

NO. 2001-242

RESOLUTION

9/25/01

BY: BAY COUNTY BOARD OF COMMISSIONERS

WHEREAS, Bay County (the "County") and certain Component Units of Bay County provide qualified retired employees with "Retiree Medical Benefits" pursuant to contracts, rules, and procedures which have developed over time ("Component Units" being any authority, district, board, or commission whose employees participate in the Bay County Employees' Retirement System [such Component Units, together with the County, being "Employers"]); and

WHEREAS, Retiree Medical is presently provided on an unfunded, pay-as-you-go basis by the Employers; and

WHEREAS, The County believes it prudent to begin a process of prefunding the Retiree Medical Benefits through a trust, similar to the prefunded pension trust for the Bay County Employees' Retirement System ("BCERS"), principally (a) in order to reduce the unfunded liability which Retiree Medical Benefits represent, (b) in order to reduce the cost of providing such benefits in the future, and (c) in order to increase retirees' security in such benefits; and

WHEREAS, The Retiree Medical Benefits may be prefunded through a Voluntary Employees' Beneficiary Association (VEBA) pursuant to the Public Employee Health Care Fund Investment Act (P.A. 149 of 1999), and Section 501(c)(9) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, The County wishes to adopt a VEBA for the purposes described above with respect to Retiree Medical Benefits of (a) at this time, non-union employees of the County who would be eligible, upon retirement, for Retiree Medical Benefits, and (b) such unionized employees of the County who shall agree through collective bargaining to similar coverage by the VEBA, and (c) employees of Component Units which shall choose to adopt the VEBA (with appropriate collective bargaining, where applicable), provided that adoption by any Component Unit is consented to at the time by resolution of the Bay County Board of Commissioners; and

WHEREAS, The County does not presently intend to fund the VEBA on a strict actuarial basis, but rather intends to make discretionary contributions from time to time, which contributions shall be no less than the amount of BCERS contribution which the County saves by reason of funding the 4% BCERS employee contribution (historically made on employees' behalf by the County) out of actuarial surplus in the BCERS, provided that the BCERS's actuarial surplus shall no longer be used for such purpose if and when the funded ratio of the BCERS drops to 125% or less; and

WHEREAS, In order to more accurately define the Retiree Medical Benefits which are to be prefunded under the VEBA, the County has prepared a document entitled the "Bay County Retiree Health Benefit Plan" ("Retiree Medical Plan"), which is intended to set forth present rules and policies pertaining to Retiree Medical Benefits; Therefore, Be It

RESOLVED By the Bay County Board of Commissioners that the Bay County Voluntary Employees' Beneficiary Association Trust Agreement ("VEBA") as presented to this meeting is hereby adopted, effective September 30, 2001 (subject to subsequent approval of the Internal Revenue Service as provided below); Be It Further

RESOLVED That the VEBA shall be funded, initially with respect to Bay County non-union employees eligible for retiree medical, in the manner described above in this resolution and as prescribed by the VEBA; Be it Further

RESOLVED That all contributions to the VEBA shall be conditioned upon approval of the VEBA's tax-exempt status by the Internal Revenue Service, as provided in the VEBA; Be It Further

RESOLVED That proper County personnel, acting with outside legal counsel (Stevenson Keppelman Associates) are hereby authorized and directed to apply to the Internal Revenue Service for a determination that the VEBA meets the tax-qualification requirements of Internal Revenue Code of 1986 Section 501(c)(9); Be It Further

RESOLVED That the persons described as trustees in the VEBA (generally being the current trustees of the BCERS) are hereby designated as trustees of the VEBA; Be It Further

RESOLVED That the Bay County Retiree Health Benefit Plan is hereby adopted with respect to employees of Bay County (subject to collective bargaining consent, where applicable), effective September 30, 2001; Be It Further

RESOLVED That the Chairman of the Board is authorized to execute the VEBA on behalf of Bay County.

EDWARD L. RIVET, CHAIRMAN

BAY COUNTY BOARD OF COMMISSIONERS

VEBAIRS.

BAY COUNTY BOARD OF COMMISSIONERS 9/24/01 MEETING

RESOLUTION NO. 2001-242

MOTION NO. \_\_\_\_\_

MOVED BY COMM. Gwizdata

SUPPORTED BY COMM. Reder

VOTE:

ROLL CALL:  YEAS 8 NAYS 0 EXCUSED 1 - Rupp

VOICE: YEAS \_\_\_\_\_ NAYS \_\_\_\_\_ EXCUSED \_\_\_\_\_

DISPOSITION: ADOPTED  DEFEATED \_\_\_\_\_ WITHDRAWN \_\_\_\_\_  
AMENDED \_\_\_\_\_ CORRECTED \_\_\_\_\_ REFERRED \_\_\_\_\_

