall have the same actuarial present value, computed as of the effective date of the retirement benefit, as the amount of retirement benefit under form of payment SL.

(e) Payment shall be made under form of payment SL if there is not a timely election of another form of payment.

(f) If a retirant is married at the retirant's date of retirement, any election is ineffective, and a retirement benefit shall not be paid, unless the election of a form of payment other than B or C naming the spouse as beneficiary is signed by the spouse of the retirant, except that this requirement may be waived by the Board if the signature of the spouse cannot be obtained because of extenuating circumstances.

(g) If a retirant is receiving a reduced retirement benefit under form of payments A, B, or C and is divorced from the spouse who had been named as the retirant's survivor beneficiary, the election of a reduced retirement benefit form of payment shall be considered null and void by the Retirement System if a judgment of divorce or award or order of the court, or amended judgment of divorce or award or order of the court, dated after July 18, 1991, provides that the election of a reduced retirement benefit form of payment is to be considered null and void by the Retirement System, and the retirant provides a certified copy of the judgment of divorce or award or order of the court, to the Retirement System. If the election of a reduced retirement benefit is considered null and void by the Retirement System under this subsection, the retirant's retirement benefit shall revert to form of payment SL effective the first day of the month following the date the Retirement System receives a certified copy of the judgment of divorce or award or order of the court. This subsection does not supersede a judgment of divorce or award or order of the court in effect on or before July 18, 1991. This subsection does not require the Retirement System to distribute or pay retirement benefits on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

(h) See Section 25 [Section 4.025] regarding Direct Rollover of distributions of accumulated contributions.

(Res. No. 2002-12, adopt. 2-5-02)

4.041 Non-duty and duty disability retirement; conditions.

Sec. 41.

(a) The Board shall retire a member who becomes incapacitated for continued employment by the County if each of the following conditions are met:

(i) Application for disability retirement, on a form prescribed by the Board, is filed with the Board by either the member or the County, while the member is in the employment of the County;

(ii) The member has 10 or more years of credited service;

(iii) The member undergoes all medical examinations and tests ordered by the Board and releases to the Board all requested medical reports and records;

(iv) The medical director, under whose direction medical examinations shall be made, certifies all of the following to the Board:

- (A) The member is mentally or physically incapacitated for continued employment by the County,
 - (B) The incapacity is likely to be permanent, and
 - (C) The member should be retired;
- (v) The Board concurs with the certification of the medical director.
 - (vi) The effective date of a disability retirement shall not predate the following:
 - (A) the date of disability, and
 - (B) the date the member ceases to be paid by the County.
- (b) The following exceptions to Subsection (a) shall apply if the Board finds that the member's disability was the direct and proximate result of a personal injury or disease arising out of and in the course of the member's actual performance of duty while in the employ of the County and if the member is in receipt of worker's compensation for that personal injury or disease:
- (i) The requirement of 10 or more years of service shall be waived, and;
 - (ii) The member's credited service shall include years and fractions of a year, if any, between the effective date of the disability retirement and the date that the member would attain age 55 years. This provision is effective only for employees hired, and current members whose disability occurs after, the effective date of this Ordinance.

(Res. No. 2002-12, adopt. 2-5-02)

4.042 Disability retirement; amount; form of payment.

Sec. 42. The amount of an annual retirement benefit under a disability retirement shall be computed according to Sections 36 [Section 4.036] based upon the member's credited service and compensation earned until termination of County employment. The disability retiree shall have the right to elect a form of payment provided in Section 40 [Section 4.040].

4.043 Disability retirement; limitation on amount.

Sec. 43.

(a) If a disability retiree is paid a worker's compensation benefit, on account of the same disability for which the member retired, which is more than the difference between the retiree's final average compensation and the amount of the retirement allowance computed according to Section 37 [Section 4.037], the amount of the retirement allowance shall be reduced to the amount which is the difference between the final average compensation and the worker's compensation benefit. The reduction shall continue for the worker's compensation period. In no case shall the amount of the reduced retirement allowance be less than the amount of retirement allowance supported by the retiree's accumulated member contributions.

(b) If there is a redemption or settlement of a worker's compensation claim, weekly benefits at the amount established by the Workers' Disability Compensation Act, as amended, shall be considered to continue until the weekly benefits paid after the effective date of the settlement or redemption equal the amount of the redemption or settlement. Thereafter, the retiree will be considered to have no income from worker's compensation benefits.

(c) Worker's compensation benefits for bonafide medical expenses, as determined by the Board, shall not be considered worker's compensation benefits for purposes of this Section.

(Res. No. 2000-97, 4-11-2000)

4.044 Disability retirement; continuation; subject to reexamination; suspension/termination of benefit; future benefit reduction.

Sec. 44.

- (a) At least once each year during the first five (5) years following a member's disability retirement, and at least once in every three-year period thereafter, the Board may require a disability retirant to undergo periodic medical or other reevaluation if the individual has not attained 55 years.
- (b) If the disability retirant refuses to submit to reevaluation, payment of the retirement benefit may be suspended by the Board. If the retirant continues to refuse to be reevaluated for a period of one (1) year, the Board may permanently revoke the disability retirant's retirement benefit.
- (c) A disability retirement benefit shall be terminated if the Medical Director reports that the disability retirant is no longer mentally or physically incapacitated for continued employment by the County, and the Board concurs with the Medical Director.
- (d) The membership status of a terminated disability retirant who is returned to County employment under this section shall be governed by the provisions of Section 27 [Section 4.027]. The Retirement System shall restore the retirant's actual credited service that the retirant had earned as of the date of his/her disability retirement. Credited service shall not be granted for the period of disability retirement unless the member retired under Section 41 [Section 4.041], Subsection (b) and is in receipt of worker's compensation on account of a disability arising out of and while in the course of County employment.
- (e) A terminated disability retirant who does not reacquire membership and restoration of credited service shall have actual credited service at date of disability retirement restored if such restoration enables the terminated disability retirant to become a vested former member.
- (f) A terminated disability retirant who has received disability retirement benefits and who is returned to County employment and had his/her actual credited service restored pursuant to Subsection (d) of this section, shall have his/her future pension benefits upon retirement actuarially reduced for his/her previous benefits received under his/her disability retirement. This provision is effective only for employees hired, and current members whose disability occurs after, the effective date of this Ordinance.

4.045 Survivor benefits; conditions for automatic spousal retirement benefit.

Sec. 45. A retirement benefit shall be paid for life to the surviving spouse of a deceased member if each of the following conditions are met:

- (a) The member has 10 or more years of credited service;
- (b) The member was married to the surviving spouse at time of death;
- (c) The member died while an employee of the County;
- (d) No eligible domestic relations court orders to the contrary are in effect.

