

**CARROLL COUNTY PENSION PLAN**

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# **CARROLL COUNTY PENSION PLAN**

## **ARTICLE 1: PLAN ESTABLISHMENT AND DEFINITIONS**

### **1.1 PLAN ESTABLISHED**

Carroll County, Maryland established a pension plan for certain employees of Carroll County, Maryland by the adoption of this document, entitled the “Carroll County Pension Plan.” This Plan is amended from time to time and most recently amended effective July 1, 2009.

### **1.2 EXISTING RETIREMENT PLANS**

Carroll County, Maryland established the Carroll County, Maryland Retirement Savings and Investment Plan (the “Savings Plan”) effective July 1, 1985. Employees of the County hired prior to July 1, 1985 participate in either the Maryland State Pension System or the Maryland State Retirement System. Employees hired prior to July 1, 1985 who participate in the Maryland State Retirement System are excluded from participation in this Plan. Effective October 1, 2009, employees hired prior to July 1, 1985 who participate in the Maryland State Non-Contributory Pension System may elect to participate in this Plan pursuant to Section 2.1(c).

Carroll County, Maryland established the Carroll County Certified Law Officers Pension Plan (the “Law Officers Pension Plan”) effective October 1, 2009 for certain employees of the Carroll County Sheriff’s Office. Employees who participate in the Law Officers Pension Plan are excluded from participation in this Plan effective October 1, 2009.

Notwithstanding the adoption of this Plan, the County Commissioners of Carroll County, Maryland direct the County to continue to make contributions to the Maryland State Pension System and the Maryland State Retirement System to the extent required by those Systems, and to continue to make contributions to the Savings Plan, as provided by the terms of the Savings Plan, as amended from time to time.

### **1.3 NAME**

This Plan may be referred to as the “Carroll County Pension Plan.”

### **1.4 QUALIFICATION UNDER INTERNAL REVENUE CODE**

The Carroll County Pension Plan is intended to be a pension plan that will qualify under Section 401(a) of the Internal Revenue Code, so that the Trust established under the Plan will be exempt from tax under Section 501(a) of the Internal Revenue Code. Notwithstanding anything herein to the contrary, the benefits under this Plan shall be contingent upon the County’s receipt of a favorable determination letter from the Internal Revenue Service to the effect that the Plan qualifies under Section 401(a) of the Internal Revenue Code and the County reserves the right to amend the Plan retroactively to the extent necessary to obtain such a favorable determination letter.

The contributions made by Plan Participants through payroll deductions shall be characterized as “pick-up” contributions, as described in Section 414(h)(2) of the Internal Revenue Code.

## **1.5 APPLICABILITY**

The provisions of the Plan shall apply only to an individual who meets the definition of “Covered Individual” set forth in Section 1.7 of this subtitle and who is credited with an Hour of Service on or after the Effective Date.

## **1.6 CONSTRUCTION OF TERMS**

For all purposes of the Plan, where the context admits, the singular shall include the plural, and the plural shall include the singular, and references to persons shall include individuals, receivers, trustees, guardians, fiduciaries, corporations, partnerships, associations, estates and trusts. Headings of sections, subsections, and paragraphs are inserted only for convenience of reference and are not to be considered in the construction of the Plan.

## **1.7 DEFINITIONS**

The following terms, as used herein, unless a different meaning is clearly implied by the context, shall have the following meanings:

### **(a) Accrued Benefit**

- (1) “Accrued Benefit” means the benefit to which a Participant is entitled, pursuant to the provisions of Sections 5.1 through 5.5, expressed as the normal form of monthly benefit commencing at Normal Retirement Date or the Actuarial Equivalent thereof.
- (2) The Accrued Benefit as of any date preceding the Participant’s Normal Retirement Date, but expressed as aforesaid, shall be the monthly benefit computed pursuant to Section 5.5.
- (3) In no event, however, shall the Accrued Benefit exceed the maximum limitation determined, as of the date of computation, pursuant to Section 5.6.
- (4)
  - (i) The portion of the Participant’s Accrued Benefit attributable to the Participant’s contributions made pursuant to Sections 4.4 and 4.5 shall be equal to the Actuarial Equivalent of the Participant’s Employee Contributions Benefit, expressed as the normal form of monthly benefit commencing at Normal Retirement Date.
  - (ii) The portion of the Participant’s Accrued Benefit attributable to County contributions shall be the remainder, if any, of the Accrued Benefit.

(b) **Actuarial Equivalent**

“Actuarial Equivalent” means a form of benefit differing in time, period or manner of payment from a specific benefit provided under the Plan but having the same value when computed based upon the following:

Pre-retirement and Post-retirement:

GAM 83 mortality table (Blended 50% male, 50% female)

8% per annum interest rate.

The foregoing factors, to the extent applicable, shall be utilized (whether or not there is a specific reference to this definition) whenever in the administration of the Plan a calculation of actuarial equivalence is to be made.

(c) **Actuarial Reduction**

(1) "Actuarial Reduction" means a reduction which will cause a benefit with a starting date which precedes a Participant's Normal Retirement Date to be the Actuarial Equivalent of the benefit which would otherwise have been payable at Normal Retirement Date.

(2) However, notwithstanding any factors set forth in the definition of Actuarial Equivalent, the reduction shall be equal to 0.50% of the benefit for each month preceding the Participant's 62nd birthday.

(3) No reduction pursuant to this Section 1.7(c) shall apply to a Participant who retires after completing at least 30 Years of Eligibility Service.

(d) **Average Compensation**

(1) “Average Compensation” means the sum of the Compensation recorded during the 78 consecutive full bi-weekly pay periods that produce the highest total amount, divided by 3. Example: The sum of the Compensation recorded during the 78 consecutive full pay periods for a Participant that produce the highest total amount is \$97,503. The Average Compensation would equal \$32,501 (\$97,503 divided by 3).

(2) However, any pay period during which a Participant was on an unpaid leave of absence shall be disregarded when determining the total Compensation used in the determination of Average Compensation unless: (A) the Participant earned 60 or more hours of service in the pay period or (B) the Participant received full credit for Years of Eligibility Service and Years of Creditable Service pursuant to Section 3.2. In the event a pay period is disregarded because a Participant is on an unpaid leave of absence, the Compensation recorded during the pay period(s) immediately preceding the 78 consecutive pay periods that otherwise would have been included in the calculation of “Average Compensation” will be substituted for any pay periods disregarded.

- (3) Periods of time during which a Participant receives short term disability payments from the County shall be recorded as if the Participant were on fully paid leave and paid at the rate of pay in effect immediately prior to the leave for purposes of determining Average Compensation.
- (4) If the Participant's employment as a Covered Individual does not provide for 78 consecutive pay periods as aforesaid, the Compensation paid over the period of time not disregarded shall be totaled, then divided by the number of full pay periods utilized, then multiplied by 26 to arrive at "Average Compensation." Example: A Participant for whom "Average Compensation" is to be calculated has only worked for 76 full pay periods. The total of Compensation recorded for those 76 pay periods is \$87,693. Average Compensation for this Participant is \$30,000.24. ( $\$87,693/76 \times 26 = \$30,000.24$ ).

(e) **Beneficiary**

"Beneficiary" means any person entitled to receive the benefits which are payable under the Plan upon or after the death of a Participant.

(f) **Benefit Commencement Date**

"Benefit Commencement Date" means the day on which the sole payment is made or the first day of the period for which the first in a series of payments constituting the distribution of an Accrued Benefit is made.

(g) **Break in Service**

"Break in Service" means a period of separation from employment in any Plan Year ending after the date of the Covered Individual's Employment Commencement Date, if during that Plan Year the Covered Individual does not complete more than 350 hours of employment while a Covered Individual.

(h) **Cash-Out**

"Cash-out" means a distribution in settlement of a benefit otherwise payable under the Plan, and which is equal to the Employee Contributions Benefit.

(i) **Compensation**

"Compensation" means the base wages and/or salary normally scheduled to be paid to a Participant for a pay period in which no unpaid leave occurs, at the base pay rate in effect as of the last day of that pay period, determined without regard to:

- (1) overtime or other hours in excess of regularly scheduled hours, bonuses, lump sum longevity payments, and other extra remuneration;
- (2) amounts in excess of one-twenty-sixth (1/26) of the applicable dollar limit in effect as of the first day of the Plan Year under Section

401(a)(17) of the Internal Revenue Code and regulations promulgated thereunder, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code;

- (3) contributions, credits or benefits under this Plan or under any other retirement, deferred compensation, fringe benefit or employee welfare benefit Plan; or
- (4) direct reimbursement for expenses; provided, however, that Compensation shall include any amount that would have qualified as Compensation but for the fact that it constitutes a pick-up contribution under Section 4.4 or a salary reduction contribution under any plan described in Section 132(f), 414(h)(2), 457(b) or 125 of the Internal Revenue Code.

(j) **Coordinator**

“Coordinator” means the individual to whom certain administrative duties may be delegated by the Plan Administrator pursuant to Section 8.5(d).

(k) **County**

“County” means Carroll County, Maryland including, where required by context, the Carroll County Sheriff’s Office, the Carroll County State’s Attorney’s Office, and the Circuit Court of Carroll County.

(l) **Covered Individual**

“Covered Individual” means any person employed by the County, the County Commissioners of Carroll County Maryland, the Carroll County Sheriff’s Office, the Carroll County Office of the State’s Attorney, and the Carroll County Circuit Court on or after July 1, 2003 who is budgeted to perform at least 975 Hours of Service during a twelve month period in accordance with the policies and procedures established by the County and administered by the Department of Human Resources. The term “Covered Individual” includes the County Commissioners of the County. The term “Covered Individual” does not include a person during any period that he or she qualifies as an Excluded Employee. A “Covered Individual” shall not include the judges of the Orphan’s Court of Carroll County or a Board member of the Carroll County Board of Elections.

(m) **Deferred Retirement**

“Deferred Retirement” means retirement, as described in Section 5.3, which occurs after the Participant’s Normal Retirement Date.

(n) **Dual Service Participant**

“Dual Service Participant” means a Participant who has earned Years of Eligibility Service and/or Years of Creditable Service (or fractional Years of Eligibility Service and/or fractional Years of Creditable Service) as both: (1) a certified law enforcement officer of the County or another Government Employer eligible to participate in the Law Officers Pension Plan and (2) in a capacity eligible to participate in this Plan.

(o) **Early Retirement Date**

“Early Retirement Date” means any date occurring on or after the first date on which: (1) a Participant has attained age 55, (2) a Participant has completed at least 3 Years of Eligibility Service and (3) the sum of the participant’s age in whole years and Years of Eligibility Service equals or exceeds 80. Notwithstanding the foregoing, a Participant who is electing to participate pursuant to Section 2.1(c) (pertaining to voluntary participation by participants in the Maryland State Non-Contributory Pension System) shall not be deemed to have reached an Early Retirement Date until he or she has completed at least 3 Years of Eligibility Service beginning October 1, 2009.