BAY COUNTY VOLUNTARY  
EMPLOYEES' BENEFICIARY ASSOCIATION  
TRUST AGREEMENT

*Effective September 30, 2001*

**T A B L E O F C O N T E N T S**

*page*

<b>ARTICLE I</b>	<b>GENERAL</b>	
Sec. 1.1	Name of Trust.....	2
Sec. 1.2	Purpose; VEBA .....	2
Sec. 1.3	Acceptance of VEBA .....	2
Sec. 1.4	Part of Plan.....	2
Sec. 1.5	Certification of Fiduciaries and Administrator .....	3
Sec. 1.6	Construction and Applicable Law.....	3
Sec. 1.7	Fiscal Year .....	3
Sec. 1.8	Adoption By Units of the County .....	3
<b>ARTICLE II</b>	<b>TRUST FUND</b>	
Sec. 2.1	Composition .....	5
Sec. 2.2	Amount of Contributions .....	5
Sec. 2.3	Restrictions on Use of Contributions .....	6
Sec. 2.4	Separate Accounts for Benefit Plans .....	7
Sec. 2.5	Separate Accounts for Adopting Units .....	7
Sec. 2.6	Other Accounting Procedures .....	8
Sec. 2.7	No Duty to Collect Contributions .....	8
<b>ARTICLE III</b>	<b>TRUSTEES</b>	
Sec. 3.1	Board of Trustees--Creation; Composition; Compensation .....	9
Sec. 3.2	Board of Trustees--Term of Office; Oath of Office; Vacancies .....	10
Sec. 3.3	Board of Trustees--Quorum; Voting; Officers .....	11
Sec. 3.4	Board of Trustees--Rights and Duties of the Board; Public Meetings and Notices; Public Records.....	11
Sec. 3.5	Board of Trustees--Administrative Services .....	11
Sec. 3.6	Board of Trustees--Records; Reports.....	12
Sec. 3.7	Board of Trustees--Experience Tables; Regular Interest .....	12
Sec. 3.8	Board of Trustees--Contract for Provision of Medical Benefits .....	12
Sec. 3.9	Board of Trustees--General Responsibility .....	13
Sec. 3.10	Board of Trustees--Powers of Trustees .....	14
Sec. 3.11	Board of Trustees--Benefits to Fiduciaries .....	16

**ARTICLE IV**

**MISCELLANEOUS**

Sec. 4.1 No Assignment ..... 17  
Sec. 4.2 Evidence ..... 17  
Sec. 4.3 Dealings of Others with Trustees ..... 17  
Sec. 4.4 Others Not Party ..... 17  
Sec. 4.5 Audits ..... 17  
Sec. 4.6 Waiver of Notice..... 18  
Sec. 4.7 Headings ..... 18  
Sec. 4.8 Use of Compounds of Word "Here" ..... 18  
Sec. 4.9 Construed as a Whole ..... 18  
Sec. 4.10 Counterparts ..... 18  
Sec. 4.11 Correction of Errors..... 18

**ARTICLE V**

**AMENDMENT AND TERMINATION**

Sec. 5.1 No Diversion ..... 19  
Sec. 5.2 Amendment ..... 19  
Sec. 5.3 Termination of Plan; Termination of VEBA..... 20  
Sec. 5.4 Termination of Adoption By Any Adopting Unit ..... 20  
Sec. 5.5 Removal of Adopting Unit..... 20  
Sec. 5.6 Initial Qualification ..... 20

**BAY COUNTY VOLUNTARY EMPLOYEES'  
BENEFICIARY ASSOCIATION  
TRUST AGREEMENT**

This Trust Agreement is made, effective as of September 30, 2001, by and between Bay County (the "County"), Michigan and the Trustees described in Sec. 3.1 of this Trust Agreement, or their successors (the "Trustees" or "Board").

**RECITALS:**

WHEREAS, the County and its "Component Units" as hereinafter defined (such "Component Units" currently being the Bay County Road Commission, the Bay County Medical Care Facility, and the Bay County Library System [collectively, including the County, the "Employers"]) provide medical benefits to retirees, their spouses and dependents pursuant to the terms of the Bay County Retiree Health Benefit Plan (the "Plan"); and

WHEREAS, the parties desire to establish a trust exempt from tax under Section 501(c)(9) of the Internal Revenue Code of 1986, as amended, and pursuant to 1999 P.A. 149, the Public Employee Health Care Fund Investment Act ("P.A. 149"), to accumulate during employees' working years funds to help defray the cost of retiree medical benefits under the Plan and to receive contributions for that purpose from the Employers; and

WHEREAS, the parties intend that, unless otherwise amended in the future, or unless an Adopting Unit (as hereinafter defined) specifies to the contrary with respect to its portion of the VEBA, the trust shall not be funded on an actuarial basis as permitted by Section 3(d) of P.A. 149.

NOW, THEREFORE, the parties agree to adopt the Bay County Voluntary Employees' Beneficiary Association Trust Agreement on the following terms:

ARTICLE I  
GENERAL

**Sec. 1.1 Name of Trust.** This Trust Agreement and the trust established by this Trust Agreement shall be known as the "Bay County Voluntary Employees' Beneficiary Association" (the "VEBA").

**Sec. 1.2 Purpose; VEBA.** The purpose of this VEBA is to do the following:

- (a) To provide, through insurance contracts, contracts with health maintenance organizations, preferred provider organizations, other similar health care provider organizations (referred to in this Trust Agreement as "Health Care Organizations"), or otherwise, for medical benefits for retired employees of the Employers, their spouses and dependents, in all events pursuant to the terms of the Plan.
- (b) To provide for such other life, sick, accident, vacation or other benefits as defined in Section 501(c)(9) of the Code and permitted under 1999 P.A. 149 for employees and retired employees of the Employers, their spouses and dependents, as the Employers and the Trustees shall from time to time agree shall be funded through the VEBA or as may be required to be funded through the VEBA pursuant to the terms of any collective bargaining agreement between an Employer and any collective bargaining association covering its employees.
- (c) Together with the Plan and any other benefit plan funded through this VEBA, this VEBA shall constitute a voluntary employees' beneficiary association as defined in Section 501(c)(9) of the Code ("VEBA") and shall be administered and interpreted so as to comply with the requirements of Section 501(c)(9).
- (d) The members of this VEBA shall be all employees of an Employer and all former employees of an Employer eligible for retiree health care benefits under the Plan, or under any other benefit plan or program funded through the VEBA, but only to the extent the Employer has chosen (or agreed by collective bargaining) to prefund medical or other qualified benefits for such employees through this VEBA.