4.046 Survivor benefits; amount of automatic spousal retirement benefit.

Sec. 46. If a retirement benefit becomes payable under Section 45 [Section 4.045], the amount of the retirement benefit payable to the spouse shall be computed as if the deceased member had retired the day preceding death under Section 35 [Section 4.035] and elected form of payment B, and nominated the surviving spouse as survivor beneficiary under Section 40 [Section 4.040]. Upon the death of the spouse, the retirement benefit shall terminate.

4.047 Survivor benefit; conditions for contingent survivor beneficiary retirement benefit.

Sec. 47.

(a) A member may name a contingent survivor beneficiary for the purpose of being paid a retirement benefit under the provisions of this section. The naming of a contingent survivor beneficiary shall be made on a form prescribed by and filed with the Board. The contingent survivor beneficiary may be changed or the election revoked at any time.

(b) A retirement benefit shall be paid to the contingent survivor beneficiary if each of the following conditions are met:

- (i) The member dies while an employee of the County at a time when the contingent beneficiary is alive;
- (ii) The member, at time of death, has 10 or more years of credited service;
- (iii) The contingent survivor beneficiary is found by the Board to have been dependent upon the deceased member for the contingent survivor beneficiary's financial support.

4.048 Survivor benefits; amount of contingent survivor beneficiary retirement benefit.

Sec. 48. The amount of retirement benefit payable to the contingent survivor beneficiary under Section 47 [Section 4.047] shall be computed as if the deceased member had retired the day preceding death under Section 37 [Section 4.037] and elected form of payment B and nominated the contingent survivor beneficiary as survivor beneficiary under Section 40 [Section 4.040]. The retirement benefit shall terminate upon the death of the named beneficiary.

4.049 Survivor benefit; special provisions for children, spouse, and parents if duty incurred. Limitations.

Sec. 49.

(a) This section shall apply in lieu of Sections 45, 46, 47, and 48 [Sections 4.045, 4.046, 4.047, and 4.048] if following occurs:

- (i) a member dies while an employee of the County, or;
- (ii) a disability retiree dies within three (3) years of the date of retirement as a result of the same injury or disease for which the retiree retired and for which the retiree was paid a worker's compensation benefit; and
- (iii) the member or retiree's injury or disease resulting in death is found by the Board to have occurred as a direct and proximate result of causes arising out of the course of the member's actual performance of duty while in the employ of the

County and eligible beneficiaries are paid a worker's compensation benefit on account of the death,

(b) The member's accumulated member contributions shall be refunded in accordance with Section 25 [Section 4.025];

(c) The surviving spouse of the deceased member or retirant shall receive a retirement benefit equal to the spouse's weekly worker's compensation converted to a monthly basis. The spouse's retirement benefit shall begin upon termination of the worker's compensation benefits and shall continue until the spouse's remarriage or death, whichever is earliest. As used in this section, spouse means the person to whom the member or retirant was married at the time the member's or retirant's last employment with the County was terminated and at the date of death;

(d) If the deceased member or retirant is survived by an unmarried child or children under age 18 years, each child shall receive a retirement benefit equal to the child's weekly worker's compensation converted to a monthly basis. The child's retirement benefit shall begin upon termination of the worker's compensation payments and shall continue until the child's marriage, attainment of age 18 years, or death, whichever is earliest.

(e) If the deceased member or retirant is survived by dependent parents, each parent shall each receive a retirement benefit equal to the parent's weekly worker's compensation converted to a monthly basis. The parent's retirement benefit shall begin upon termination of the parent's worker's compensation payments and shall continue until death.

(f) If there is a redemption or settlement of the worker's compensation benefits described in Subsections (c), (d), and/or (e) of this section, weekly benefits at the established amount shall be considered to continue until the weekly benefits paid after the effective date of the settlement equal the amount of the redemption or settlement. Thereafter, the worker's compensation benefits will be considered to have terminated.

(g) In no case shall the sum of the annual retirement benefits provided in Subsections (c), (d), and (e) of this section exceed the deceased member's or retirant's final average compensation. If an adjustment is necessary to meet this limitation, each of the benefits under Subsections (c), (d), and (e) shall be reduced proportionately.

(Res. No. 2002-12, adopt. 2-5-02)

4.050 Survivor benefit; only one retirement benefit payable.

Sec. 50. No retirement benefit shall be payable under the provisions of Section 45 [Section 4.045] if a retirement benefit is or will be paid under the provisions of Section 47 [Section 4.047]. No retirement benefit shall be payable under the provisions of Sections 45 or 47 [Sections 4.045 or 4.047] if any retirement benefit is or will be payable under the provisions of Section 49 [Section 4.049].

4.051 Retirement benefit; guaranteed minimum aggregate payout.

Sec. 51. If all retirement benefits permanently terminate before the total payments from the Retirement System on behalf of the former member equal the retirant's, deceased member's, or deceased vested former member's accumulated member contributions at time of retirement or death, if earlier, the difference between the amount of accumulated member contributions and the aggregate amount of retirement benefits provided shall be paid to the refund beneficiary of the member, retirant, or vested former member. The refund beneficiary shall be designated by the member, retirant, or vested former member on a form prescribed by and filed with the Board, and may be changed or revoked at any

time. If the refund beneficiary is no longer alive or is not designated, the difference shall be paid to the legal representative of the member, retirant, vested former member, or refund beneficiary, whoever is the last to survive.

4.052 Retirement system; payment authorization.

Sec. 52. All payments from the Retirement System shall be made according to procedures governing disbursement as adopted by the Board. Payments shall only be executed based upon a specific or continuing resolution adopted by the Board. Authorization of the Bay County Board of Commissioners shall not be required for making Retirement System payments.

4.053 Retirement benefit; commencement, duration, and change.

Sec. 53.

- (a) A normal, early, or disability retirement benefit shall commence on the member's or vested former member's date of retirement.
- (b) A pre-retirement survivor retirement benefit shall commence on the first day following the death of the member.
- (c) A post-retirement survivor retirement benefit shall commence on the first day of the month following the death of the retirant.
- (d) Retirement benefits are paid in 12 equal installments on the first of each month.
- (e) Termination of payment of a retirement benefit shall occur at the end of the calendar month in which the event causing termination occurs. Payment shall be made for the full month of termination.
- (f) A change in the amount of a retirement benefit shall occur the first day of the calendar month next following the date of the event causing the change.
- (g) Notwithstanding anything in this Ordinance to the contrary:
 - (i) Distribution of a member's benefits hereunder shall be made or commence to be paid not later than April 1 of the year following the year in which the later of the following occurs:
 - (1) the member obtains age 70 1/2; or
 - (2) the member retires.

The later of these events shall be the member's "Required Distribution Date."