(p) **Effective Date**

“Effective Date” means the Effective Date of the Plan, which shall be July 1, 2003.

(q) **Employee Contributions Benefit**

“Employee Contributions Benefit” means the sum of the following amounts (net of any previous distributions):

- (1) the contributions made by the Participant through salary reduction and “picked up” by the County, as described in Section 4.4(a); plus
- (2) the contributions made by the Participant pursuant to Section 4.5 that are not picked up by the County; plus
- (3) interest on the amounts described in paragraphs (1) and (2) above computed on June 30 of each year and compounded annually at the rate of 5% per year on any amount contributed or transferred prior to the current Plan Year.

(r) **Employment Commencement Date**

“Employment Commencement Date” means the date on which a Covered Individual first performs an Hour of Service.

(s) **Excluded Employee**

- (1) “Excluded Employee” means any person employed by the County during any period that he or she qualifies under any of the following subparagraphs:

- (i) the person is budgeted to work less than 975 hours in a twelve month period;
  - (ii) the person is classified as a contractual or temporary employee as defined in the County Code of Public Local Laws and Ordinances;
  - (iii) the person is accruing benefits under the Maryland State Retirement System, Maryland State Pension System or the Maryland State Judge's Retirement System. Effective October 1, 2009, a participant in the Maryland State Non-Contributory Pension System may elect to participate in this Plan pursuant to Section 2.1(c). A participant in the Maryland State Non-Contributory Pension System who does not elect to participate in this Plan shall be an Excluded Employee.
  - (iv) the person's conditions of employment are determined by a collective bargaining agreement which does not specifically provide for participation in this Plan, unless and until a mutually satisfactory agreement shall have been reached with respect to the person's coverage under this Plan;
  - (v) the person is a "constitutional elected officer" who has made an election not to participate in the Plan pursuant to Section 2.1 of the Plan;
  - (vi) the person is a participant in the Law Officers Pension Plan; or
  - (vii) the person is classified as a "grant contingent" employee whose continued employment with the County is contingent upon the renewal of federal or state grant funding of the position.
- (2) Periods during which a person is an Excluded Employee shall not be credited with respect to Years of Creditable Service (or one-twelfth (1/12th) increments thereof) nor credited with respect to Hours of Service for purposes of determining Years of Eligibility Service.

(t) **Government Employer**

"Government Employer" means the State of Maryland and any municipality or other political subdivision within the State of Maryland.

(u) **Hour of Service**

- (1) "Hour of Service" means each hour for which an individual, in his or her capacity as a Covered Individual, is directly or indirectly paid, or entitled to payment, for the performance of duties for the County.
- (2) Hours of service include normal working hours, paid holidays, compensatory hours, personal leave, sick leave, accrued annual leave, short term disability leave, other paid leave and overtime hours, except as provided herein. Hours in

excess of the regularly scheduled hours in a pay period do not count as Hours of Service.

- (3) Hours of service also include hours for which an individual is not paid, but would be entitled to payment but for a temporary furlough.
- (4) Notwithstanding the foregoing, an Hour of Service shall not be credited if the crediting of the Hour of Service will cause the total Hours of Service credited for any one pay period to exceed the number of regularly scheduled hours within the pay period.

(v) **Internal Revenue Code**

“Internal Revenue Code” means the Internal Revenue Code of 1986, or any provision or Section thereof herein specifically referred to, as such code, provision or Section may from time to time be amended or replaced.

(w) **Law Officers Pension Plan**

“Law Officers Pension Plan” means the Carroll County Certified Law Officers Pension Plan.

(x) **Maryland State Non-Contributory Pension System**

“Maryland State Non-Contributory Pension System” means the pension system established pursuant to Subtitle 2 of Title 23 of the State Personnel and Pensions Article of the Annotated Code of Maryland and to which the County did not elect to provide employees with the contributory pension benefit.

(y) **Military Service**

“Military Service” means active military duty in the Armed Forces of the United States.

(z) **Normal Retirement Date**

“Normal Retirement Date” means the earlier of:

- (1) the first day of the month coincident with or next following the date on which the Participant has completed 30 Years of Eligibility Service; or
- (2) the first day of the month coincident with or next following the date on which the Participant has attained age 62 and completed three Years of Eligibility of Service.

Notwithstanding the foregoing, a Participant who is electing to participate pursuant to Section 2.1(c)(pertaining to voluntary participation by participants in the Maryland State Non-Contributory System) shall not be deemed to have reached a Normal Retirement Date

until he or she has completed at least 3 Years of Eligibility Service beginning October 1, 2009.

A Participant who reaches a Termination Date after completing at least three Years of Eligibility of Service but prior to completing 30 Years of Eligibility of Service shall not be deemed to have reached a Normal Retirement Date until the first day of the month coincident with or next following the date on which the Participant has attained age 62.

(aa) **Participant**

“Participant” means any Covered Individual who is currently benefiting under the Plan, and, where appropriate according to the context of the Plan, any former Covered Individual who is or may become (or whose Beneficiaries may become) eligible to receive a benefit under the Plan.

(ab) **Per-Pay Compensation**

“Per-Pay Compensation” means, for a particular paycheck, any amounts includable as Compensation paid to the Participant that are not in excess of the base salary or wages that would be paid to that Participant if the Participant worked all of the regularly scheduled hours in the pay period.

Base salary or wages that would be paid to the Participant if the Participant worked all of the regularly scheduled hours in a pay period shall be determined without regard to:

- (1) overtime, bonuses and other extra remuneration;
- (2) amounts in excess of the per-pay equivalent of the applicable dollar limit under Section 401(a)(17) of the Internal Revenue Code and regulations promulgated thereunder as of the first day of the Plan Year;
- (3) contributions, credits or benefits under this Plan or under any other retirement, deferred compensation, fringe benefit or employee welfare benefit Plan;
- (4) direct reimbursement for expenses; or
- (5) any regularly scheduled hours in the pay period that occurred prior to the Participant’s Employment Commencement Date or after the Participant’s Termination Date;

provided, however, that Per-Pay Compensation shall include any amount that would have qualified as base pay but for the fact that it constitutes a pick-up contribution under Section 4.4 or a salary reduction under any plan described in Section 132 (f), 414(h)(2), 457(b) or 125 of the Internal Revenue Code.

(ac) **Plan**

“Plan” means the Carroll County Pension Plan, as set forth herein, and as amended from time to time.

(ad) **Plan Administrator**

“Plan Administrator” means the Retirement Plan Committee appointed pursuant to Section 8.5.

(ae) **Plan Year**

“Plan Year” means the 12 month period ending on the last day of the month of June.

(af) **Re-employment commencement date**

“Re-employment commencement date” means the date on which a Covered Individual first performs an Hour of Service after a period during which no Hours of Service were performed by reason of the occurrence of the Covered Individual’s Termination Date or otherwise.

(ag) **Savings Plan**

“Savings Plan” means the Carroll County, Maryland Retirement Savings and Investment Plan.

(ah) **Termination Date**

“Termination Date” means the date of the first to occur of:

- (1) a termination of employment by reason of resignation, discharge, mutual agreement, retirement or death;
- (2) the first day of an unpaid leave of absence if the leave of absence expires without the Covered Individual’s return to active employment for the County; or
- (3) subject to Section 2.4, the date on which the individual ceases to be a Covered Individual.

(ai) **Trust**

“Trust” means the trust fund established pursuant to the Plan, maintained in accordance with the terms of the trust agreement, as from time to time amended, between the County and the Trustees, which trust agreement constitutes a part of the Plan; where appropriate according to the context, the term “Trust” shall also refer to the trust agreement.

(aj) **Trustees**

“Trustees” means, collectively, the Trustee or Trustees named in the Trust and such successor and/or additional Trustees as may be named pursuant to the terms of the Trust.

(ak) **Unpaid Leave of Absence**

“Unpaid leave of absence” means an absence from active employment with the County, approved in advance by the County, which does not constitute a termination of employment, and during which the Covered Individual completes no Hours of Service and is not paid.

(al) **Year of Creditable Service**

(1) **General**

A “Year of Creditable Service” means, generally, a year of service for purposes of calculating a Participant’s Accrued Benefit and monthly retirement income pursuant to Article 5.

(2) **Periods beginning on and after July 1, 2003**

For periods beginning on and after July 1, 2003, a Participant may receive credit for a Year of Creditable Service if the Participant is regularly scheduled to perform at least 60 Hours of Service per bi-weekly pay period for the entire Plan Year and performs at least 60 Hours of Service in each bi-weekly pay period for the entire Plan Year. If a Participant is not regularly scheduled to perform (or does not perform) at least 60 Hours of Service for one or more bi-weekly pay periods during the Plan Year, the Participant will receive fractional credit for a Year of Creditable Service determined in accordance with the following formula:

$$\frac{(A \times 75) + B}{1,950}$$

Where:

A is the number of bi-weekly pay periods during the Plan Year during which the Participant was regularly scheduled to perform and did perform at least 60 Hours of Service each pay period.

B is the total number of scheduled Hours of Service performed during any bi-weekly pay period or pay periods in the Plan Year and not accounted for in A.

The result of the application of the formula set forth above will be converted to years or partial years based on 26 pay periods per Plan Year and rounded to the nearest one-twelfth of a year.

**Example:** For the 26 full pay periods occurring between July 1, 2003 and June 30, 2004, a Participant is regularly scheduled to work and does work 60 hours per pay

period for 19 pay periods, 56 hours per pay period for 4 pay periods and 50 hours per pay period for 3 pay periods.

The Participant will receive credit for 11/12ths of a Year of Creditable Service for the Plan Year ending June 30, 2004, determined as follows:

$$\frac{(19 \times 75)}{1,950} + \frac{(4 \times 56)}{1,950} + \frac{(3 \times 50)}{1,950} = 0.9226$$

0.9226 years = 11.07 months

11.07 months rounded to the nearest whole number of months, equals 11 months or 11/12ths of a Year of Creditable Service.

No more than one Year of Creditable Service will be credited to the Participant for any one Plan Year. The total number of bi-weekly pay periods applied to any Plan Year shall not exceed 26. For purposes of determining the number of Years of Creditable Service earned by any Participant, only the first 26 full bi-weekly pay periods that begin within a Plan Year shall be counted.

**(3) July 1, 1985 through June 30, 2003**

A “Year of Creditable Service” means, with respect to periods on and after July 1, 1985 and prior to July 1, 2003, the number of whole and partial years determined in accordance with the following formula:

$$\frac{A + (B \times (C/D))}{12}$$

Where:

A is the number of whole months during which the Covered Individual was regularly scheduled to perform 30 or more Hours of Service per week and did perform 30 or more Hours of Service per week. For partial months not accounted for in the preceding sentence, each day worked shall equal 1/30th of a month.

B is the number of whole months during which the Covered Individual was regularly scheduled to perform less than 30 Hours of Service per week and did perform less than 30 Hours of Service per week. For partial months not accounted for in the preceding sentence, each day worked shall equal 1/30th of a month.

C is the number of Hours of Service, less than 30 per week, the Covered Individual was regularly scheduled to perform per week for the period of time covered by “B” above.