**Sec. 1.3 Acceptance of VEBA.** By executing this Trust Agreement, the Trustees accept their appointment as such.



**Sec. 1.4 Part of Plan.** This VEBA forms a part of the Plan and is used to fund benefits thereunder. The County warrants that it has furnished the Trustees with a true and correct copy of the Plan as currently in effect. The County and each Employer agree that promptly upon the adoption of any amendment to the Plan it will furnish the Trustees with a copy of the amendment and with an appropriate certificate evidencing its due adoption. The Employers further agree that no amendment of the Plan shall have the effect of changing the rights, duties, and liabilities of the Trustees without their written consent. The Trustees may rely on the latest Plan documents furnished them as above provided without further inquiry or verification.

**Sec. 1.5 Certification of Fiduciaries and Administrator.** The County will certify to the Trustees the name of the person or persons who have authority on behalf of the County to communicate with the Trustees with respect to any matters relating to the VEBA. The Trustees and each Employer shall recognize the County as the administrator of the Plan unless and until receipt by the Trustees and Employers from the County of a certification evidencing the appointment of some other person or persons as said administrator. The County shall provide the Trustees with a specimen signature of each of the persons referred to above. The Trustees may rely on the latest relevant certificate without further inquiry or verification. The Trustees shall be fully protected in acting upon written instructions received from the County or the plan administrator.

**Sec. 1.6 Construction and Applicable Law.** This Trust Agreement shall be construed and administered according to the laws of the State of Michigan, including, but not limited to 1965 P.A. 314 and 1999 P.A. 149 and in accordance with Section 501(c)(9) of the Code. All references herein to the "Code" are to the Internal Revenue Code of 1986 as from time to time amended and the regulations promulgated thereunder.

**Sec. 1.7 Fiscal Year.** The VEBA shall be maintained on a Fiscal Year ending December 31.

**Sec. 1.8 Adoption By Units of the County.** This trust agreement may be adopted by any Component Unit of Bay County (as defined below) to fund medical benefits for retirees of such entity by:

- (a) resolution of the governing body of such entity, which shall include a description of how the amount of contributions to be made by such entity will be determined, and whether such contributions will be funded on a discretionary or actuarial basis, and an adoption of the Plan for the benefit of retirees of such entity (which Plan shall thereafter be amended as necessary to describe the medical benefits available to retirees of such entity); and

- (b) resolution of the Bay County Board of Commissioners consenting to such adoption and amending the Plan to provide the medical benefits available to retirees of such entity.

Such an entity which adopts this VEBA shall be referred to as an "Adopting Unit." The term "Employers" as used in this Trust Agreement refers to Bay County and all Adopting Units, unless the context clearly requires otherwise. An Adopting Unit may terminate its adoption of this Trust Agreement as provided in Sec. 5.4 below. An Adopting Unit may be removed from participation in this Trust as provided in Sec. 5.5 below.

The term "Component Unit" shall refer to any authority, district, board, or commission whose employees participate in the Bay County Employees' Retirement System.

- (c) Each Employer shall promptly provide the Trustees with true copies of any resolutions or collective bargaining agreements which determine and specify a VEBA contribution.
- (d) Contributions described in this Section 2.2 shall be deposited to the VEBA no less frequently than quarterly.

**Sec. 2.3 Restrictions on Use of Contributions.**

- (a) Except as otherwise provided in this Section 2.3, the Trust Fund shall not be used to purchase retiree health (or other) benefits for retirees, but shall be accumulated until the first January 1 on which the VEBA Trustees reasonably believe that the Trust Fund has assets greater than or equal to 7 times the second previous Plan Year's medical costs for retirees under the Plan. At such time as the VEBA assets meet the requirements of the preceding sentence, the Trust Fund shall be used to provide medical benefits under the Plan (or other benefits permitted by the VEBA). The Trust Fund shall then pay 100% of the cost of medical benefits under the Plan, less the cost-sharing portion required of the Retirees under the Plan, if any.
- (b) If the Trust Fund has begun to pay benefits under the Plan, but as of any January 1 thereafter, the VEBA Trustees reasonably believe the Trust Fund has assets less than 5 times the second previous Plan Year's retiree medical costs, then as of that January 1 the Trust Fund shall no longer be used to pay for medical benefits under the Plan and the Trust Fund shall again accumulate assets until the first January 1 thereafter on which the VEBA Trustees reasonably believe that 7 times the second previous Plan Year's retiree medical costs have again accumulated, at which time the Trust Fund shall again be used to provide medical benefits under the Plan or other benefits permitted by the VEBA.
- (c) In a given Plan Year, if the Trust Fund is being used to pay benefits under the Plan, but during such Plan Year the Trust Fund's assets drop below the minimum threshold described at (b) above, the Trust Fund shall continue to be used to provide medical benefits under the Plan or other benefits provided by the VEBA only until the end of that current Plan Year, at which time the Trust Fund shall cease such payment.
- (d) For purposes of Sections 2.3(a) and (b) above, the term "second previous Plan Year" means the Plan Year that ended on the second previous December 31 (for example, for the Plan Year ending December 31, 2001, the second previous Plan Year ended December 31, 1999).
- (e) The thresholds described in this Section 2.3 shall be applied by the Trustees separately to Bay County and to each Adopting Unit.
- (f) Notwithstanding the preceding provisions of this Section 2.3, if at least 75% of the Trustees agree, the Trust Fund may be used for the County or an Adopting Unit sooner or

**ARTICLE II  
TRUST FUND**

**Sec. 2.1 Composition.** All sums of money and all securities and other property acceptable to the Trustees and received by them to be held in the VEBA hereunder, as evidenced by their receipts, from whatever source received, together with all investments made therewith, the proceeds thereof, and all earnings and accumulations thereon, and the part thereof from time to time remaining, shall be held and administered by the Trustees, in trust, in a fund referred to herein as the "Trust Fund" or the "VEBA," in accordance with the terms and provisions hereof. Except as otherwise expressly provided in the VEBA, or as otherwise provided by P.A. 314 or other applicable laws, the Trust Fund shall be held, administered, and disbursed by the Trustees without distinction between principal and income.