If a member retires in a calendar year after the calendar year in which he/she attains age 70 1/2, such member's retirement benefits shall be actuarially increased to take into account any period after attainment of age 70 1/2 in which he/she was not receiving any benefits under the Retirement System. The actuarial increase shall begin on April 1 following the calendar year in which the member attains age 70 1/2 (January 1, 1997 in the case of a member who attained age 70 1/2 prior to 1996), and shall end on the date on which benefits commence after retirement in an amount sufficient to satisfy Section 401(a)(9) of the Internal Revenue Code.

- (ii) Benefit payments, if not made in a lump sum, may only be made over one of the following periods (or a combination thereof):
 - (1) the life of a member;
 - (2) the life of a member and a designated beneficiary as that term is

defined in Section 401(a)(9)(E) of the Internal Revenue Code;

(3) a period certain not extending beyond the life expectancy of the member; or

(4) a period certain not extending beyond the joint and last survivor expectancy of the member and a designated beneficiary.

If the member's entire interest is to be distributed in a manner other than a lump sum, then the amount to be distributed each year must be at least an amount equal to the quotient obtained by dividing the member's entire interest by the life expectancy of the member or joint and last survivor expectancy are computed by the use of the return multiples contained in Treasury Regulation Section 1.72-9. For purposes of this computation, a member's life or a member's and spouse's life expectancy may be recalculated no more frequently than annually; however, the life expectancy of a non-spouse beneficiary may not be recalculated. If a member's spouse is not the designated beneficiary, the method of benefit payment selected must assure that at least 50% of the present value of the amount available for distribution is paid within the life expectancy of the member.

(iii) Upon the death of a member, the following benefit payment provisions shall apply:

(1) If the member dies after distribution of his interest has commenced, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the member's death.

(2) If the member dies before distribution of his interest commences, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death except to the extent that an election is made to receive distributions in accordance with (A) or (B) below:

(A) If any portion of the member's interest is payable to a designated Beneficiary, distributions may be made in substantially equal installments over the life or life expectancy of the designated Beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the member's death [occurred]; or

(B) If the designated beneficiary is the member's surviving Spouse, the date distributions are required to begin in accordance with 1. above shall not be earlier than in the December 31 of the calendar year in which the Member would have attained age 70 1/2, and if the spouse dies before payments begin, subsequent distributions shall be made as if the spouse had been the member.

(3) For purposes of (2) above, payments will be calculated by use of the return multiples specified in Treasury Regulation Section 1.72-9. Life expectancy of a surviving spouse may be calculated annually. However, in the case of any other designated beneficiary, such life expectancy will be calculated at the time payment first commences without further recalculation.

(4) For purposes of (1), (2), and (3) above, any amount paid to a child of the member will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

(Res. No. 2002-12, adopt. 2-5-02)

4.054 Retirant reemployment by County; effect on retirement benefit.

Sec. 54. One of the following conditions applies to a retirant who is receiving a retirement benefit from the Retirement System if the retirant becomes employed by the County:

(a) The retirant's retirement allowance shall be suspended the first of the month following the 60th day after the retirant's rehire date unless reemployment by the County has ended by that date or unless the retirant meets the conditions of subsection (b) of this section. The retirant's retirement allowance shall resume the first of the month following termination of the retirant's reemployment. Payment of the retirant's retirement allowance shall be resumed without change in conditions or amount by reason of the retirant's reemployment.

The retirant shall not be a member of the Retirement System during the period of reemployment.

(b) Payment of the retirant's retirement allowance shall continue without change in amount or conditions by reason of reemployment by the County if all of the following conditions are satisfied:

(i) The retirant meets one of the following conditions:

(A) For any retirant, s/he is employed by the County for not more than 1,000 hours in any 12 month period.

(B) For a retirant who was not an elected or appointed county official at retirement, s/he is elected or appointed as a county official for a term of office which begins after the retirant's retirement date;

(C) For a retirant who was an elected or appointed county official at retirement, s/he is elected or appointed to a different office from which the retirant retired for a term of office which begins after the retirant's retirement date;

(D) For a retirant who was an elected or appointed county official at retirement, s/he is elected or appointed as a county official to the same office from which the retirant retired for a term of office that begins not less than two (2) years after the retirant's retirement date;

(ii) The retirant is not eligible for any benefits from the county other than those required by law or otherwise provided to the retirant by virtue of his or her being a retirant.

(iii) The retirant is not a member of the Retirement System during the period of reemployment, does not receive additional service credit during the period of reemployment, and does not receive an increase in retirement because of reemployment under this subsection.

ARTICLE V [VI]**4.055 Denial of claim for benefits: Appeal to Board of Trustees.**

Sec. 55.

(a) Any person who claims that s/he is entitled to any benefit or payment under this Ordinance and who applies for such benefit or payment shall be notified in writing within thirty (30) days if his/her claim for benefits is denied. The notification shall contain the basis for denial of the benefit or payment.

(b) Any person who is denied any benefit or payment under this Ordinance may appeal the denial and request an oral hearing before the Board if each of the following conditions are met:

- (i) The appeal must be written;
- (ii) The appeal and/or a request for oral hearing must be filed with the Board within ninety (90) days of the date of the notification of denial;
- (iii) The appeal must state the reasons for the appeal.

(c) The Board may schedule an oral hearing of the appeal within sixty (60) days of receipt of the request for an oral hearing, or the Board may decide the appeal based upon written documentation submitted to it by the appellant. The Board shall decide the appeal within 120 days after the date of the notification of appeal and shall notify the appellant of its decision in writing.

4.056 Reciprocal retirement system; system membership.

Sec. 56. The Retirement System is a reciprocal retirement system under the provisions of Act 88, Public Acts of 1961, as amended, being MCLA 38.1101 et seq, except that this section does not indicate adoption by Bay County of Section 6 [Section 4.006] of that act.

4.057 Retirement system; assignments prohibited.

Sec. 57.

(a) The right of a person to a retirement benefit, to a refund of accumulated member contributions, to an optional benefit, or to any other right accrued or accruing to any member or beneficiary under this act, and the monies and assets of the Retirement System, is unassignable and is not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or other process of law, except as otherwise required by law, including but not limited to, the Eligible Domestic Relations Order Act, being Act 46 of the Public Acts of 1991, 38.1701 to 38.1711 of the Michigan Compiled Laws, as amended; and the Public Employee Retirement Benefits Forfeiture Act, being Act 350 of the Public Acts of 1994, 38.2701 to 38.2705 of the Michigan Compiled Laws, as amended.