D is 37.5

The result of the application of the formula set forth above shall be converted to whole years based on a 52 week year and fractions of a year rounded to the nearest one-twelfth.

**Example:** Participant Jones was regularly scheduled to work 35 hours per week from June 3, 2002 through September 6, 2002 and was regularly scheduled to work 25 hours per week from September 7, 2002 through November 6, 2002. For the period from June 3, 2002 through November 6, 2002, Participant Jones will receive credit for 4/12ths of a Year of Creditable Service determined as follows:

A = 3 months and 4 days equals 3 and 4/30ths of one month, or 3.13 months

B = 2 months

C = 25

D = 37.5

$$\frac{3.13 + (2 \times (25/37.5))}{12} = 4.46/12\text{ths of a Year of Creditable Service}$$

4.46/12 rounded to the nearest one-twelfth equals 4/12ths of a Year of Creditable Service

The time constituting breaks in employment with the County as a Covered Individual will not be counted when determining a Participant's Years of Creditable Service with respect to periods on and after July 1, 1985 and prior to July 1, 2003. The total of years and partial years of service as a Covered Individual on and after July 1, 1985 and prior to July 1, 2003 will be added together to reach a total of years and months of Creditable Service.

No more than one Year of Creditable Service will be credited to the Participant for any one Plan Year.

(am) **Year of Eligibility Service**

(1) **General**

A "Year of Eligibility Service" means, generally, a year of service for purposes of (A) determining whether a Participant has reached his or her Normal Retirement Date, (B) determining whether a Participant has reached his or her Early Retirement Date, (C) determining the Participant's vested percentage pursuant to Section 5.5, and (D) determining the amount of any Actuarial Reduction.

(2) **Periods beginning on and after July 1, 2003**

Subject to Section 3.3(a) and, with respect to periods beginning on and after July 1, 2003, a Participant may receive credit for 1/26<sup>th</sup> of a "Year of Eligibility Service" for each of the first 26 bi-weekly pay periods beginning on or after July 1 of each Plan Year in which

the Participant performs at least one Hour of Service (or is otherwise credited with at least one Hour of Service pursuant to the provisions of this Plan) rounded to the nearest whole month.

Example: A Participant performs 80 Hours of Service during the first 17 pay periods of the Plan Year. The Participant performs one Hour of Service during the 18<sup>th</sup> pay period. The Participant performs no additional Hours of Service during the Plan Year. The Participant receives credit for a partial Year of Eligibility Service as follows:

$$1/26^{\text{th}} \times 18 \text{ pay periods} = 18/26\text{ths}$$

No credit for pay periods 19 through 26 (less than one Hour of Service performed)

$$18/26 = 0.6923$$

$$0.6923 \text{ years} = 8.31 \text{ months rounded to } 8/12\text{ths of a Year of Eligibility Service}$$

**(3) July 1, 1985 through June 30, 2003**

A “Year of Eligibility Service” means, with respect to periods on and after July 1, 1985 and prior to July 1, 2003, the years, months and days of a Participant’s employment for the County as a Covered Individual, determined without regard to the Hours of Service performed. The time constituting breaks in employment with the County as a Covered Individual will not be counted when determining a Participant’s Years of Eligibility Service. The total of years and months of service as a Covered Individual on and after July 1, 1985 and prior to July 1, 2003 will be added together to reach a total of months and Years of Eligibility Service. The total number of days in the partial months of service for that period will be added together and 1/12th of a Year of Eligibility Service will be credited for each period of more than 14 days.

No more than one Year of Eligibility Service will be credited to the Participant for any one Plan Year.

## **ARTICLE 2: PARTICIPATION**

### **2.1 PARTICIPATION REQUIREMENTS**

**(a) General**

Except as otherwise provided herein, a Covered Individual's participation in this Plan, and the agreement to make contributions hereunder, as described in Section 4.4(a)(1), is mandatory as a condition of employment with the County with respect to all Covered Individuals employed by the County on or after July 1, 2003. Every individual who is or becomes a Covered Individual on or after July 1, 2003 shall become a Participant on the date he or she performs an Hour of Service as a Covered Individual.

**(b) Constitutional Elected Officers**

An employee of the County who is a "constitutional elected officer" as of the later of July 1, 2003, or his or her Employment Commencement Date and who is otherwise eligible to participate in the Plan may make an irrevocable election to waive participation and benefits in the Plan. Such election shall be made on a written application supplied by the Administrator and filed with the Administrator prior to the date the first contributions would be made to the Plan pursuant to Section 4.4 of the Plan. If such Covered Individual fails to file an election to waive participation and benefits in the Plan, the Covered Individual shall continue to participate in the Plan until he or she reaches a Termination Date. For these purposes, a "constitutional elected officer" is the Sheriff and the State's Attorney.

**(c) Participants in Maryland State Non-Contributory Pension System**

Every individual who is eligible to be a Covered Individual under this Plan as of October 1, 2009 and who is an active participant in the Maryland State Non-Contributory Pension System may make an irrevocable election to participate in the Plan effective October 1, 2009. Such election shall be filed in person or by mail with the County's Department of Human Resources no earlier than August 25, 2009 and must be received in all events no later than the close of business on September 25, 2009. Such election shall be made on a written application supplied by the County and shall contain an agreement to make, as a condition of the individual's continued employment with the County, Participant contributions as provided in Section 4.4(a)(1). The election shall be revocable at any time before the close of business on September 25, 2009, at which time the election shall thereafter be irrevocable. If an otherwise eligible Covered Individual fails to file, in person or by mail, the completed application to the County's Department of Human Resources by the close of business on September 25, 2009, he or she shall cease to be eligible to be a Covered Individual and shall become an Excluded Employee as of October 1, 2009. Any revocation of an election to participate shall be made in a form acceptable to the County.

## **2.2 RE-EMPLOYMENT**

### **(a) Re-employment of a Covered Individual**

If a Covered Individual who reaches a Termination Date is subsequently re-employed as a Covered Individual, the Covered Individual's status with respect to the Plan shall be governed by the following:

#### **(1) Eligibility**

The re-employed Covered Individual shall become a Participant on his or her Re-employment Commencement Date.

#### **(2) Vesting and Benefit Accrual**

Subject to subsection 2.2(a)(4) below, if the re-employed Covered Individual was a Participant prior to his or her Termination Date, his or her prior Years of Creditable Service and Years of Eligibility Service shall be aggregated with Years of Creditable Service and Years of Eligibility Service credited after his or her Re-employment Commencement Date for purposes of determining the individual's eligibility to receive, the vested percentage of, and amount of, his or her Accrued Benefit (with respect to the periods before the individual's Termination Date and after his or her Re-employment Commencement Date).

#### **(3) Benefit Payments**

If, at the time of his or her Re-employment Commencement Date, the Participant is receiving benefits under the Plan, such benefits (other than those previously funded through individual or non-pooled group insurance annuity arrangements) shall cease until such time as they may be paid in conjunction with the benefits accrued with respect to the Participant's subsequent employment. In any event, any benefits payable with respect to subsequent employment shall be reduced or offset if and as necessary to avoid duplication of any benefits payable or paid with respect to the Participant's prior employment, but no such offset shall reduce the Participant's benefit below the amount in effect at the original Termination Date, plus cost of living adjustments that would have been applied pursuant to Section 5.10 during the period of re-employment. The form of benefit payment elected by the Participant upon the initial retirement shall remain in effect.

#### **(4) Covered Individual Status After July 1, 2003**

An individual who is employed by the County on July 1, 2003, but who is not a Covered Individual on that date, shall nevertheless receive credit for Years of Eligibility Service and Years of Creditable Service earned prior to July 1, 2003 upon becoming a Covered Individual and a Participant in this Plan.

(5) **Cash-out**

(i) If, after the Participant's Termination Date:

(a) the Participant receives a Cash-Out of his or her Employee Contributions Benefit, and

(b) the Participant resumes his or her employment as a Covered Individual,

then, notwithstanding the crediting of additional Years of Eligibility Service and Years of Creditable Service, the Years of Eligibility Service and Years of Creditable Service with respect to which the distribution was received shall be disregarded in subsequent determinations of the Participant's eligibility to receive, the vested percentage of, and the amount of his or her Accrued Benefit.

(ii) However, if the Participant:

(a) resumes his or her employment as a Covered Individual, and

(b) within six months of his or her Re-employment Commencement Date, repays to the Trust in one lump sum, on an after-tax basis, the full amount of the Cash-Out, plus interest on the amount of the distribution, applied on the July 1 immediately following the date the Participant received the Cash-Out and compounded annually at the rate of 5.0% per annum thereafter on each subsequent July 1, ending on the July 1 preceding the date of repayment, then his or her Accrued Benefit will be determined taking into account the Participant's Years of Eligibility Service and Years of Creditable Service before as well as after the Termination Date.

(b) **Re-employment Other Than of a Covered Individual**

If an individual was not employed by the County on July 1, 2003, but becomes a Covered Individual after July 1, 2003, the individual shall be eligible to receive credit for Years of Eligibility Service and Years of Creditable Service for service performed for the County prior to July 1, 2003 as follows:

(1) **Eligibility**

The re-employed Covered Individual shall become a Participant on his or her Re-employment Commencement Date.

(2) **Vesting and Benefit Accrual**

The re-employed Covered Individual's Years of Creditable Service and Years of Eligibility Service earned prior to the Covered Individual's most recent Termination Date shall be aggregated with Years of Creditable Service and Years of Eligibility Service

credited after his or her Re-employment Commencement Date for purposes of determining the individual's eligibility to receive, the vested percentage of, and amount of, his or her Accrued Benefit (with respect to the periods before the individual's Termination Date and after his or her Re-employment Commencement Date), provided:

(i) The period of time elapsed between the Covered Individual's most recent Termination Date and most recent Re-employment Commencement Date does not exceed the greater of:

(a) Five years, or

(b) The period of time the Covered Individual was employed by the County prior to his or her Termination Date;

and

(ii) During the period or periods of previous employment for which Years of Creditable Service and Years of Eligibility Service may be credited under this subsection, the Covered Individual did not participate in, or otherwise receive credit under, a defined benefit pension plan sponsored by a Government Employer, including the Maryland State Retirement System, the Maryland State Pension System, and the Maryland State Judge's Retirement System;

and

(iii) The Covered Individual earns at least three Years of Eligibility Service between the Re-employment Commencement Date and the next following Termination Date;

and

(iv) Within the later of: (i) six months of the Covered Individual's Re-employment Commencement Date, or (ii) December 31, 2005, the Covered Individual pays over to the Trust, in one lump sum, on an after tax basis, an amount equal to the sum of: (a) two percent of the Participant's Per-Pay Compensation earned during the period for which Years of Creditable Service and Years of Eligibility Service are being granted prior to October 1, 2009, plus (b) five percent of the Participant's Per-Pay Compensation earned during the period for which Years of Creditable Service and Years of Eligibility Service are being granted on and after October 1, 2009, plus (c) interest to the date of payment at the rate of 5.0% per annum, compounded annually as of each December 31;

or

(v) If the re-employed Covered Individual does not make the payment described in subsection (b)(2)(D), the Covered Individual's benefit calculated pursuant to Article 5 shall be offset by the Actuarial Equivalent of the contributions, plus interest, described in subsection (b)(2)(D).