**Sec. 2.2 Amount of Contributions.**

- (a) Each Employer may, in its discretion, contribute to the VEBA an amount necessary or advisable to prefund, amortize or otherwise reduce the unfunded accrued liability for retiree health benefits for future retirees (or for other proper benefits) unless such Employer has agreed to make a specific level of contributions or has agreed to contribute the amount necessary to amortize the cost of benefits on an actuarial basis. Notwithstanding that each Employer's contribution amount is discretionary (as provided above), in no event shall an Employer's VEBA contribution for a Plan Year be less than the amount the Employer saves (in "forgiven" contributions to the Bay County Employees' Retirement System ["BCERS"]) by reason of funding out of actuarial surplus of BCERS that Employer's employees' Member Contributions to BCERS, which Member Contributions would otherwise be funded by the Employer.
- (b) Each Employer shall determine from time to time its VEBA contribution by resolution of its governing body or pursuant to collective bargaining. Unless otherwise provided in the resolution or collective bargaining agreement which specifies the amount of VEBA contribution, if any Employer determines no specific VEBA contribution amount for a Plan Year, that Plan Year's contribution amount shall be zero; PROVIDED that during any period in which an Employer is participating in this VEBA, its VEBA contribution shall be no less than its forgiven BCERS contributions, as described in Section 2.2(a). Where appropriate, the resolution or bargaining agreement specifying a VEBA contribution shall indicate how it is to be applied within the VEBA (for example, to benefit a specified subset of employees of the Adopting Unit).

later than the time otherwise permitted or prescribed in this Section 2.3, or in an amount other than otherwise prescribed, but only to provide medical benefits under the Plan or other benefits permitted by the VEBA.

(g) In no event shall Trust Fund assets which were accumulated for the purpose of providing retiree medical benefits be used to provide other benefits unless (i) retiree medical benefits are fully funded on a reasonable actuarial basis, per opinion of the Actuary, or (ii) the Trustees reasonably believe that retiree medical benefits need no longer be prefunded (examples: such benefits have been discontinued, or are provided by the federal government), and in either case (iii) such "other benefits," pursuant to opinion of legal counsel, are permitted VEBA benefits pursuant to Code Section 501(c)(9) and P.A. 149, in each case, as amended. Note: funds which are specifically accumulated for a purpose other than retiree medical benefits, pursuant to Section 2.4, shall not be subject to this section 2.3(g).

**Sec. 2.4 Separate Accounts for Benefit Plans.** Initially, the Employers and the Trustees intend that this VEBA be used only to pre-fund and provide for retiree health care benefits under the Plan. In the event this Trust Agreement is amended to provide other benefits under other benefit plans which may be funded through a VEBA pursuant to Section 501(c)(9) of the Code and 1999 P.A. 149, the Trustees shall create and maintain separate accounts for the Plan and each other benefit plan funded through the Trust. The Trustees shall thereafter allocate contributions for the Plan and each other benefit plan funded through the Trust, and earnings or losses thereon, as well as any distributions or VEBA expense payments, to the separate account for such plan. The Trustees shall not pay for benefits under the Plan or under any other benefit plan any amounts in excess of the amount in the separate account for such plan. Furthermore, the Trustees shall not pay from the Plan's account any amounts for medical or other benefits for active employees (or their spouses or dependents) even if the Plan is amended to provide such benefits to active employees, their spouses and dependents. All separate accounts described in this Section 2.4 shall be for accounting purposes and shall not require segregation of assets within the Trust Fund.

**Sec. 2.5 Separate Accounts for Adopting Units.** The Trustees shall establish and maintain separate accounts for each Employer, which shall consist of the contributions made by such Employer, all earnings and investment gains or losses on such contributions, and less amounts charged against the Employer's proportional share of expenses for the VEBA and for medical or other benefits for retirees of Bay County or such Adopting Unit. Where separate Employers (Bay County and Adopting Units) fund more than one benefit plan through this VEBA (see Section 2.4), separate accounting of allocable VEBA assets and liabilities (including, without limitation, a proportional share of expenses for the VEBA) shall be maintained both by Employer and by plan funded.

Such accounts do not require segregation of assets within the Trust Fund.

**Sec. 2.6 Other Accounting Procedures.** The Trustees shall maintain such further accounts (which may be different or in addition to those described in this Trust Agreement) as may from time to time be agreed to by the Trustees and any affected Employer.

**Sec. 2.7 No Duty to Collect Contributions.** The Trustees shall have no duty to require that any contributions be made to them, to determine that the contributions received by them comply with (1) the provisions of the Plan, (2) with the terms of any collective bargaining agreement between an Employer and a collective bargaining association covering its employees, or (3) with any resolution of the Bay County Board of Commissioners or of the governing body of any Adopting Unit providing therefor, or to collect any contributions payable to the VEBA pursuant to (a) the Plan, (b) any collective bargaining agreement or (c) resolution of the Bay County Board of Commissioners or the governing body of any Adopting Unit. The Trustees shall not be responsible for the adequacy of the Trust Fund to pay benefits under the Plan. The responsibility of the Trustees shall be limited to the sums of money, securities, and other property actually received by them.