(b) If the County offers group health insurance, a pre-payment plan, or any other optional benefit to the retirant or beneficiary for which the retirant or beneficiary must pay all or part of the cost of the benefit, and the retirant or beneficiary makes an election to participate in the group health insurance, pre-payment plan, or other optional benefit, the member or beneficiary authorizes the Board of Trustees to deduct from the retirement

benefit of the retirant or beneficiary the payment(s) required to participate in group health insurance, prepayment plan, or other optional benefit.

4.058 Retirement system; correction of errors.

Sec. 58. If a change or error in the records of the retirement system results in a retirant or beneficiary receiving from the Retirement System more or less than the retirant or beneficiary would have been entitled to receive had the records been correct, the Retirement System shall, as far as practicable, correct the error, and may adjust the payment to provide an actuarial equivalent of the benefit to which the retirant or beneficiary, estate, or legal representative was correctly entitled. 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.

4.059 Retirement system; Internal Revenue Code qualifications.

Sec. 59.

(a) This section is enacted pursuant to federal law that imposes certain administrative requirements and benefit limitations for qualified governmental plans. The County intends the Retirement System to be a qualified pension plan under Section 401 of the Internal Revenue Code, as amended, and that the trust be an exempt organization under Section 501 of the Internal Revenue Code, as amended. The Board shall administer the Retirement System to fulfill this intent.

(b) The Retirement System and trust have been created for the exclusive benefit of members and beneficiaries as set forth herein. The funds thereof have been established for the benefit of the members and for the operation of the Retirement System. No part of the principal and income of any of the funds of the system and trust shall revert to or be returned to the County prior to the satisfaction of all liabilities hereunder to all members, beneficiaries, and persons claiming by or through them.

(c) In the event of termination or partial termination of the Retirement System, the interest of the members, vested former members, retirants, beneficiaries, or any other person having an interest in the Retirement System is nonforfeitable to the extent funded as described in Section 411(d)(3) of the Internal Revenue Code, as amended, and related Internal Revenue Service regulations applicable to governmental plans.

(d) In accordance with Section 414(l) of the Internal Revenue Code, if the assets and/or liabilities of the Retirement System are transferred to any other retirement system or pension plan, and this Retirement System is terminated, each member, vested former member, retirant, beneficiary, or any other person having an interest in this Retirement System shall be immediately vested in a benefit in the new retirement system or pension plan that is equal to or greater than the benefit that person would have been entitled to receive immediately before the transfer.

(e) The Retirement System shall not pay any benefit that would exceed the benefit limitations for governmental plans as set forth in Section 415 of the Internal Revenue Code and regulations, as amended.

(i) *Single Plan Individual Member Limitations*

(1) *Benefits Payable between Age Sixty-Two (62) and Age Sixty-Five (65)*

(A) For annual benefits commencing on and after age sixty-two (62), but no later than age sixty-five (65), the annual maximum

permissible benefit payable in the form of a SL (Straight Life) annuity (or a joint annuity with the member's survivor beneficiary) which a member may receive in any Limitation Year (as defined below) from all qualified defined benefit plans maintained by the County may not exceed the lesser of:

(I) a dollar amount (hereinafter referred to as the "Dollar Limitation") equal to:

(aa) \$90,000, for Limitation Years beginning before January 1, 2002; or

(bb) \$160,000 for Limitation Years beginning on or after January 1, 2002, or

(II) 100% of the member's average Compensation (as defined below) for the three (3) consecutive Limitation Years with the County that produce the highest amount (hereinafter referred to as the "Compensation Limitation").

Effective for Limitation Years beginning after December 31, 1994, the Compensation Limitation under (II) above shall not apply.

(B) If as of any January 1 the Secretary of Treasury adjusts the Dollar Limitation set forth in (A)(I) above pursuant to Section 415(d) of the Internal Revenue Code, such adjusted Dollar Limitation shall be effective for purposes of the Plan without the necessity of a specific amendment, and shall be applicable to the Limitation Year containing such January 1.

(2) *Benefits Payable before Age Sixty-Two (62)*

(A) If the annual benefit commences before age sixty-two (62), the benefit may not exceed the lesser of:

(I) the actuarial equivalent of the Dollar Limitation commencing at age sixty-two (62); or

(II) the member's Compensation Limitation.

The actuarial adjustment will not, however, reduce the Dollar Limitation below \$75,000 if the benefit begins at or after age fifty-five (55). Effective for Limitation Years beginning after December 31, 1994, the Compensation Limitation under (II) above shall not apply.

(B) If the annual benefit commences before age fifty-five (55), the actuarial adjustment will not reduce the Dollar Limitation below the greater of:

(I) the actuarial equivalent of a \$75,000 benefit beginning at age fifty-five (55); or

(II) the actuarial equivalent of the Dollar Limitation beginning at age sixty-two (62).

(C) For purposes of this paragraph (2), actuarial equivalent benefits commencing prior to age sixty-two (62) shall be determined by using an interest rate assumption equal to the greater of:

(I) 5%; or

(II) the rate specified in Section 5(b) [Section 4.005(b)] of

this Ordinance for determining Actuarial Equivalence.

For distributions with an annuity starting date between July 1, 1989 and December 31, 1999, the applicable mortality table shall be the mortality table set forth in Section 5(b) [Section 4.005(b)] of this Ordinance. For distributions with an annuity starting date between January 1, 2000 and December 31, 2002, the applicable mortality table shall be the mortality table set forth in Internal Revenue Service Revenue Ruling 95-6. For distributions with an annuity starting date on or after January 1, 2003, the applicable mortality table shall be the mortality table set forth in Internal Revenue Service Revenue Ruling 2001-62. Any decrease in the Dollar Limitation determined in accordance with this paragraph (2) shall not reflect a mortality decrement if benefits are not forfeited upon the member's death. If any benefits are forfeited upon death, the full mortality decrement shall be taken into account.

(D) Effective for Limitation Years beginning after December 31, 1994, the actuarial adjustment provided under this Section 59(e)(i)(2) [Section 4.059(e)(i)(2)] shall not apply to:

(I) income received under this Ordinance as a pension, annuity, or similar allowance as a result of the recipient's becoming disabled by reason of personal injuries or sickness; or

(II) amounts received under this Ordinance by a member's beneficiaries, survivors, or estate as a result of the member's death.

(3) *Benefits Payable after Age Sixty-Five (65)*

(A) If the annual benefit commences after age sixty-five (65), the benefit may not exceed the lesser of:

(I) the actuarial equivalent of the Dollar Limitation beginning at age sixty-five (65); or

(II) the member's Compensation Limitation.

Effective for Limitation Years beginning after December 31, 1994, the Compensation Limitation under (II) above shall not apply.

(B) For purposes of this paragraph (3), actuarial equivalent benefits payable after age sixty-five (65) shall be determined by using the interest rate assumption equal to the lesser of:

(I) 5%; or

(II) the rate specified in Section 5(b) [Section 4.005(b)] of this Ordinance for determining Actuarial Equivalence.