Notwithstanding the foregoing, the Covered Employee's method of payment described in

subsection (b)(2)(D) above may be modified by the County to the extent necessary to conform to Section 415 of the Internal Revenue Code.

**(3) Benefit Payments**

If, at the time of his or her Re-employment Commencement Date, the Participant is receiving benefits under the Plan, such benefits (other than those previously funded through individual or non-pooled group insurance annuity arrangements) shall cease until such time as they may be paid in conjunction with the benefits accrued with respect to the Participant's subsequent employment. In any event, any benefits payable with respect to subsequent employment shall be reduced or offset if and as necessary to avoid duplication of any benefits payable or paid with respect to the Participant's prior employment, but no such offset shall reduce the Participant's benefit below the amount in effect at the original Termination Date, plus cost of living adjustments that would have been applied pursuant to Section 5.10 during the period of re-employment. The form of benefit payment elected by the Participant upon the initial retirement shall remain in effect.

**(4) Cash-out**

(i) If, after the Participant's Termination Date:

(a) the Participant receives a Cash-Out of his or her Employee Contributions Benefit, and

(b) the Participant resumes his or her employment as a Covered Individual,

then, notwithstanding the crediting of additional Years of Eligibility Service and Years of Creditable Service, the Years of Eligibility Service and Years of Creditable Service with respect to which the distribution was received shall be disregarded in subsequent determinations of the amount of the Participant's eligibility to receive, the vested percentage of, and the amount of his or her Accrued Benefit.

(ii) However, if the Participant:

(a) resumes his or her employment as a Covered Individual, and

(b) within six months of his or her Re-employment Commencement Date, repays to the Trust in one lump sum, on an after-tax basis, the full amount of the Cash-Out, plus interest on the amount of the distribution, applied on the July 1 immediately following the date the Participant received the Cash-Out and compounded annually at the rate of 5.0% per annum thereafter on each subsequent July 1, ending on the July 1 preceding the date of repayment, then his or her Accrued Benefit will be determined taking into account the Participant's Years of Eligibility Service and Years of Creditable Service before as well as after the Termination Date.

### **2.3 ENROLLMENT**

Participation hereunder shall be automatic when the requirements of Section 2.1 have been met; provided, however, that the County may, in its discretion, require each Covered Individual to execute a written application containing such items as may be desired by the County including, but not limited to, the Covered Individual's consent to be bound by all the terms and conditions of the Plan and all amendments thereto.

### **2.4 CHANGE OF EMPLOYMENT CATEGORY**

If a Participant who has not yet reached his or her Early Retirement Date or Normal Retirement Date ceases to be a Covered Individual, but continues in the employ of the County or the Carroll County Sheriff's Office, the Participant shall not be deemed to have reached a Termination Date at the time he or she ceases to be a Covered Individual, but shall be deemed to have reached a Termination Date only at such time as he or she is no longer an employee of the County or the Carroll County Sheriff's Office. If a Participant who has reached his or her Early Retirement Date or Normal Retirement Date ceases to be a Covered Individual, the Participant shall be deemed to have reached a Termination Date as of the later of: (a) the date he or she ceases to be a Covered Individual, or (b) the Participant's 62<sup>nd</sup> birthday.

## **ARTICLE 3: CREDIT FOR SERVICE**

### **3.1 BREAKS IN SERVICE**

Except as otherwise provided in this Article 3, a Covered Individual shall receive no credit for service for any period during which the Covered Individual is not actively employed by the County.

### **3.2 CREDIT FOR UNPAID LEAVES OF ABSENCE**

- (a) Except as otherwise provided in this Plan, Hours of Service (for purposes of determining Years of Eligibility Service and Years of Creditable Service) shall not be credited during an unpaid leave of absence.
- (b) However, to the extent permitted under the Internal Revenue Code, a Participant who, on account of an unpaid leave of absence, earns less than the service the Participant would have earned had he or she remained in active service, may elect to receive credit for up to one Year of Eligibility Service and up to one Year of Creditable Service to the extent of any one unpaid leave of absence. A Participant who has more than one unpaid leave of absence during his or her employment with the County, may elect to receive credit for up to one Year of Eligibility Service and one Year of Creditable Service for each unpaid leave of absence.
- (c) If a Participant does so elect, the Participant shall be required to pay over to the Plan in one lump sum payment, within six months after his or her return from an unpaid leave of absence, and before his or her Termination Date, an amount equal to the Participant contributions he or she would have been required to make pursuant to Section 4.4(a)(1) had the Participant remained in active service during the unpaid leave of absence (based on what the Participant's Per-Pay Compensation would have been in his or her last paycheck prior to the unpaid leave of absence had the Participant worked his or her regularly-scheduled hours).
- (d) A Covered Individual who is on an unpaid leave of absence for reasons other than Military Service (or the Beneficiary of such a Covered Individual) remains eligible for death benefits as provided by Section 5.8.

### **3.3 FRACTIONAL CREDIT FOR SERVICE**

An individual shall receive partial or full credit for service as a Covered Individual on or after July 1, 2003, as follows:

#### **(a) Year of Eligibility Service**

For purposes of determining (1) the extent to which a Participant is vested in his or her Accrued Benefit, (2) whether he or she has reached a Normal Retirement Date or an Early Retirement Date, and (3) whether the Participant's benefit payment is subject to an Actuarial Reduction, the Participant shall receive credit on the basis of his or her whole

and fractional Years of Eligibility Service. A Participant shall receive credit for one twenty-sixth (1/26<sup>th</sup>) of a Year of Eligibility Service (not to exceed one year of credit during each Plan Year) for each bi-weekly pay period during which the Participant earns at least one Hour of Service.

(b) **Year of Creditable Service**

For purposes of determining the extent to which a Participant shall accrue benefits, the Participant shall receive credit on the basis of the number of his or her whole and fractional Years of Creditable Service.

**3.4 TRANSFERRED AND MILITARY SERVICE CREDIT**

(a) **Transfers of Service from Other Maryland Governmental Retirement Plans**

A Participant may elect to receive credit for service (whether or not it would be considered a Year of Eligibility Service or Year of Creditable Service had it been performed for the County) transferred from another employer provided there is no break in participation under the retirement plan sponsored by such other Government Employer and commencement of employment for the County. The County shall establish uniform and consistent rules governing transfers of service to this Plan which shall be implemented by the Committee. If such service is transferred and recognized under the Plan, the number of years of service credited and the amount of the benefit payable to the Participant pursuant to this Plan shall be adjusted in accordance with the following provisions:

(1) Conditions for Transfer -

- (i) Credit for Years of Eligibility Service and Years of Creditable Service shall be granted to any Participant: (i) who irrevocably elects, within the one year of commencing participation in the Plan to transfer the amount of any Participant contributions made to another Government Employer retirement plan under which he or she was covered, together with interest previously credited by such plan to this Plan; and (ii) who is participating in a plan which provides for the transfer of credit for service and contributions to this Plan. Transfers of service pursuant to this Section 3.4 shall be available only if there is no break in employment with coverage of the Participant under a defined benefit plan sponsored by a Government Employer. Furthermore, service credit shall be given for service transferred only to the extent required by, and in accordance with, the provisions of Title 37 of the State Personnel and Pensions Article of the Annotated Code of Maryland, or any successor statute.
- (ii) If the Participant was not required to make contributions to such other Government Employer retirement plan for all years of participation in such other Government Employer Retirement Plan and on all compensation paid to the Participant, he or she may, nonetheless, elect to receive credit for Years of Eligibility Service and Years of Creditable

Service under this Plan. Such election: (i) shall be irrevocable; (ii) shall be made within one year of commencing participation in the Plan, and (iii) shall be contingent upon the complete forfeiture of benefits and service credits under the Government Employer Retirement Plan from which service credit is being transferred. Transfers of service pursuant to this Section 3.4 shall be available only if there is no break in employment with coverage of the Participant under a defined benefit plan sponsored by a Government Employer. Furthermore, service credit shall be given for service transferred only to the extent required by, and in accordance with, the provisions of Title 37 of the State Personnel and Pensions Article of the Annotated Code of Maryland, or any successor statute.

- (2) Amount of Creditable Service – For service transferred pursuant to this Section 3.4, a Participant shall receive credit for Years of Eligibility Service and Years of Creditable Service only to the extent required by, and in accordance with, the provisions of Title 37 of the State Personnel and Pensions Article of the Annotated Code of Maryland, or any successor statute, but determined without regard to Section 37-204, as in effect on the Effective Date.
- (3) Adjustments to Monthly Retirement Income - A Participant’s monthly retirement income calculated pursuant to Article 5 shall be adjusted with respect to service transferred pursuant to Section 3.4(a)(ii) to the fullest extent allowed by, and in accordance with Title 37 of the State Personnel and Pensions Article of the Annotated Code of Maryland, or any successor statute, but without regard to Section 37-204. For purposes of determining the amount of the adjustment described in this Section 3.4(c), the accumulated employee contributions shall be calculated using the rate set forth in the definition of “Employee Contributions Benefit” in Section 1.7.
- (4) Retirement Within Five Years Of Transferring Service - Notwithstanding any other provision of this Section 3.4, if a Participant reaches a Termination Date, and begins to collect a monthly benefit, other than by reason of death, within five years of the date of the transfer of service credit pursuant to this Section 3.4, the portion of the Participant’s monthly retirement income payable with respect to the service credit transferred pursuant to this Section 3.4 may not be greater than the benefit that would have been payable by the other Government Employer retirement plan with respect to that service if the Participant had remained a participant in the other Government Employer retirement plan.
- (5) Transfers of Service to Other Plans
  - (i) Voluntary Transfers of Employment

If a Participant ceases to be an employee of the County, but becomes an employee of a Government Employer and becomes eligible to participate in a Government Employer retirement plan, the Participant may elect to transfer service earned under this Plan to such other Government Employer retirement plan.

(ii) **Involuntary Transfers of Employment**

If, due to job reclassification or reassignment, a Participant is involuntarily transferred to another State or local retirement or pension system because of an involuntary transfer of the Participant's employing unit to another employer, all of the County's contributions on behalf of the Participant and interest on those contributions shall be transferred to the new system. The amount to be transferred to the new system shall be determined by actuarial valuation. Notwithstanding the foregoing, this Section (a)(5)(ii) shall be operative only to the extent required by Title 37 of the State Personnel and Pensions Article of the Annotated Code of Maryland, or any successor statute.