**ARTICLE III  
TRUSTEES**

**Sec. 3.1 Board of Trustees--Creation; Composition; Compensation.**

(a) The Bay County VEBA Board of Trustees ("Board") is hereby created. Except as otherwise provided at Section 3.1(b), the Board shall consist of the following seven (7) trustees who shall be the same persons holding such positions from time to time, and for the same terms, as under the Bay County Employees' Retirement System:

(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 Board of the Bay County Family Independence Agency ex officio or his/her designee. Any person appointed by the chairperson of the Board of the Bay County Family Independence Agency must also be a member of the Bay County Family Independence Agency;

(v) A member of the Bay County Employees' 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 Bay County Employees' 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 Bay County Employees' 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) If the Bay County Employees' Retirement System trustee, described at Section 3.1(a)(v), (vi), or (vii), is not also an employee of an Employer which is prefunding benefits under this VEBA, then such trustee shall not serve as a trustee of this VEBA. In his or her place, an additional trustee shall be elected from the remaining group of employees of Employers participating in the VEBA and described in Section 3.1(a)(v), (vi), or (vii) (whichever such Section the Trustee in questions represented). If there are no remaining Employers described in Sections 3.1(a)(v) or (vi), then the replacement trustee shall be elected from the group of all employees of Employers described at Section 3.1(a)(vii), which Employers are prefunding benefits under this VEBA. The intent of this Section 3.1(b) is that the VEBA shall have three trustees who are employees of Employers which are prefunding benefits under this VEBA. This Section 3.1(b) shall be construed accordingly.

(c) The Board shall establish rules and regulations for trustee elections required by Sections 3.1 (a)(v), (vi), and (vii), and (b), or otherwise.

(d) The Bay County Board of Commissioners may establish per diem compensation for trustees who are not employees of the County. 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.

### Sec. 3.2 Board of Trustees--Term of Office; Oath of Office; Vacancies.

(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 3.1(c). Elected trustees' terms shall be identical to the trustee's term under the Bay County Employees' Retirement System (or to the term of the trustee whom the trustee in question replaces, pursuant to Section 3.1(b) above).

(b) Each trustee shall, prior to taking office as a VEBA trustee, 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 both (x) a member of the Retirement System (including becoming a Retirant) and an employee of an Employer which is prefunding benefits under this VEBA;

(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.

**Sec. 3.3 Board of Trustees--Quorum; Voting; Officers.**

(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 VEBA trustees. The Secretary shall administer the first meeting of each year, until such time as a new chairperson and vice chairperson are elected.

**Sec. 3.4 Board of Trustees--Public Meetings and Notices; Public Records.**

(a) 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.

(b) 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.

**Sec. 3.5 Board of Trustees--Administrative Services.**

(a) The Board shall be custodian of the assets of the VEBA, except those assets that the Board may place in the custody of a member of the Federal Reserve

System, a clearing corporation, or a custodian bank which is a member of the Federal Reserve System, or other depository permitted by law and selected by the Board.

(b) The County Corporation Counsel shall serve as legal advisor to the Board.

(c) 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.

(d) 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.

#### Sec. 3.6 Board of Trustees--Records; Reports.

(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 VEBA.

(b) The Board 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 VEBA during the fiscal year.

(c) The Board shall cause to be prepared an actuarial report not less often than once every five years, or as may otherwise be required by P.A. 149 of 1999, as amended. The actuarial report shall contain information about the actuarial costs of medical benefits under the Plan, for current and future retirants of Employers. The actuarial report shall be similar in content to those which are generated for the Bay County Employees Retirement System. A copy of the actuarial report shall be furnished to the Bay County Board of Commissioners and the governing body of any Adopting Unit.

(d) The Board shall furnish the Bay County Board of Commissioners and the governing body of any Adopting Unit with other information about the VEBA as requested.

Sec. 3.7 Board of Trustees--Experience Tables; Regular Interest. The Board shall from time to time adopt mortality and other tables of actuarial experience, a funding methodology, and a rate or rates of regular interest, that are necessary to prepare actuarial reports.

**Sec. 3.8 Board of Trustees--Contract for Provision of Medical Benefits.** The Trustees shall, if so directed by an Employer, execute a contract with an insurance company or a health care organization for the provision of benefits under the Plan. The Trustees are further authorized to accept and hold any such contract, and to assign and deliver any such contract upon the further direction of the Employer.

**Sec. 3.9 Board of Trustees--General Responsibility.** The Board are the Trustees of the VEBA's assets. The general responsibilities of the Trustees shall be as follows:

(a) Except as expressly otherwise provided herein, the Trustees shall have exclusive authority and discretion to manage and control the assets of the Plan held in the Trust Fund, and shall be the investment fiduciary for the Trust Fund as required by 1999 P.A. 149, and 1965 P.A. 314, both as amended from time to time, provided that the Trustees may delegate such authority and discretion to an investment manager as described in Section 3.10(h).

(b) The Trustees shall hold, administer, invest and reinvest, and disburse the Trust Fund in accordance with the powers and subject to the restrictions stated herein.

(c)(i) The Trustees shall make such payments and disbursements from the Trust Fund as the County, or any other party authorized by the County to so direct the Trustees, shall from time to time direct in writing. The Trustees shall accept written directions by facsimile, and such facsimile directions shall have the same effect as writing delivered by mail or by delivery service. Such payments or disbursements may be made directly to such person or persons, natural or otherwise, at such time and in such amounts as specified in authorized directions to the Trustees, and the County warrants that no direction will be issued to the Trustees other than in accordance with the terms of the Plan.

(c)(ii) Without limiting the generality of the foregoing, but in furtherance thereof, the Trustees shall also pay premiums to insurance companies for insurance coverage or to Health Care Organizations for health care benefits under the Plan, as directed by the County.