For distributions with an annuity starting date between July 1, 1989 and December 31, 1999, the applicable mortality table shall be the mortality table set forth in Section 5(b) [Section 4.005(b)] of this Ordinance. For distributions with an annuity starting date between January 1, 2000 and December 31, 2002, the applicable mortality table shall be the mortality table set forth in Internal Revenue Service Revenue Ruling 95-6. For distributions with an annuity starting date on or after January 1, 2003, the applicable mortality table shall be the mortality table set forth in Internal Revenue Service Revenue Ruling 2001-62. For these purposes, mortality between age sixty-five (65) and the age at which benefits commence shall be ignored.

(4) *General Provisions*

(A) If the annual benefit under this Ordinance to a member is in a form other than a SL (Straight Life) annuity, the maximum permissible amount shall be adjusted to the actuarial equivalent of a SL (Straight Life) annuity beginning at the same age. The interest rate assumption used for determining the actuarial equivalent of such other forms of benefits will be the greater of:

(I) 5%; or

(II) the rate specified in Section 5(b) [Section 4.005(b)] of this Ordinance for determining Actuarial Equivalence.

For distributions with an annuity starting date between July 1, 1989 and December 31, 1999, the applicable mortality table shall be the mortality table set forth in Section 5(b) [Section 4.005(b)] of this Ordinance. For distributions with an annuity starting date between January 1, 2000 and December 31, 2002, the applicable mortality table shall be the mortality table set forth in Internal Revenue Service Revenue Ruling 95-6. For distributions with an annuity starting date on or after January 1, 2003, the applicable mortality table shall be the mortality table set forth in Internal Revenue Service Revenue Ruling 2001-62.

(B) If the annual benefit commences when the member has fewer than ten (10) years of participation under this Ordinance, the Dollar Limitation set forth in (1)(a)(I) above shall be reduced by 1/10th for each year of participation less than ten (10).

Effective for Limitation Years beginning after December 31, 1994, the adjustment to the Dollar Limitation for a member with fewer than ten (10) years of participation under this Ordinance shall not apply to:

(I) income received under this Ordinance as a pension, annuity, or similar allowance as a result of the recipient's becoming disabled by reason of personal injuries or sickness; or

(II) amounts received under this Ordinance by a member's beneficiaries, survivors, or estate as a result of the member's death.

If the annual benefit commences when the member has fewer than ten (10) years of credited service under this Ordinance, the Compensation Limitation set forth in (1)(a)(II) above shall be reduced by 1/10th for each year of credited service less than ten (10).

If the member never participated in a defined contribution plan maintained by the County, and the member's annual benefit is not more than \$1,000 multiplied by the member's years of credited service under the Ordinance (not in excess of 10), unadjusted for early retirement and optional forms, the limitations set forth in this Section 59(e) [Section 4.059(e)] shall be deemed to be satisfied.

(C) The term "Compensation" shall mean for purposes of the limitations set forth in this Section 59(e) [Section 4.059(e)] all compensation of the member from the County (as described in Section 415 of the Internal Revenue Code and the regulations thereunder) for the Limitation Year. For purposes of applying the limitations of this Section 59(e) [Section 4.059(e)], compensation

paid or made available during such limitation period shall include the following:

(I) effective for Limitation Years beginning on or after January 1, 1998, any elective deferral (as defined in Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the County at the member's election and which is not includible in the member's gross income by reason of Section 125 or 457 of the Internal Revenue Code; and

(II) effective for Limitation Years beginning on or after January 1, 2001, any amount which is not includible in the member's gross income under a salary reduction agreement used for qualified transportation fringe benefits pursuant to Section 132(f)(4) of the Internal Revenue Code.

For purposes of applying the limitations of this Section 59(e) [Section 4.059(e)] for Limitation Years beginning on or after January 1, 2002, an amount which is contributed or deferred by the County by reason of Section 125 of the Internal Revenue Code shall include any amounts not available to a member in cash in lieu of group health coverage because the member is unable to certify that he has other health coverage. For this purpose, an amount shall be treated as a contribution or deferral by reason of Section 125 of the Internal Revenue Code only if the County does not request or collect information regarding the member's other health coverage as part of the enrollment process for the health plan.

(D) The term "Limitation Year" shall mean for purposes of this Section 59(e) [Section 4.059(e)] the calendar year.

(E) The maximum permissible annual benefit computed under this Section 59(e) [Section 4.059(e)] shall not include benefits attributable to mandatory or voluntary Employee contributions, if any. The sum of such contributions shall be deemed to be a separate defined contribution plan subject to the limitations for such plans, as set forth in Section 415 of the Internal Revenue Code and the regulations thereunder.

(F) For purposes of determining the maximum permissible annual benefit under this Section 59(e) [Section 4.059(e)], any contributions by a member to purchase permissive service credits under this Ordinance shall comply with the requirements of Section 415(n) of the Internal Revenue Code.

(ii) *Combined Plan Individual Member Limitations*

(1) If the member is, or was, covered under a defined benefit plan and a defined contribution plan maintained by the County, the sum of the member's defined benefit plan and defined contribution plan fractions, as set forth below, may not exceed 1.0 in any Limitation Year. If in any Limitation Year the sum of the defined benefit plan and the defined contribution plan fractions will exceed 1.0, the contributions under the County's defined contribution plan will be reduced so that the sum of such fractions equals 1.0.

(2) The defined benefit plan fraction is a fraction, the numerator of which is the sum of the member's projected annual benefits under all defined benefit plans (whether or not terminated) maintained by the County, and the denominator of which is the lesser of:

(A) 1.25 times the Dollar Limitation in effect for the Limitation Year; or

(B) 1.4 times the member's Compensation Limitation.

For purposes of this paragraph, the projected annual benefit with respect to any defined benefit plan means the annual benefit to which the member would be entitled under the terms of any such plan if the member continued employment until normal retirement age (or current age, if later), and the member's compensation for the Limitation Year and all other relevant factors used to determine such benefit remained constant until normal retirement age (or current age, if later).

(3) The defined contribution plan fraction is a fraction, the numerator of which is the sum of the annual additions to the member's account balances under all defined contribution plans maintained by the County (whether or not terminated) for the current and all prior Limitation Years, and the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the County:

(A) 1.25 times the Dollar Limitation in effect under Section 415(c)(1)(A) of the Internal Revenue Code for the Limitation Year; or

(B) 1.4 times the amount which may be taken into account under Section 415(c)(1)(B) of the Internal Revenue Code.