(b) **Credit for Military Service**

- (1) Notwithstanding Section 3.2, if a Participant is granted a leave of absence on account of Military Service, the Participant shall receive credit for Years of Eligibility Service and Years of Creditable Service for the period of such unpaid leave of absence to the extent required by the Uniformed Services Employment and Re-employment Rights Act of 1994, Title 38 of the State Personnel and Pensions Article of the Annotated Code of Maryland, or any other law.
- (2) If a Participant's Military Service precedes his or her Employment Commencement Date, the Participant will receive credit for Years of Eligibility Service and Years of Creditable Service to the extent of his or her Military Service (to a maximum of five years and at the multiplier set forth in Section 5.1) provided that he or she earns ten Years of Creditable Service, other than his or her Military Service. A Participant will not receive credit for service pursuant to this subsection 3.4(b)(2) unless the service is classified as "active duty" on the Form DD-214 or comparable, official record of Military Service issued to the Participant. A Participant will not receive credit for service pursuant to this subsection 3.4(b)(2) if the Participant is entitled to receive a pension benefit (except for disability benefits, Social Security benefits or benefits under the National Railroad Retirement, National Guard or military reserve, or a pension described in Chapter 1223 of the United States Code) from another retirement system, on account of the Military Service.

**3.5 TRANSFERS BETWEEN COVERED AND NONCOVERED EMPLOYMENT**

(a) **Transfer to a Position as a Covered Individual**

- (1) In the case of an individual who transfers from a position of employment by the County that is not covered under this Plan to a position as a Covered Individual under this Plan, the individual's retirement benefits with respect to his or her service as a Covered Individual (and any other service recognized under this Plan) shall be determined solely under the provisions of this Plan based only on

Years of Eligibility Service and Creditable Service earned while a Covered Individual under this Plan. Notwithstanding the foregoing, a Participant may receive credit for Years of Eligibility Service and Creditable Service transferred from the Law Officers Pension Plan. In that event, the Participant will be deemed a Dual Service Participant.

- (2) In determining such a Participant's Average Compensation under this Plan, only Compensation paid while a Covered Individual shall be taken into account.
- (3) In the event a Participant transfers participant contributions, plus interest, from the Law Officers Pension Plan to this Plan, the contributions shall be accounted for as provided in Section 4.4 or 4.5, as the case may be.

(b) **Transfer to a Non-Covered Position**

- (1) In the case of an individual who transfers from a position as a Covered Individual under this Plan to a position of employment by the County that is not covered by this Plan, the individual's retirement benefits with respect to his or her service as a Covered Individual (and any other service recognized under this Plan) shall be determined under the provisions of this Plan as of the date he or she no longer qualifies as a Covered Individual.
- (2) In determining such a Participant's Average Compensation under this Plan, only Compensation paid while a Covered Individual shall be taken into account.
- (3) In the event a Participant who ceases to be a Covered Individual becomes a participant in the Law Officers Pension Plan, the participant contributions, plus interest, may be transferred from this Plan to the Law Officers Pension Plan, and shall be accounted for as provided in Section 4.4 or 4.5, as the case may be, of the Law Officers Pension Plan.

## **ARTICLE 4: CONTRIBUTIONS**

### **4.1 PAYMENT OF CONTRIBUTIONS**

The funding of the Plan and payment of benefits hereunder shall be provided through the medium of the Trust. The County, from time to time, shall make contributions to the Trust in amounts determined, in accordance with generally accepted actuarial principles, to be sufficient to support the contributions and transfers made pursuant to Section 4.4 and the contributions and transfers made pursuant to Section 4.5, and to fund the benefits provided by the Plan.

### **4.2 DISPOSITION OF FORFEITURES**

Any forfeiture arising under the provisions of the Plan shall be used to reduce the then current or future costs of funding the benefits provided in the Plan.

### **4.3 ACTUARIAL EXAMINATION**

The County shall, at least once every two Plan Years, cause the liabilities of the Plan to be evaluated by an enrolled actuary who shall report to the County as to the soundness and solvency of the Trust in relation to the said liabilities and the amount of the County contribution sufficient to meet the requirements of Section 4.1.

### **4.4 PICK-UP CONTRIBUTIONS**

Under limited circumstances described below, Participant contributions and monies from other government employers may be accepted by the Plan.

#### **(a) County Pick-up Contributions**

- (1) Effective as soon as practicable after July 1, 2003, and in accordance with rules established by the County, each Participant who is classified as a Covered Individual shall make contributions to the Plan equal to two percent of the Participant's Per-Pay Compensation. Effective October 1, 2009, each Participant who is classified as a Covered Individual shall make contributions to the Plan equal to five percent of the Participant's Per-Pay Compensation.
- (2) The Participant's contributions referred to in paragraph (1) of this Section 4.4(a) shall be separately accounted for, but shall be made a part of the Participant's Employee Contributions Benefit, which shall be part of the Accrued Benefit of the respective Participant.
- (3) The Participant contributions referred to in paragraph (1) of this Section 4.4(a) shall be:
  - (i) be picked up by the County, as described in Section 414(h)(2) of the Internal Revenue Code;

- (ii) deducted from the pay of the contributing Participants as salary reduction contributions; and
  - (iii) paid by the County to the Trustees as soon as administratively practical following the deduction..
- (4) The contributions made pursuant to paragraph (1) of this Section 4.4(a) shall be made a part of the Participant's Employee Contributions Benefit, that is, a part of his or her Accrued Benefit.
- (5) Participants have no option to choose to receive the contributions provided for in this Section 4.4 directly instead of having the contributions paid by the County to the Trust.

**(b) Suspension of Contributions**

A Participant's salary reduction contributions shall be automatically suspended for any payroll period during which the Participant is not a Covered Individual or during which he or she is on an unpaid leave of absence.

**(c) Withdrawals of Pick-up Contributions**

- (1) A Participant who has reached his or her Termination Date after having become 100% vested in his or her entire Accrued Benefit may elect, at any time, to receive a Cash-Out of the Participant's Employee Contributions Benefit, by filing a written notice of such election with the Plan Administrator.
- (2) A Participant who has reached his or her Termination Date before becoming 100% vested in his or her entire Accrued Benefit automatically will have a Cash-Out of the Participant's Employee Contributions Benefit paid to him or her as soon as administratively feasible following the Termination Date, provided the amount of the Cash-Out does not exceed \$1,000. If the amount of the Cash-Out will exceed \$1,000, the Participant may elect to receive a Cash-Out at any time by filing a written notice of such election with the Plan Administrator.
- (3) In either case, such Cash-Out shall constitute full payment of all benefits due to such Participant under the Plan.

**(d) Forfeiture of Remaining Accrued Benefit**

In the event of a Cash-Out to a Participant pursuant to subsection (c) above, then, subject to restoration provided in Section 2.2(e), the entire remaining portion of his or her Accrued Benefit shall be forfeited by the Participant.

**(e) Vesting of Pick-up Contributions**

Notwithstanding any provisions of this Plan to the contrary, Participant contributions picked up by the County shall be fully vested at all times.

(f) **Payment of Benefits**

Subject to the right of withdrawal described above, the benefits attributable to the Participant's contributions shall be payable at the same time, in the same manner, and, in the event of the Participant's death, to the same Beneficiary or Beneficiaries, as is the remainder of the Participant's Accrued Benefit.

(g) **Plan Termination**

In the event of a termination of the Plan, distribution to each Participant of the portion of his or her Accrued Benefit attributable to the Participant's contributions picked up by the County shall, notwithstanding any other provision of Section 9.5, be treated as a priority distribution ahead of any other distribution to Participants based upon the remainder of the Trust, other than those attributable to contributions made pursuant to Section 4.5.

#### **4.5 PARTICIPANT CONTRIBUTIONS**

Under limited circumstances, as described below, other Participant contributions may be accepted by the Plan.

(a) **Characterization**

The contributions made pursuant to this Section 4.5 shall be distinct from those made pursuant to Section 4.4 as to the character of such contributions. Whereas contributions made pursuant to Section 4.4 shall be classified as County contributions picked up from the pay of Participants, contributions described in this Section 4.5 shall be contributions made directly by the Participant.

(b) **Limitations**

A Participant may elect to make contributions pursuant to this Section 4.5 within the following limitations:

- (1) A Participant who elects to restore credit for service and benefits, as described in Section 2.2, shall pay over to the Plan the amount of any Cash-Out previously made to the Participant, with interest thereon.
- (2) A Participant who is on an unpaid leave of absence, and who elects to purchase service credit in accordance with Section 3.2, shall pay over to the Plan the amount determined under Section 3.2.
- (3) A Participant who elects to obtain credit for service and benefits by payment described in Section 2.2(b)(2)(iv) shall pay over to the Plan the amount of contributions plus interest described in Section 2.2(b)(2)(iv).

(c) **Procedures**

All Participant contributions or transfers made pursuant to this Section 4.5 shall be paid to the Trust.

(d) **Separate Accounting**

Participant contributions, whether made directly or transferred from another retirement plan, as aforesaid, shall be accounted for separately but shall be made a part of the Participant's Employee Contributions Benefit, which shall be a part of the Accrued Benefit of the respective Participant.

(e) **Withdrawals of Participant Contributions**

(1) A Participant who has reached his or her Termination Date after having become 100% vested in his or her entire benefit may elect, at any time, to receive a Cash-Out of his or her Employee Contributions Benefit, by filing a written notice of such election with the Plan Administrator.

(2) A Participant who has reached his or her Termination Date before becoming 100% vested in his or her entire Accrued Benefit automatically will have a Cash-Out of the Participant's Employee Contributions Benefit paid to him or her as soon as administratively feasible following the Termination Date, provided the amount of the Cash-Out does not exceed \$1,000. If the amount of the Cash-Out will exceed \$1,000, the Participant may elect to receive a Cash-Out at any time by filing a written notice of such election with the Plan Administrator.

(3) In either case, such Cash-Out shall constitute full payment of all benefits due to such Participant under the Plan.

(f) **Forfeiture of Remaining Accrued Benefit**

In the event of a Cash-Out to a Participant pursuant to subsection (e) above, then, subject to restoration provided in Section 2.2(e), the entire remaining portion of his or her Accrued Benefit shall be forfeited by the Participant.

(g) **Vesting of Participant Contributions**

Notwithstanding any provisions of this Plan to the contrary, Participant contributions made to the Plan pursuant to this Section 4.5 shall be fully vested at all times.

(h) **Payment of Benefits**

Subject to the right of withdrawal described above, the benefits purchased from the Participant's contributions shall be payable at the same time, in the same manner, and, in the event of the Participant's death, to the same Beneficiary or Beneficiaries, as is the remainder of the Participant's Accrued Benefit.

(i) **Plan Termination**

In the event of a termination of the Plan, distribution to each Participant of the portion of the Participant's Accrued Benefit attributable to his or her Participant contributions benefit shall, notwithstanding any other provision of Section 9.5, be treated as a priority distribution ahead of any other distribution to Participants based upon the remainder of the Trust.