(c)(iii) The County is authorized to open an account in any institution described at Section 3.10(h)(iii), (iv) or (v) for the purpose of making distributions or paying benefits or premiums in accordance with the Plan. Any person authorized by the County is authorized to sign, manually or by facsimile signature, any and all checks, drafts and orders, including orders or directions in informal or letter form, against any funds in such account with such institution and such institution is authorized to honor any and all checks, drafts and orders so signed, regardless of by whom or by what means the actual or purported facsimile signature or signatures thereon may have been affixed thereto, if such signature or signatures resemble those duly filed with such institution, without further inquiry or regard to the authority of said person or the use

of the checks, drafts and orders, or the proceeds thereof or to determine whether such checks, drafts and orders are in accordance with the Plan. The Trustees shall make such deposits to any such account as directed in writing or by facsimile by the County or any person authorized by the County, and the Trustees shall have no duty to question the propriety of any such direction or account for the funds retained in or disbursed from any such account. The County warrants that all funds deposited in any such designated account will be disbursed by it solely to or for the use and benefit of persons entitled thereto in accordance with the terms of the Plan, but until so disbursed, shall be held in the VEBA for such purpose by it.

(d) The Trustees in their capacity as such shall have no responsibility or authority with respect to the operation and administration of the Plan, and the rights, powers and duties of the Trustees shall be governed solely by the terms of this Trust Agreement without reference to the provisions of the Plan.

**Sec. 3.10 Board of Trustees--Powers of Trustees.** The Trustees shall have the right, power, and authority to take any action and to enter into and carry out every agreement with respect to the Trust Fund that may be necessary or advisable to discharge their responsibilities hereunder.

The Trustees shall invest and re-invest the assets of the Trust Fund subject to the terms, conditions, limitations and restrictions imposed by the State of Michigan on the investments of public employee Retirement Systems, including the provisions of 1999 P.A. 149 and 1965 P.A. 314, as amended, being Section 38.1132 et seq. of Michigan Compiled Laws Annotated (the "Investment Funds of Public Employee Retirement Systems Act"). In exercising their discretionary authority with respect to the management of the Trust Fund, the Trustees shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person, acting in a similar capacity and familiar with those matters, would use in the conduct of a similar enterprise with similar aims, and as further described in MCLA 38.1133(3), and shall not engage in the transactions prohibited by law and described by MCLA 38.1133, (5), (6), (7), (9), or otherwise prohibited by P.A. 314. Trustees shall diversify the Trust's assets so as to minimize the risk of large losses, unless under the circumstances it appears not prudent to do so. This standard shall not be applied to investments in isolation but rather in the context of the Trust portfolio and as a part of the overall investment strategy, which shall incorporate risk and return objectives reasonably suited to the Trust.

Subject to the foregoing, the Trustees shall have the following powers, rights and duties:

(a) to retain, manage, improve, repair, operate and control all property, real or personal, at any time comprising part of the Trust Fund;

(b) to manage, sell, contract to sell, grant options to purchase, convey, exchange, partition, lease for any term (even though such term commences in the future or may extend beyond the duration of the Trust), and otherwise dispose of the Trust Fund from time to time in such manner, for such consideration, and upon such terms and conditions as the Trustee in its discretion shall determine;

(c) to vote any corporate stock either in person or by proxy for any purpose; to exercise or sell any stock subscription or conversion right; to participate in voting trusts; to consent to, take any action in connection with, and receive and retain any securities resulting from, any merger, consolidation, reorganization, readjustment of the financial structure, liquidation, sale, lease or other organization the securities of which may constitute a portion of the Trust Fund;

(d) to keep any property in the name of a nominee with or without disclosure of any fiduciary relationship;

(e) to borrow money, and to mortgage, pledge or otherwise encumber the Trust Fund or any part thereof;

(f) to take any action with respect to conserving or realizing upon the value of any property in the Trust Fund; to collect, pay, contest, compromise, or abandon demands of or against the Trust Fund, to pay any tax, assessment or other charge attributable to the interest of any beneficiary;

(g) to employ such agents, experts, investment fiduciaries, counsel, and other persons (any of whom may also be employed by or represent the County) deemed by the Trustees to be necessary or proper for the administration of the Trust; to rely and act on information and advice furnished by such agents, experts, investment fiduciaries, counsel, and other persons; and to pay their reasonable expenses and compensation for services to the VEBA from the Trust Fund;

(h) to transfer to an investment fiduciary (as defined in Section 12c.(1) of P.A. 314 and pursuant to Section 4 of 1999 P.A. 149) the authority and accompanying duty to direct the investment and management of all or a portion of the Trust Fund, provided that such an investment fiduciary shall acknowledge in writing fiduciary status with respect to the Trust Fund.

For purposes of Section 3.10(h) above, an investment fiduciary means any person who does any of the following:

(i) Exercises any discretionary authority or control in the investment of the Trust Fund; or

(ii) Renders investment advice to the VEBA for a fee or other direct or indirect compensation.

Except for an employee of the VEBA, the County, or the State of Michigan who is acting in the capacity of an investment fiduciary to the VEBA, an investment fiduciary shall meet one of the following requirements:

(iii) Be a registered investment advisor under either the investment advisors act of 1940, title II of chapter 686, 54 Stat. 847, 15 U.S.C. 80b-1 to 80b-21, or the uniform securities Act, Act No. 265 of the Public Acts of 1964, being sections 451.501 to 451.818 of the Michigan Compiled Laws.

(iv) Be a bank as defined under the investment advisers' act of 1940.