(4) For purposes of this Section 59(e) [Section 4.059(e)], any transition rules shall apply which are either:

(A) prescribed by the Secretary of the Treasury under the Tax Equity and Fiscal Responsibility Act of 1982; or

(B) elected by the County under Section 415(e)(6) of the Internal Revenue Code.

(5) Effective for Limitation Years beginning after 1999, the combined plan limits under Section 415(e) of the Internal Revenue Code are repealed, and the provisions of this Section 59(e)(ii) [Section 4.059(e)(ii)] shall not apply in such Limitation Years.

(Res. No. 2002-12 adopt. 2-5-02; Res. No. 2003-21 adopt. 2-4-03)

4.060 Retirement ordinance; severability.

Sec. 60. If any section or part of a section of this Ordinance is for any reason held to be invalid or unconstitutional, such holding shall not be construed to affect the validity of remaining sections of the Ordinance or the Ordinance in its entirety.

4.061 Retirement Ordinance; repeal.

Sec. 61. All ordinances or other provisions of law inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

4.062 Bay County Road Commission Employees Early Retirement Incentive.

Sec. 62. Early retirement incentives shall be offered to all Road Commission employees eligible

as described in this section with the exception of any incumbent member of the Board of County Road Commissioners of Bay County. The option period shall be open and extend from July 13, 1998 through August 28, 1998, and the employee's retirement date shall commence only during this period. Acceptance of this incentive shall be contingent upon submission of necessary election documents by the eligible employee in accordance with Section 35 [4.035] of this Ordinance. The offer is available only to those employees who are eligible in accordance with the following requirements: If 5 years of additional credit added toward a combination of age and years of service would have the effect of bringing an employee within normal retirement eligibility age (55 with 30 years of service, or age sixty 60 with eight 8 years of service), then up to five years of service will be added, first to the current chronological age of the employee to meet the minimum age qualification, and next, any remaining years will be added to service time to meet the years of service qualification. If this allocation of five incentive years enables any employee to meet the standard age and service requirements for a normal retirement, then that employee will have met the minimum requirements under this early retirement proposal and pension payment will be based on those requirements without reduction of pension benefits as of the date any such employee retires.

In accordance with the preceding terms, this retirement incentive shall be offered to both represented and unrepresented employees and shall also be extended with equal force to employees who meet normal eligibility requirements.

(Amend. adopted 6-16-98)

4.063 Early Retirement Incentive by Bay County Board of Commissioners.

Sec. 63. The Bay County Board of Commissioners, with the agreement of the Bay County Employees' Retirement Board of Trustees ordains this Amendment to the Ordinance in order to offer an Early Retirement Incentive to Members of designated Groups who meet specified age/service requirements and who comply with all stipulations within this Amendment (A.-K.) for the purpose of lowering expenditures to accommodate decreasing revenues by reducing the County workforce:

A. The Incentive is available only to eligible "Members" of the following Groups [Section 4 (4.004)]:

(4) "*General Circuit Court Group*" means all employees of the Eighteenth Judicial Circuit Court who are not within the Judges Group and are not within the "Circuit Court U.S.W.A. Group."

(5) "*General District Court Group*" means all employees of the Seventy-Fourth Judicial District Court who are not within the Judges Group and are not within the District Court A.F.S.C.M.E. Group.

(7) "*B.C.A.M.P.S. Group*" means all members of the Bay County Association of Managers, Professionals and Supervisors (B.C.A.M.P.S.).

(8) "*U.S.W.A. General Unit Group*" means all members of the United Steelworkers of America, AFL-CIO-CLC Local Union 15157 Bay County Full-Time Employee Unit.

B. Retirement shall occur between February 2, 2004 and September 30, 2004. The Member's supervising elected official shall approve in writing the date during this period when the Member's retirement shall begin.

C. Members shall have 8 (eight) or more years of Credited Service [Section 4.005 (Sec. 5)] as of their retirement date or no later than September 30, 2004 without application of the Retirement Incentive.

D. Members shall be at least 50 (fifty) years of age on the date of retirement which shall occur no later than September 30, 2004.

- E. Members shall be credited with an additional 5 (five) years of age and/or service credit in any combination of age and service totaling "5."
- F. Members shall retire with a Normal (unreduced) retirement benefit [Section 4.035 (Sec. 35)].
- G. A Member shall submit an application [Section 4.034 (Section 34)] for retirement between January 2, 2004 and March 31, 2004. The application shall be submitted at least thirty (30) days before retiring but the 90 (ninety) day requirement is waived to comply with Paragraph D above [Section 35 (4.035)].
- H. Applications to retire, once received by the Finance Department, are irrevocable.
- I. The Member shall timely execute all County paperwork necessary to this Incentive, including, but not limited to, documents waiving and releasing age discrimination and other claims against the County and Retirement System.
- J. The creation of this Early Retirement Incentive shall not in any way prejudice or bind the Bay County Board of Commissioners and the Bay County Employees' Retirement System Board of Trustees or their successors to offer other early retirement incentives in any successive collective bargaining agreement or in succeeding years.
- K. Where conflicts arise, this Early Retirement Incentive shall supercede the Ordinance during the dates stated above.

(Res. No. 2003-241, adopted 12-16-03)

4.063.1 Early Retirement Incentive by Bay County Board of Commissioners[--Nurses Group].

Sec. 63. The Bay County Board of Commissioners ordains this Amendment to the Bay County Employees' Retirement Ordinance in order to offer an Early Retirement Incentive to Members of designated Groups who meet specified age/service requirements and who comply with all stipulations within this Amendment (A.--K.) for the purpose of lowering expenditures to accommodate decreasing revenues by reducing the County workforce:

- A. The Incentive is available only to eligible "Members" of the following Groups [Section 4 (4.004)10]:

"Nurses Group" which means all members of the Bay County Public Health Registered Nurses Organization.

- B. Retirement shall occur between February 21, 2005 and March 15, 2005. The Member's supervising elected official shall approve in writing the date during this period when the Member's retirement shall begin.
- C. Members shall have 8 (eight) or more years of Credited Service [Section 4.005 (Sec. 5)] as of their retirement date or no later than March 15, 2005 without application of the Retirement Incentive.
- D. Members shall be at least 50 (fifty) years of age on the date of retirement which shall occur no later than March 15, 2005.
- E. Members shall be credited with an additional 5 (five) years of age and/or service credit in any combination of age and service totaling "5."
- F. Members shall retire with a Normal (unreduced) retirement benefit [Section 4.035 (Sec. 35)].
- G. A Member shall submit an application [Section 4.034 (Sec. 34)] for retirement between January 19, 2005 and January 21, 2005. The application shall be submitted at

least thirty (30) days before retiring but the 90 (ninety) day requirement is waived to comply with Paragraph D above [Section 35 (4.035)].