## ARTICLE 5: RETIREMENT AND DEATH BENEFITS

### 5.1 NORMAL RETIREMENT

A Participant who retires on his or her Normal Retirement Date shall be entitled to receive a monthly retirement income, beginning with the first day of the month coincident with or next following his or her Normal Retirement Date and continuing for the remainder of the Participant's life. A Participant may elect an alternate form of benefit payment pursuant to Article 6. Subject to the limitations set forth in Section 5.6, the amount of the monthly retirement income of a Participant shall be equal to the amounts determined under (a) or (b) or (c) below:

(a) **Retirement Provisions - General**

(1) Service Prior to October 1, 2009: The amount of the monthly retirement income of a Participant shall be equal to  $(A \times B \times C)/12$  where:

(A) equals 0.007,

(B) equals the Participant's Average Compensation, and

(C) equals the number of Years of Creditable Service (and fractional years) credited to the Participant prior to October 1, 2009, other than for pre-employment Military Service credited pursuant to Section 3.4(b)(2);

plus

(2) Service On and After October 1, 2009: The amount of the monthly retirement income of a Participant shall be equal to  $(A \times B \times C)/12$  where:

(A) equals 0.016, or 0.018 for service classified by the County as a "correctional officer"

(B) equals the Participant's Average Compensation, and

(C) equals the number of Years of Creditable Service (and fractional years) credited to the Participant on and after October 1, 2009, other than for pre-employment Military Service credited pursuant to Section 3.4(b)(2).

plus

(3) Pre-Employment Military Service: The amount of the monthly retirement income of a Participant shall be equal to  $(A \times B \times C)/12$  where:

(A) equals 0.01,

(B) equals the Participant's Average Compensation, and

(C) equals the number of Years of Creditable Service (and fractional years) credited to the Participant for pre-employment Military Service credited pursuant to Section 3.4(b)(2).

(b) **Retirement Provisions for Dual Service Participants**

(1) Service Prior to October 1, 2009: The amount of the monthly retirement income of a Dual Service Participant shall be equal to  $(A \times B \times C)/12$  where:

(A) equals 0.007,

(B) equals the Participant's Average Compensation, and

(C) equals the number of Years of Creditable Service (and fractional years) credited to the Participant under this Plan prior to October 1, 2009 and the Law Officers Pension Plan, and transferred to this Plan pursuant to Section 3.5 prior to October 1, 2009, other than for pre-employment Military Service credited pursuant to Section 3.4(b)(2);

plus

(2) Service On and After October 1, 2009: The amount of the monthly retirement income of a Participant shall be equal to  $(A \times B \times C)/12$  where:

(A) equals 0.016, or 0.018 for service classified by the County as a "correctional officer"

(B) equals the Participant's Average Compensation, and

(C) equals the number of Years of Creditable Service (and fractional years) credited to the Participant under this Plan on and after October 1, 2009 and the Law Officers Pension Plan, and transferred to this Plan pursuant to Section 3.5 on and after October 1, 2009, other than for pre-employment Military Service credited pursuant to Section 3.4(b)(2);

plus

(3) Pre-Employment Military Service: The amount of the monthly retirement income of a Participant shall be equal to  $(A \times B \times C)/12$  where:

(A) equals 0.01,

(B) equals the Participant's Average Compensation, and

(C) equals the number of Years of Creditable Service (and fractional years) credited to the Participant for pre-employment Military Service credited pursuant to Section 3.4(b)(2).

**(c) Retirement Provisions for Participants in the Maryland State Non-Contributory Pension System**

(1) Service Other Than Pre-Employment Military Service: The amount of the monthly retirement income of a Participant electing to participate in the Plan pursuant to Section 2.1(c) shall be equal to  $(A \times B \times C)/12$  where:

(A) equals 0.008, or 0.010 for service classified by the County as a "correctional officer",

(B) equals the Participant's Average Compensation, and

(C) equals the number of Years of Creditable Service (and fractional years) credited to the Participant under this Plan on and after October 1, 2009, other than for pre-employment Military Service credited pursuant to Section 3.4(b)(2).

plus

(2) Pre-Employment Military Service: The amount of the monthly retirement income of a Participant shall be equal to  $(A \times B \times C)/12$  where:

(A) equals 0.002,

(B) equals the Participant's Average Compensation, and

(C) equals the number of Years of Creditable Service (and fractional years) credited to the Participant for pre-employment Military Service credited pursuant to Section 3.4(b)(2).

## **5.2 EARLY RETIREMENT**

### **(a) Early Retirement Date**

A Participant may elect to retire on any date on or after the first date which qualifies as an Early Retirement Date, in which case the date of retirement shall be deemed to be his or her Early Retirement Date and the Participant shall be entitled to a monthly early retirement benefit equal to the benefit computed pursuant to Section 5.1 (based upon the Participant's actual Years of Creditable Service and Average Compensation at his or her Early Retirement Date), but subject to the appropriate Actuarial Reduction, if any.

### **(b) Commencement of Early Retirement Benefits**

Early retirement benefits shall commence on the first day of the month coincident with or otherwise next following the Participant's Normal Retirement Date, unless the Participant elects to have the benefits commence on the first day of any prior month coincident with or following his or her Early Retirement Date.

### **(c) Form of Payment**

Except as otherwise provided in Section 6.3, the benefits payable pursuant to this Section shall be payable in the normal form provided by Section 5.1, unless an optional form of payment has been elected pursuant to Section 6.2.

## **5.3 DEFERRED RETIREMENT**

In the event a Participant remains a Covered Individual after his or her Normal Retirement Date, then, subject to the limitations set forth in Section 5.6 and subject to Section 6.3, the Participant shall be entitled to receive, commencing on the 1st day of the month coincident with or otherwise next following his or her Termination Date, the benefit to which the Participant would have been entitled pursuant to Section 5.1 if he or she had retired at the Normal Retirement Date, but adjusted:

(a) by including any additional Years of Creditable Service which have accrued since his or her Normal Retirement Date;

- (b) notwithstanding any provision in the definition of Average Compensation to the contrary, by taking into account any increases in Average Compensation which may be generated by increases in Compensation earned since his or her Normal Retirement Date; and
- (c) notwithstanding anything to the contrary, the Participant's Accrued Benefit upon Deferred Retirement shall not be less than the Actuarial Equivalent of his or her Accrued Benefit at the Participant's Normal Retirement Date.

#### **5.4 DISABILITY BENEFITS**

If a Participant terminates employment by reason of a disability, he or she shall be treated as having reached a Termination Date and his or her benefit will be determined in accordance with Section 5.5.

#### **5.5 OTHER TERMINATIONS OF EMPLOYMENT**

##### **(a) Amount of Termination Benefit**

If a Participant reaches a Termination Date for any reason other than death or retirement before his or her Normal or Early Retirement Date, the Participant shall be entitled to a monthly termination benefit equal to a vested percentage (determined as set forth below) of the benefit computed pursuant to Section 5.1 (based upon the Participant's actual Years of Creditable Service and Average Compensation at his or her Termination Date).

##### **(b) Commencement of Termination Benefits**

Benefits payable pursuant to this Section 5.5 shall commence on the first day of the month coincident with or next following the Participant's Normal Retirement Date or, if elected by the Participant, on the first day of the month coincident with or following the later of: (1) the Participant's 55<sup>th</sup> birthday, or (2) the date the Participant's attained age as of the Benefit Commencement Date, plus Years of Eligibility Service credited as of the Participant's Termination Date, equal at least 80.

##### **(c) Cash-Out Option**

Notwithstanding the preceding provisions of this Section 5.5:

- (1) a Participant who reaches a Termination Date after having become 100% vested in his or her Accrued Benefit may elect to receive a Cash-Out of his or her Employee Contributions Benefit, as provided in Section 6.2(d), in which case such Cash-Out may be made at any time following the Termination Date, at the election of the Participant; or
- (2) a Participant who reaches a Termination Date before becoming 100% vested in his or her entire Accrued Benefit shall receive a Cash-Out of his or her Employee Contributions Benefit as provided in Section 6.2(d), provided the amount of the Cash-Out does not exceed \$1,000, in which case such Cash-Out automatically shall be made as soon as administratively feasible following the Termination

Date. If the amount of the Cash-Out will exceed \$1,000, the Participant may elect to receive a Cash-Out at any time by filing a written notice of such election with the Plan Administrator.

(d) **Form of Benefits**

The benefits payable pursuant to this Section 5.5 shall be payable in the normal form provided by Section 5.1, unless an optional form of payment has been elected pursuant to Section 6.2.

(e) **Vested Percentage of the Accrued Benefit**

(1) The vested percentage of the Accrued Benefit to which the Participant is entitled shall be equal to the greater of:

- (i) 100% of the Participant’s Employee Contributions Benefit; or
- (ii) a percentage of the Participant’s Accrued Benefit, determined on the basis of the number of his or her Years of Eligibility Service and in accordance with one of the following schedules:

(A) Participants Electing to Participate Pursuant to Section 2.1(c)

<b>Years of Eligibility Service Earned Beginning October 1, 2009</b>	<b>Percentage Vested</b>
<b>Less than 3</b>	<b>0%</b>
<b>3 or more</b>	<b>100%</b>

(B) All Other Participants

<b>Years of Eligibility Service</b>	<b>Percentage Vested</b>
<b>Less than 3</b>	<b>0%</b>
<b>3 or more</b>	<b>100%</b>

(2) Notwithstanding the preceding paragraph, a Participant’s vested percentage in his or her Accrued Benefit shall be 100% upon attainment of his or her Normal Retirement Date while a Covered Individual.

## 5.6 MAXIMUM LIMITATION ON BENEFITS

Notwithstanding any Plan provisions to the contrary:

(a) **Maximum Benefit**

To the extent necessary to prevent disqualification under Section 415 of the Internal Revenue Code, and subject to the remainder of this Section 5.6, the maximum monthly benefit to which any Participant may be entitled at any time pursuant to Sections 5.1 through 5.5 (hereafter referred to as the “maximum benefit”) shall be equal to one-twelfth (1/12<sup>th</sup>) of the amount set forth in Section 415(b)(1)(A) of the Internal Revenue Code (such amount, as adjusted by the Internal Revenue Service for cost of living increases, hereafter referred to as the “monthly dollar limit”). The rate of benefit accrual shall be frozen or reduced accordingly to comply with the limitations.

(b) **Actuarial Adjustment of Dollar Limit**

The monthly dollar limit shall be subject to actuarial adjustment as follows:

- (1) If the benefit is payable in any form other than a single life annuity or a qualified joint and survivor annuity (as defined for purposes of Section 415 of the Internal Revenue Code), the monthly dollar limit shall be reduced so that it is the Actuarial Equivalent of the single life annuity.
- (2)
  - (i) With respect to a benefit beginning before age 62, the monthly dollar limit shall be reduced to the Actuarial Equivalent of a monthly benefit in the amount of the monthly dollar limit beginning at age 62
  - (ii) Notwithstanding the foregoing, however, in no event shall the monthly dollar limit applicable to benefits beginning before age 62 be reduced for Participants who have been credited with at least 15 Years of Creditable Service:
    - A. As a full-time employee of the County in a position providing police protection, firefighting services or emergency medical services;
    - B. In Military Service; or
    - C. In a combination of A. and B.
- (3) With respect to a benefit beginning after age 65, the monthly dollar limit shall be increased so that it is the Actuarial Equivalent of the monthly dollar limit applicable to a benefit beginning at age 65.
- (4) For purposes of this subsection (b), “Actuarial Equivalent” shall be as defined in Section 1.7(b), except that the interest rate assumption for purposes of a computation under paragraph (1) or (2) above shall not be less than five percent or any higher rate specified in the definition of “Actuarial Equivalent.” For purposes of a computation under paragraph (3) above, the interest rate

assumption shall not be greater than five percent or any lower rate specified in the definition of "Actuarial Equivalent."