(v) Be an insurance company qualified under MCLA Section 38.1136;

and

(i) to perform any and all acts in its judgment necessary or desirable for the proper and advantageous administration and distribution of the Trust Fund.

**Sec. 3.11 Board of Trustees--Benefits to Fiduciaries.** Nothing in this Trust shall prevent a fiduciary from receiving any benefit that he or she is otherwise entitled to from the Plan as a retiree or beneficiary. However, the benefit must be computed and paid consistently with the terms of the Plan as applied to all other retirees and beneficiaries. This Trust shall not be interpreted to prevent any fiduciary from receiving reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred in the performance of duties to the Trust; except no person receiving full-time pay from the County shall receive compensation from this Trust, except for reimbursement of expenses properly and actually incurred, or for a permitted per diem payment. No Trustee or employee who assists in the investment or administration of the Trust Fund shall (i) have a beneficial interest, direct or indirect, in an investment of the VEBA; (ii) borrow any assets of the VEBA; or (iii) receive any payment from any person or organization providing service to the VEBA. The "prohibited transaction" rules of P.A. 314 (MCCA Section 38.1133)[5], [6], [7], [9] or other prohibited transaction sections) shall apply to all VEBA fiduciaries.

ARTICLE IV  
MISCELLANEOUS

**Sec. 4.1 No Assignment.**

(a) The right of an individual to any benefit from or funded by the VEBA Trust, and the monies and assets of the VEBA Trust, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law, or other process of law, except as specifically required by State of Michigan or Federal law and shall be unassignable except as required by State of Michigan or Federal law.

(b) Nothing contained herein shall be construed as a contract of employment between any Employer and any employee, or as a right of any employee to be continued in the employment of any Employer, or of any Employer to discharge any of its employees, with or without cause.

(c) No employee shall have any right to, or interest in, any assets of the VEBA Trust upon termination of his employment otherwise, except as benefits which may be payable under the Plan to such employee.

**Sec. 4.2 Evidence.** Evidence required of anyone under this Trust Agreement may be by certificate, affidavit, document, or other instrument which the person acting in reliance thereon considers to be pertinent and reliable, and to be signed, made, or presented by the proper party.

**Sec. 4.3 Dealings of Others with Trustees.** No person (corporate or individual) dealing with the Trustees shall be required to see to the application of any money paid or property delivered to the Trustees or to determine whether the Trustees are acting pursuant to any authority granted to them under this Trust Agreement.

**Sec. 4.4 Others Not Party.** No insurance company that issues an insurance contract held by the Trustees and no health care organization with which the Trustees have entered into a contract shall be construed to be a party to this Trust Agreement, nor shall it have any responsibility for the validity of this Trust Agreement. An insurance company or Health Care Organization to which an application may be submitted by the Trustees may accept such application and shall have no duty to make any investigation or inquiry regarding the authority of the Trustees to make such application or any amendment thereto or to inquire as to whether a person on whose life or for whose benefit any contract is to be issued is entitled to such contract under the Plan.

Sec. 4.5 Audits. The County shall have the right to cause the books, records, and accounts of the Trustees that relate to the Plan to be examined and audited by independent auditors designated by the County at such times as the County may determine, and the Trustees shall make such books, records, and accounts available for such purposes at all reasonable times.

Sec. 4.6 Waiver of Notice. Any notice required under this Trust Agreement may be waived by the person entitled thereto.

Sec. 4.7 Headings. Headings at the beginning of articles and sections are for convenience of reference, shall not be considered a part of this Trust Agreement, and shall not influence their construction.

Sec. 4.8 Use of Compounds of Word "Here." Use of the words "hereof," "herein," "hereunder," or similar compounds of the word "here" shall mean and refer to the entire Trust Agreement unless the context clearly indicates otherwise.

Sec. 4.9 Construed as a Whole. The provisions of this Trust Agreement shall be construed as a whole in such manner as to carry out the provisions thereof and shall not be construed separately without relation to the context.

Sec. 4.10 Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by any one counterpart.

Sec. 4.11 Correction of Errors. The Trustees shall correct errors in the records and operations of the Trust. The Trustees shall seek to recover overpayments.



**ARTICLE V  
AMENDMENT AND TERMINATION**

**Sec. 5.1 No Diversion.** The Trust Fund shall be for the exclusive purpose of providing benefits to retired employees of the Employers eligible to participate in the Plan (or other plan funded hereunder) and their dependents or beneficiaries and defraying reasonable expenses of administering the VEBA, Plan (or other plan funded hereunder), and no part of the corpus or income of the Trust Fund may be used for, or diverted to, any other purposes. Except as provided in Sec. 5.1(a) and Sec. 5.4 below, no portion of the Trust Fund shall inure to the private benefit of any Employer and no portion of the Trust Fund shall be distributed to any individual, except for payment of benefits under the Plan (or other plan funded hereunder). Expenses of administering the VEBA, Plan (or other plan funded hereunder) may include premiums for the bonding or insurance of Trustees of the VEBA and officials of the Plan (or other plan funded hereunder) and any taxes on the Trust Fund or assets held in the Trust Fund. Notwithstanding the foregoing:

(a) If any contribution or portion thereof is made by an Employer by a mistake of fact, the Trustees shall, upon written request of the Employer, return such contribution or portion thereof to the Employer within one year after the payment of the contribution to the Trustees; however, the earnings attributable to such contribution or portion thereof shall not be returned to the Employer but shall remain in the Trust Fund, and the amount returned to the Employer shall be reduced by any losses attributable to such contribution or portion thereof.