H. Applications to retire, once receipted by the Finance Department, are irrevocable.

I. The Member shall timely execute all paperwork the County requires for this Incentive, including, but not limited to, documents waiving and releasing age discrimination and other claims against the County and Retirement System.

J. The creation of this Early Retirement Incentive shall not in any way prejudice or bind the Bay County Board of Commissioners and the Bay County Employees' Retirement System Board of Trustees or their successors to offer other early retirement incentives in any successive collective bargaining agreement or in succeeding years.

K. Where conflicts arise, this Early Retirement Incentive shall supersede the Ordinance during the dates stated above.

(Res. No. 2005-8, adopted 1-18-05)

4.064 Retiree health benefits.

(a) The eligibility for health insurance coverage, the specific health insurance coverage, the condition of which would lead to loss of coverage, and the cost to the County and the covered individuals provided after the retirement or death of a Retirant shall be as described in Bay County Retiree Health Benefit Plan.

(b) The County's share of the cost of retiree health insurance benefits provided under this Section shall, to the extent such account has sufficient funds, be paid from the separate account as described in Section 4.065.

(Res. No. 2002-273 adopt. 12-10-02)

4.065 Health benefit fund.

The Health Benefit Fund is the accounting fund within the Retirement System pursuant to Code Section 401(h) which shall be credited with (a) contributions by the County for the purpose of funding all or a portion of the cost of providing health insurance coverage to eligible Retirant and eligible Contingent Survivor Beneficiaries, and (b) investment earnings allocated to the Health Benefit Fund, and which shall be charged with all, or a portion of, applicable premiums or contract charges for such coverage. Eligibility for coverage and the portion of the premium or contract charge to be paid from the Health Benefit Fund shall be as determined in accordance with Section 4.064. Except as provided at Section 4.066, contributions to the Health Benefit Fund by the County, when added to any County contributions for life insurance protection provided by the Retirement System, shall not exceed 25% of the total actual contributions to the Retirement System (other than contributions to fund past service) for all years since the Health Benefit Fund has been in effect and shall be reasonable and ascertainable. Amounts allocated to the Health Benefit Fund may only be used for Retiree Health Benefits described in Section 4.064 and in the Bay County Retiree Health Benefit Plan, and may not be used for any purpose other than providing such Retiree Health Benefits or until the satisfaction of all liabilities under Section 4.064, at which time any amount remaining in the Health Benefit Fund shall be returned to the County. Amounts in the Health Benefit Fund shall be allocated to separate 401(h) subaccounts which shall be established for any key employee of the County (as defined in Code Section 416(i)(1)), and benefits may be paid only from such key employee's subaccount. The County shall not contribute any amounts to the Health Benefit Fund or a welfare benefit fund (as defined in Code Section 419(e)(1)) with respect to Qualified Current Retiree Health Liabilities as defined in Code Section 420(e)(1)(A) for which transferred assets are required to be used as described in Section 4.066(a)(3) below.

(Res. No. 2002-273 adopt. 12-10-02)

4.066 Code section 420 transfer of excess assets to the health benefit fund.

(a) In addition to contributions made directly by the County under Section 4.065, the Health Benefit Fund may be funded by a "Qualified Transfer" of "Excess Assets" of the Retirement System to the Health Benefit Fund. "Excess Assets" means those assets in excess of the Retirement System's (i) full funding limit; or (ii) 125 percent of the Retirement System's current liability (as described in Code Section 412(c)(7)(B)). The "Qualified Transfer" of assets does not otherwise count against the limits on County contributions described in Section 4.065 to the Health Benefit Fund. The "Qualified Transfer" of excess assets is subject to the requirements described below:

(i) *Limitation on Number of Qualified Transfers Per Taxable Year.* No more than one transfer of excess assets under this Section 4.066 during a taxable year of the County; PROVIDED that in no event shall any such "Qualified Transfer" be made after December 31, 2005.

(ii) *Limit on Amount of Transfer.* The amount of excess assets transferred from the Retirement System to the Health Care Fund shall not exceed the amount reasonably estimated to be paid during the tax year of the transfer for "Qualified Current Retiree Health Liabilities" as defined in Code Section 420(e)(1)(A). The amount to be transferred shall be reduced by the ratio of (i) assets (as of December 31 preceding the Plan Year of the transfer) previously set aside to pay for the Qualified Current Retiree Health Liabilities (as defined in Code Section 420(e)(1)(B)(i)), to pay for the Qualified Current Retiree Health Liabilities, to (ii) the present value of the Qualified Current Retiree Health Liabilities for all plan years (as defined in Code Section 420(e)(1)(B)(ii)). In the event the amount transferred exceeds the amount used to pay Qualified Current Retiree Health Liabilities, the excess (including income thereon) shall be returned from the Health Benefit Fund to the Retirement System.

(iii) *Use of Transferred Assets.* Any assets (and any income allocable thereto) of the Retirement System transferred to the Health Benefit Fund shall be used only to pay reasonably estimated Current Retiree Health Liabilities (other than liabilities of key employees not taken into account under Section 420(e)(1)(D)) for the taxable year of the transfer. For purposes of this section, any amount paid out of the Health Benefits Fund shall be treated as first being paid out of Excess Assets transferred to the Health Benefit Fund pursuant to this Section 4.066 and income thereon.

(iv) *Accelerated Vesting Requirement.*

1. An Employee who is a Member in the Retirement System on the date of the transfer shall be 100% vested on the date of the Qualified Transfer in his then currently accrued benefit in the Retirement System, in the same manner as if the Plan had terminated immediately before the Qualified Transfer.

2. A Member who separated from service at the County during the one-year period ending on the date of the Qualified Transfer shall be 100% vested in his then currently accrued benefit as if the Plan had terminated immediately before his separation from service.

A Member who vests in an accrued benefit under this Section 4.066 shall nonetheless be subject to the vesting requirements of Section 4.028 with respect to future benefit accruals in the Retirement System. A Member who becomes vested pursuant to Section 4.066(iv)(2) above, has been paid his Accumulated Member Contributions and has accordingly forfeited his Credited Service, shall have his accrued benefit based upon his

previously forfeited Credited Service retroactively reinstated and vested, provided that the vested accrued benefits so reinstated and vested shall be reduced by the actuarial equivalent of his Accumulated Member Contributions previously paid to him.

(v) *Maintenance of Applicable Employer Retiree Health Costs.* As more fully set forth at Section 3.1A of the Bay County Retiree Health Benefits Plan, in the event of a Qualified Transfer, the County shall maintain levels of Applicable Employer Retiree Health Costs during the Cost Maintenance Period, as such terms are defined in Section 3.1A of the Bay County Retiree Health Benefits Plan.