- (5) Notwithstanding any other plan provisions to the contrary, the applicable mortality table used for purposes of adjusting any benefit or limitation under 415(b)(2)(B), (C), or (D) of the Internal Revenue Code is the table prescribed in Revenue Ruling 2001-62.

(c) **Reducing Dollar Limit**

The dollar limit shall be reduced (but not by more than 90%) by 1/10th for each Year of Creditable Service less than 10, considering only those Years of Creditable Service during any part of which the Participant was participating in the Plan (excluding those periods for which he or she elected to transfer service pursuant to Section 3.4).

(d) **Other Reductions in Maximum Benefit**

In addition to the foregoing, the maximum benefit shall be reduced, and the rate of benefit accrual shall be frozen or reduced accordingly, to the extent necessary to prevent disqualification of the Plan under Section 415 of the Internal Revenue Code, with respect to any Participant who is also a Participant in:

- (1) any other tax-qualified pension plan maintained by the County, including a defined benefit plan in which an individual medical benefit account (as described in Section 415(l) of the Internal Revenue Code) has been established for the Participant;
- (2) any welfare plan maintained by the County in which a separate account (as described in Section 419A(d) of the Internal Revenue Code) has been established to provide post-retirement medical benefits for the Participant; and/or
- (3) any retirement or welfare plan, as aforesaid, maintained by a related employer, as described in Section 414(b), (c), (m) or (o) of the Internal Revenue Code.

## **5.7 POST-TERMINATION CHANGES**

Any change in benefits provided for by amendment to the Plan shall not apply to any Participant whose Termination Date with the County occurred prior to the effective date of such amendment, except as otherwise specifically provided for in the Plan or in such amendment.

## **5.8 DEATH BENEFITS**

The only benefits payable under the Plan in the event of the death of a Participant shall be as follows:

(a) **Ordinary Death Benefit**

(1) **General Benefit**

In the event of the death of a Participant prior to his or her Benefit Commencement Date, the Participant's Beneficiary shall be entitled to receive an amount equal to the Participant's Employee Contributions Benefit.

(2) **Surviving Spouse Annuity Benefit**

(i) If all of the following conditions are met, then the surviving spouse of a deceased Participant shall be entitled to receive a survivor annuity, in lieu of any other Plan benefit:

(a) the Participant is married on the date of death;

(b) the Participant's death occurs before his or her Termination Date;

(c) the Participant has designated his or her surviving spouse as the Participant's only primary Beneficiary;

(d) the Participant would have been eligible to receive normal retirement benefits pursuant to Section 5.1 or early retirement benefits pursuant to Section 5.2 had the Participant retired on the day before his or her death; and

(e) the spouse does not elect to receive the benefit provided in subsection (a) above.

(ii) For purposes of this subsection (2), a survivor annuity is a monthly income commencing in the month next following the Participant's death, and continuing for the remainder of the spouse's life, in an amount equal to the benefit the spouse would have received under an immediate joint and survivor annuity pursuant to Section 6.2(a) (with a 50% survivor benefit) had the Participant retired on the day before death, but computed without actuarial reduction for early retirement.

(b) **Benefits Payable After Benefit Commencement Date**

If a Participant dies after his or her Benefit Commencement Date, the benefits, if any, to which the Participant's Beneficiary shall be entitled shall depend upon the form in which the Participant's benefits were payable at the time of his or her death, under the applicable form of benefit described in Section 6.2.

(c) **Death While on Leave of Absence**

The Beneficiary of a Participant who dies while a Covered Individual and on paid or unpaid leave of absence shall be entitled to receive death benefits pursuant to this Section 5.8.

(d) **Death of Terminated Vested Participant**

If a Participant reaches a Termination Date for any reason other than death or retirement after his or her Normal or Early Retirement Date and dies before the Benefit Commencement Date for his or her benefit under Section 5.5(a) or 5.5(c), then his or her designated Beneficiary shall be entitled to receive as a single lump sum an amount equal to the Employee Contributions Benefit.

(e) **Distribution to Non-Spouse Beneficiaries**

Notwithstanding any provision of the Plan to the contrary that would otherwise limit the option of the Beneficiary of a deceased Participant who is not a Distributee, within the meaning of Section 6.4, the Plan Administrator shall, upon the request of such a Beneficiary, transfer a lump sum distribution to the trustee of an individual retirement account established under Section 408 of the Internal Revenue Code in accordance with the provisions of Section 402(e)(11) of the Internal Revenue Code.

## **5.9 LIMITATIONS ON DEATH BENEFITS**

All death benefits payable pursuant to Section 5.8(a) shall be distributed only in accordance with regulations prescribed by the Internal Revenue Service under Section 401(a)(9) of the Internal Revenue Code, as follows:

(a) **Lump Sum Benefit**

All benefits payable under Section 5.8(a)(1) shall be distributed in full not later than the last day of the calendar year containing the fifth anniversary of the death of the Participant.

(b) **Surviving Spouse Annuity Benefit**

If the Participant's Beneficiary is the Participant's surviving spouse, then, unless the Participant's spouse elects to receive the lump sum Employee Contributions Benefit under Section 5.8, benefits payable under Section 5.8 to or for the benefit of the spouse, and which begin not later than the later of the last day of the calendar year containing the first anniversary of the Participant's death, or the last day of the calendar year in which the Participant would have reached age 70-1/2, may be distributed over the life of the spouse, under a method of distribution which meets the requirements of Section 6.3(a).

## **5.10 COST OF LIVING ADJUSTMENTS**

### **(a) Retirement Benefits Subject to Cost of Living Adjustment.**

Notwithstanding the foregoing, but subject to the limitations set forth in Section 5.6, the monthly retirement income of a Participant who has reached the 12 month anniversary of his or her Benefit Commencement Date, as otherwise computed pursuant to Section 5.1, 5.2, 5.3, or 5.5, (whichever is applicable), shall be subject to the cost of living adjustment described in this Section 5.10.

### **(b) Computation of Cost of Living Adjustment.**

The adjustment shall be determined by multiplying the Participant's monthly retirement income by a fraction:

- (1) The numerator of which is the Consumer Price Index (as defined in subsection (d) below) as of four months preceding the July 1 for which the adjustment is being made, and
- (2) The denominator of which is the Consumer Price Index (as defined in subsection (d) below) as of four months preceding the July 1 preceding the July 1 for which the adjustment is being made.

### **(c) Limitations on Adjustment**

#### **(1) Limitations on Increase in Annual Retirement Income**

The adjustment to a benefit determined pursuant to Section 5.10(b) that results in an increase in a Participant's or surviving spouse's annual retirement income shall not exceed a two percent increase in the Participant's or surviving spouse's annual retirement income determined as of the first day of the preceding Plan Year.

#### **(2) Limitations on Decrease in Monthly Pension Benefit**

If the adjustment to a benefit determined pursuant to Section 5.10(b) results in a decrease in a Participant's or surviving spouse's annual retirement income, the Participant's or surviving spouse's annual retirement income will not be decreased as of the first July 1 for which a decrease would apply. If the adjustment to a benefit determined pursuant to Section 5.10(b) would result in a decrease in a Participant's or surviving spouse's annual retirement income for two consecutive years, the adjustment that would occur in the second year shall be applied. Notwithstanding the foregoing, the adjustment to a benefit determined pursuant to Section 5.10(b) that results in a decrease in a Participant's or surviving spouse's annual retirement income shall not exceed a two percent decrease in the Participant's annual retirement income determined as of the first day of the preceding Plan Year.

(d) **Consumer Price Index**

Cost of living adjustments will be based on the Consumer Price Index (Urban Wage Earners and Clerical Workers), published monthly by the Bureau of Labor Statistics. The adjustment for each Plan Year will be determined by dividing the Consumer Price Index for the fourth month preceding the beginning of the Plan Year by the Consumer Price Index for the fourth month prior to the immediately preceding July 1. In the event the Bureau of Labor Statistics abandons publication of the above-referenced index, the County shall adopt any other index which, in its judgment, provides an accurate measure of cost-of-living changes.

(e) **Monthly Survivor Benefits Subject to Cost Of Living Adjustments.**

All survivor benefits payable pursuant to Section 5.8 (but only if payable in the form of a monthly income) shall be granted the cost of living adjustments provided in this Section 5.10.

## **ARTICLE 6: PAYMENT OF BENEFITS**

### **6.1 METHOD OF PAYMENT**

- (a) All benefit distributions shall be in cash (or in annuity contracts as provided herein).
- (b) The County shall determine, in its discretion, whether the distribution shall be funded through periodic payments made directly from the Trust, or through the purchase of annuity contracts, or whether a combination of such methods of distribution shall be used, and the County shall give to the Trustees such directions and information as may be necessary for the Trustees to carry out the decision of the County.
- (c) If the County shall determine that the whole or any part of the distribution is to be funded through purchase of an annuity contract for a Participant, the County shall select such form of contract (including a variable annuity) to be so purchased and shall direct the Trustees to pay the premium of such contract to the issuing company.
- (d) The County shall direct that all right, title and interest in such contract shall remain in the Trustees under the terms of the Plan and the Participant shall have no right, title or interest therein except to receive the payments therefrom as provided therein, and to change the Beneficiary from time to time.

### **6.2 OPTIONAL FORMS OF BENEFIT**

A Participant, subject to the conditions hereinafter set forth, may elect to receive, in lieu of the normal monthly form of retirement income described in Section 5.1, a benefit, which is its Actuarial Equivalent, payable in any of the following forms:

- (a) **Joint and Survivor Option**
  - (1) The joint and survivor option is a monthly income payable during the Participant's lifetime and continuing after his or her death at either 50%, 75% or 100% (as elected by the Participant) of the rate to the Participant's Beneficiary as of the Participant's Benefit Commencement Date for the remainder of such Beneficiary's life.
  - (2) If, before the Participant's Benefit Commencement Date, the Participant's Beneficiary dies, the election shall thereupon become void.
  - (3) If, after the Participant's Benefit Commencement Date, the Participant's Beneficiary dies before the Participant dies, or the Participant and Beneficiary divorce, the Participant may elect a substitute Beneficiary. An election pursuant to this Section 6.2(a)(3) may be made only once by the Participant and must be made within one year of the date of the Beneficiary's death or the date of divorce of the Participant and Beneficiary. Benefit payments to the Participant following such an election shall be actuarially adjusted as necessary to prevent the

Participant and Beneficiary from receiving benefits with a present value in excess of the present value of those that would have been received had a new Beneficiary not been elected.