(b) If upon a termination of the Plan (or of a plan funded under this VEBA for benefits other than retiree medical) and after payment of benefits accrued or owing under such plan to the time of termination, there remains a balance in the Trust Fund attributable to the terminated plan, such balance shall be applied to pay the costs under any comparable plan or plans maintained by the Employers for retired employees. In the event the Employers cease to maintain a comparable plan or plans for retired employees before the balance is entirely disbursed, the balance remaining shall be applied to pay the costs under any comparable plan or plans maintained for active employees. To the extent possible, assets shall be used to provide benefits to employees of the Employer to whom such assets were initially allocated. In no event may any amounts be returned to the Employers except as provided in subsection (a) of this section or Sec. 5.5 below.

**Sec. 5.2 Amendment.** Subject to the provisions of Sec. 5.1 hereof, this Trust Agreement may be amended at any time or from time to time and in any manner by resolution of the Bay County Board of Commissioners with the written agreement of the Trustees, and the provisions of any such amendment may be made applicable to the

Trust Fund as constituted at the time of the amendment as well as to the part of the Trust Fund subsequently acquired, provided that this Trust Agreement shall not be amended in any manner which causes or allows any portion of the Trust Fund allocable to the Plan (or any other plan funded under this VEBA) to be used for purposes other than providing retiree health care benefits to retired employees of the Employers and their spouses and dependents (or benefits to such persons under such other plan funded under this VEBA), or in the event of the termination of the Plan (or other plan), for purposes other than those described in Sec. 5.1(b) above and permitted by Section 501(c)(9) of the Code and by 1999 P.A. 149.

**Sec. 5.3 Termination of Plan; Termination of VEBA.** If the Plan (or another benefit plan funded by this VEBA) is terminated, this VEBA shall nevertheless continue in effect until the Trust Fund has been distributed pursuant to Sec. 5.1(b) and this Trust Agreement. The Bay County Board of Commissioners may, by resolution, terminate the VEBA at any time, provided that this VEBA shall nevertheless continue in effect until the Trust Fund has been distributed pursuant to Sec. 5.1(b) and this Trust Agreement.

**Sec. 5.4 Termination of Adoption By Any Adopting Unit.** Any Adopting Unit may terminate its adoption of this Trust Agreement, or of the Plan (or other VEBA-funded plan) and this Trust Agreement, by resolution of its governing body. Such termination shall be effective 60 days after receipt of a certified copy of such resolution by the Trustees. If an Adopting Unit terminates its adoption of this Trust Agreement, this VEBA shall nevertheless remain in effect until assets of the Trust fund equal to the separate account of such Adopting Unit have been distributed pursuant to Sec. 5.1(b) and this Trust Agreement for the benefit of retirees and, if necessary, for active employees of such Adopting Unit.

**Sec. 5.5 Removal of Adopting Unit.** In an Adopting Unit no longer qualifies as a Component Unit, then future contributions to this VEBA by such Adopting Unit shall cease at that time. At the discretion of the Trustees, assets held in this trust on behalf of such Adopting Unit shall (i) continue to be held by this VEBA according to its terms or (ii) be transferred to a VEBA established by that Adopting Unit for the same purposes as provided under this VEBA, or (iii) be otherwise disposed of at the Trustees' discretion, in a manner consistent with Code Section 501(c)(9) and P.A. 149.

**Sec. 5.6 Initial Qualification.** Contributions to the Trust Fund are conditioned on the initial qualification of the VEBA as a voluntary employees' beneficiary association under Section 501(c)(9) of the Code. If the VEBA is not determined to be tax-exempt under Section 501(c)(9), this VEBA shall terminate, and the Trustees shall, on the written request of the affected Employers, return allocable portions of the Trust Fund to the contributing Employer within one year after the date such qualification of the VEBA is denied.

-26-

IN WITNESS WHEREOF, Bay County has caused this Trust Agreement to be executed by its duly authorized officers, and the Trustees have executed this Trust Agreement, as of the day and year first above written.

ATTEST:

*Deanne C. Berger*  
DEANNE C. BERGER

*Debra A. Russell*  
DEBRA A. RUSSELL

BAY COUNTY

By: *Michael F. Halstead*  
MICHAEL F. HALSTEAD  
Its: Chairman, Board of Commissioners

*Michael F. Halstead*  
Trustee MICHAEL F. HALSTEAD

Trustee EDWARD RIVET

Trustee WANDA BEHMLANDER

*Jack Greigore*  
Trustee JACK GREGOIRE

*Tim Heil*  
Trustee TIM HEIL

*Robert Lewandowski*  
Trustee ROBERT LEWANDOWSKI

*Naomi Samyn*  
Trustee NAOMI SAMYN

APPROVED AS TO LEGAL FORM ONLY

*Martha P. Fitzhugh*  
MARTHA P. FITZHUGH  
BAY COUNTY CORPORATION COUNSEL  
DATE: 9/30/01

IN WITNESS WHEREOF, Bay County has caused this Trust Agreement to be executed by its duly authorized officers, and the Trustees have executed this Trust Agreement, as of the day and year first above written.

ATTEST:

BAY COUNTY

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Trustee

Edward L. Rivet  
Trustee EDWARD RIVET

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

APPROVED AS TO LEGAL FORM ONLY

Martha P. Fitzhugh  
MARTHA P. FITZHUGH  
BAY COUNTY CORPORATION COUNSEL  
DATE: 9/30/01

IN WITNESS WHEREOF, Bay County has caused this Trust Agreement to be executed by its duly authorized officers, and the Trustees have executed this Trust Agreement, as of the day and year first above written.

ATTEST:

BAY COUNTY

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Trustee \_\_\_\_\_

Trustee \_\_\_\_\_

*Wanda L. Behlander*  
Trustee WANDA BEHLANDER

Trustee \_\_\_\_\_

Trustee \_\_\_\_\_

Trustee \_\_\_\_\_