(vi) *Key Employees Excluded.* Assets transferred to the Health Benefits Fund cannot be used to pay the retiree health benefits of any participant who was a Key Employee (within the meaning of Code Section 416(i)(11)) at any time during the Plan Year ending within the tax year of the County in which the Qualified Transfer was made. If an employee is a key employee with respect to any Plan Year, such employee shall not be taken into account in computing Qualified Current Retiree Health Liabilities for such taxable year, or in calculating Applicable Employer Retiree Health Costs during the Cost Maintenance Period as such terms are defined in Section 3.1A of the Bay County Retiree Health Benefit Plan.

(vii) *Limitation of County Deductions.* The County shall not be entitled to a deduction for amounts transferred to the Health Benefit Fund or where amounts are used from the Health Benefit Fund to pay retiree health benefits which otherwise would have been deductible in a tax year had the expenses been paid directly by the County.

(b) *State Law Limitations.* Notwithstanding anything to the contrary in this Retirement Ordinance, excess amounts transferred under Section 4.066, "Limit on Amount of Transfer" shall not exceed state law limitations as set forth in Michigan Compiled Laws Annotation (MCLA) 38.571 which section is incorporated by reference in this Bay County Employees Retirement System Ordinance.

(Res. No. 2002-273 adopt. 12-10-02)

4.067 Cashouts of Accelerated Vested Accrued Benefit Pursuant to a Code Section 420 Transfer under Section 4.066 or Pursuant to the Reciprocal Retirement Act.

(a) This Section 4.067 shall only apply to a Member who becomes vested in his accrued benefit -

- (i) pursuant to a Qualified Transfer under Section 4.066; or
- (ii) by reason of the Reciprocal Retirement Act.

Upon termination of such a Member's employment, the following shall apply:

(b) *Involuntary Cashout under (a)(i), with termination after 2002, or under (a)(ii) any time.* This Section 4.067(b) shall apply to (i) a Member described in 4.067(a)(i) whose employment with the County terminated after 2002, or (ii) to a Member described in 4.067(a)(ii). If the present value of the vested normal Retirement Benefit of a Member described in the preceding sentence is \$7,000 or less, then the Retirement System Administrator shall pay an immediate lump sum distribution of the greater of:

- (i) the present value of such Member's vested normal Retirement Benefit, or
- (ii) his Accumulated Member Contributions,

and such Member's Credited Service and all rights to any further benefits of the Retirement System shall be forfeited.

(c) *Involuntary Cashout under (a)(i), with termination before 2003.* This Section 4.067(c) shall apply to a Member described in 4.067(a)(i) whose employment with the County terminated before 2003. If the present value of (x) the vested normal Retirement Benefit of a Member described in the preceding sentence minus (y) the amount of Accumulated Member Contributions actually paid to such Member upon termination of employment with the County (the "Net Remaining Benefit") is \$7,000 or less, then the Retirement System shall pay an immediate lump sum distribution of the Member's Net Remaining Benefit, and such Member's Credited Service and all rights to any further benefits of the Retirement System shall be forfeited.

In the case of a Member described in the first sentence of this Section 4.067(c) whose Accumulated Member Contributions were not paid to such Member upon termination of employment with the County, such Member will be treated under Section 4.067(b) as if he terminated employment after 2002.

(d) *Voluntary Cashout under (a)(i) with termination after 2002, or under (a)(ii) any time.* This Section 4.067(d) shall apply to (i) a Member described in 4.067(a)(i) whose employment with the County terminated after 2002, or (ii) to a Member described in 4.067(a)(ii). If the present value of the vested normal Retirement Benefit of a Member described in the preceding sentence is more than \$7,000, then such Member may elect to receive his benefits in an immediate lump sum distribution. In such event, the Retirement System Administrator shall pay an immediate lump sum distribution of the greater of:

- (i) the present value of such Member's vested normal Retirement Benefit, or
- (ii) his Accumulated Member Contributions,

and such Member's Credited Service and all rights to any further benefits of the Retirement System shall be forfeited.

If such Member elects not to receive an immediate lump sum distribution, he shall be treated as a Vested Former Member entitled to a deferred Retirement Benefit in accordance with Sections 4.036(b) and 4.039.

(e) *Voluntary Cashout under (a)(i) with termination before 2003.* This Section 4.067(e) shall apply to a Member described in 4.067(a)(i) whose employment with the County terminated before 2003. If the present value of (x) the vested normal Retirement Benefit of a Member described in the preceding sentence minus (y) the amount of Accumulated Member Contributions actually paid to such Member upon termination of employment with the County (the "Net Remaining Benefit") is more than \$7,000, then such Member may elect to receive his Net Remaining Benefit in an immediate lump sum distribution. If such an election is made, the Retirement System shall pay an immediate lump sum distribution equal to the Member's Net Remaining Benefit, and such Member's Credited Service and all rights to any further benefits of the Retirement System shall be forfeited.

If such Member elects not to receive an immediate lump sum distribution under this Section 4.067(e), he shall be treated as a Vested Former Member entitled to a deferred Retirement Benefit actuarially equivalent to his Net Remaining Benefit.

In the case of a Member described in the first sentence of this Section 4.067(c) whose Accumulated Member Contributions were not paid to such Member upon termination of employment with the County, such Member will be treated under Section 4.067(d) as if he terminated employment after 2002.

(f) *Present Value.* For purposes of the foregoing, present value shall be calculated using the interest rate for Actuarial Equivalencies described in Section 4.005(b), and shall be determined on the later of (i) the date of distribution or (ii) the date of a Qualified Transfer under Section 4.066.

(g) *Service Upon Reemployment.* If a vested Member who received a distribution

pursuant to this Section is reemployed by the County, his years of Credited Service for vesting shall be reinstated. The Credited Service which related to the distribution shall not be reinstated unless he repays to the Retirement System the benefit he received together with actual earnings of the Retirement System (but not less than 0%) from the date of payment to him to the date the Board approves the reinstatement of Credited Service. Repayments under this Section 4.067 shall be made in accordance with Section 4.031.

If a vested Member who received a distribution pursuant to this Section becomes employed by another governmental employer, his years of Credited Service for purposes of the Reciprocal Retirement Act shall be reinstated if he repays to the Retirement System the benefit he received, together with actual earnings of the Retirement System (but not less than 0%) from the date of payment to him to the date the Board approves the reinstatement of Credited Service. Repayments under this Section 4.067 shall be made in accordance with Section 4.033.

(h) *Timing.* All cashout distributions made pursuant to this Section shall be made as soon as administratively feasible following the later of:

- (i) the Member's termination of employment; or
- (ii) the date of a Qualified Transfer under Section 4.066.

(i) This Section 4.067 shall not apply to any Member who completes 8 years of Credited Service with the County.

(Res. No. 2002-273 adopt. 12-10-02)