(b) **Guaranteed Return of Employee Contributions Benefit Option**

The guaranteed return of Employee Contributions Benefit option is a monthly income payable during the Participant's lifetime, and if upon the death of the Participant he or she has not received total monthly payments equal to the Participant's Employee Contributions Benefit, the difference between the Employee Contributions Benefit and the total monthly payments shall be paid in a single lump sum payment to the Participant's Beneficiary as soon as administratively feasible following the Participant's death.

(c) **Life Annuity with 10 Year Certain Option**

The Life Annuity with 10 Year Certain Option is a monthly income payable during the Participant's lifetime, with the provision that, if the Participant dies before receiving retirement benefit payments for a period of 120 months, after the Participant's death, 100% of his or her monthly retirement benefit will continue for the remainder of the 120 month period to the Beneficiary determined in accordance with Article 7.

(d) **Lump Sum Option**

A Participant may elect at any time after his or her Termination Date and before his or her Benefit Commencement Date to receive a lump sum cash payment of the Participant's Employee Contributions Benefit in lieu of all other benefits under the Plan and, upon payment of that lump sum cash payment, then, subject to restoration provided in Section 2.2, the entire remaining portion of his or her Accrued Benefit shall be forfeited by the Participant.

(e) **Mandatory/Optional Cash Out**

If the amount of any annuity paid to a Participant or the Participant's Beneficiary is less than \$25 per month, the present value of the Participant's Accrued Benefit will be made in one lump sum payment in lieu of the monthly payments, provided the amount of the lump sum payment does not exceed \$1,000. If the amount of any annuity paid to a Participant or the Participant's Beneficiary is less than \$25 per month and the amount of the lump sum payment exceeds \$1,000, the Participant may elect to receive payment in the form of a lump sum in lieu of monthly payments. For purposes of determining the present value of the Participant's Accrued Benefit, if the Participant does not terminate employment with the County until after his or her Normal Retirement Date, the Accrued Benefit shall be actuarially adjusted as if the Participant had terminated employment upon attaining age 62.

## 6.3 GENERAL PROVISIONS APPLICABLE TO OPTIONS

### (a) Minimum Distribution Requirements

Notwithstanding any other provision in the Plan to the contrary, distribution shall be made only in accordance with Section 401(a)(9) of the Internal Revenue Code and regulations promulgated thereunder. To the extent required thereby, distribution of benefits shall comply with the following limitations:

- (1) (i) Except as otherwise provided below, distribution shall begin not later than the later of April 1st of the calendar year (hereinafter referred to as the “commencement year”) in which the Participant retires or attains age 70-1/2, whichever occurs later.
  - (ii) Distribution shall be made:
    - a. over the life of the Participant or the lives of the Participant and his or her Beneficiary; and/or
    - b. over a period certain not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and his or her Beneficiary,

All as described in proposed treasury regulation Section 1.401(a)(9)-1, or, if shorter, the alternate period described in proposed treasury regulation Section 1.401(a)(9)-2.

- (2) A required distribution shall be deemed to have been made during the commencement year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the commencement year.
- (3) Benefits paid prior to the commencement year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein.
- (4) Nothing contained in this subsection (a) shall prevent distribution of annuity benefits providing for non-increasing (except as otherwise permitted in proposed treasury regulation Section 1.401(a)(9)-~~1~~) payments beginning not later than the commencement year (except as provided in paragraph (3) above) and payable at least annually over a period permitted by this subsection (a) (for which purpose, if benefit commencement under the annuity precedes the commencement year, each relevant life expectancy shall be based on the individual’s attained age as of his or her birthday occurring in the calendar year in which benefit commencement occurs).

(b) **Election Procedures**

An election of any optional form of benefit described in Section 6.2 shall be made by a Participant in writing, on a form supplied by or to the Plan Administrator. Except as otherwise provided in Section 6.2, upon the Participant's Benefit Commencement Date, such election (including the designation of a Beneficiary) shall be irrevocable.

(c) **Effect of Death**

In the event of the death of a Participant prior to his or her Benefit Commencement Date, no benefits shall be payable to the Participant's spouse or other Beneficiary except as provided in Section 5.8, regardless of whether or not the Participant has elected an optional form of benefit pursuant to Section 6.2.

(d) **Applicable Regulations**

Notwithstanding any provisions of the Plan to the contrary, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under Section 401(a)(9).

## 6.4 ELIGIBLE ROLLOVER DISTRIBUTIONS

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(a) **Definitions**

(1) **Eligible rollover distribution:** An "eligible rollover distribution" is 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:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of 10 years or more;

(ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and

(iii) the portion of any distribution that is not includible in gross income.

(2) **Eligible retirement plan:**

(A) An "eligible retirement plan" is:

- i. An individual retirement account described in Section 408(a) of the Internal Revenue Code;
- ii. An individual retirement annuity described in Section 408(b) of the Internal Revenue Code; or
- iii. A qualified trust described in Section 401(a) of the Internal Revenue Code or an annuity plan described in Section 403(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution.
- iv. An annuity contract described in Section 403(b) of the Code.
- v. An eligible plan under Section 457(b) of the 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 plan.
- vi. For distributions made after December 31, 2007, a Roth IRA within the meaning of Section 408A of the Internal Revenue Code.

(B) The definition of "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 a qualified domestic relations order, as defined in Section 414(p) of the Code.

(3) **Distributee:** A "distributee" includes a Participant or former Participant. In addition, the Participant's or former Participant's surviving spouse is a distributee with regard to the interest of the spouse or former spouse.

(4) **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

## **ARTICLE 7: BENEFICIARIES**

### **7.1 DESIGNATION OF BENEFICIARIES**

**(a) Participant Designates Beneficiary**

Each Participant may designate a Beneficiary or Beneficiaries (who may be named contingently or successively) to receive such benefits as may be payable under the Plan upon or after the Participant's death, and, subject to the provisions of Section 6.3(b), such designation may be changed from time to time by the Participant by filing a new designation.

**(b) Revocations; Form of Designation; Filed with Plan Administrator**

Each designation shall revoke all prior designations by the same Participant, shall be in a form prescribed by the Plan Administrator, and shall be effective only when filed in writing with the Plan Administrator prior to the Participant's Benefit Commencement Date.

**(c) Absence of Valid Beneficiary Designation**

In the absence of a valid Beneficiary designation (except in conjunction with the election of a form of benefit payment which does not require the designation of a specific Beneficiary), or if, at the time any benefit payment is due to a Beneficiary, there is no living Beneficiary validly named by the Participant eligible to receive the payment, the Plan Administrator shall direct any such benefit payment to:

- (1) the Participant's spouse, if then living; otherwise to
- (2) the Participant's then living descendants, if any, per stirpes; otherwise to
- (3) the Participant's then living parent or parents, equally; otherwise to
- (4) the Participant's estate.

**(d) Question Regarding Right of a Person to Receive a Benefit Payment**

In determining the existence or identity of anyone entitled to a benefit payment, the Plan Administrator may rely conclusively upon information supplied by the Participant's personal representative. In the event of a lack of adequate information being supplied to the Plan Administrator, or in the event that any question arises as to the right of any person to receive a benefit payment as aforesaid, or in the event that a dispute arises with respect to any such payment, then, notwithstanding the foregoing, the Plan Administrator, in its sole discretion, may, in complete discharge of the obligations of the Plan Administrator, and without liability for any tax or other consequences which might flow therefrom, direct the Trustees to:

- (1) distribute the payment to the Participant's estate,
- (2) retain such payment, without liability for interest, until the rights thereto are determined, or
- (3) deposit the payment into any court of competent jurisdiction.

## **7.2 LOCATION OF PARTICIPANTS AND BENEFICIARIES**

### **(a) Notice to Last Post Office Address**

Any communication, statement or notice addressed to a Participant or Beneficiary at his or her last post office address filed with the Plan Administrator, or if no such address was filed with the Plan Administrator, then at the individual's last post office address as shown on the County's records, shall be binding on the Participant or Beneficiary for all purposes of the Plan. Except for the Plan Administrator's sending a letter to the last known address, the Plan Administrator shall not be obliged to search for any Participant or Beneficiary.

### **(b) Distribution to Next of Kin if Participant or Beneficiary Fails to Claim Amount**

If the Plan Administrator notifies any Participant or Beneficiary that he or she is entitled to an amount under the Plan and the Participant or Beneficiary fails to claim such amount or make his or her location known to the Plan Administrator within three years thereafter, then, except as otherwise required by law, if the location of one or more of the next of kin of the Participant, including the Participant's surviving spouse, is known to the Plan Administrator, it may direct distribution of such amount to any one or more or all of such next of kin, and in such proportions as the Plan Administrator determines.

### **(c) If Location of Participant, Beneficiary, or Next of Kin Cannot be Determined**

If the location of none of the foregoing persons can be determined, the Plan Administrator shall have the right to direct that the amount payable shall be deemed to be a forfeiture and treated in accordance with Section 4.2, except that the dollar amount of the forfeiture, unadjusted for gains or losses in the interim, shall be reinstated if a claim for the benefit is made by the Participant or Beneficiary to whom it was payable. If any benefit payable to an unlocated Participant or Beneficiary is subject to escheat pursuant to applicable state law, the Plan Administrator shall not be liable to any person for any payment made in accordance with such law.

## **ARTICLE 8: PLAN ADMINISTRATION**

### **8.1 INVESTMENT OF FUNDS**

- (a) All contributions under the Plan shall be paid to the Trustees and deposited in the Trust.
- (b) Such contributions, all investments made therewith and proceeds thereof and all earnings and profits thereon, less the authorized disbursements therefrom, shall constitute the Trust, which Trust, and the agreement under which it is maintained, shall in all respects constitute a part of the Plan.

### **8.2 PROHIBITION AGAINST DIVERSION OF FUNDS**

It shall be impossible by operation of the Plan or Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the Trust, or any funds contributed thereto, to inure to the benefit of the County or otherwise be used for or diverted to purposes other than providing benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan, except as otherwise set forth in Section 9.5(c)(5) hereof and in the Trust with respect to the conditions under which Trust assets may be returned to the County.

### **8.3 PROHIBITION AGAINST ASSIGNMENT OF BENEFITS**

- (a) Except as provided below, no benefit payable at any time under this Plan may be anticipated, assigned (either at law or in equity), alienated or be subject to attachment, garnishment, execution, levy or other legal and equitable process.
- (b) However, the prohibitions of the preceding subsection shall not apply to, and the Trustees shall fully recognize the creation, assignment or recognition of a right to any benefit payable with respect to a Participant pursuant to a “qualified domestic relations order.”
- (c) For the purposes hereof, a qualified domestic relations order shall mean a judgment, decree or order made pursuant to a state domestic relations law which relates to the provision of child support, alimony payments or marital property rights and
  - (1) which clearly specifies:
    - (i) the names and last known mailing addresses of the Participant and each payee;
    - (ii) the amount or percentage of the Participant’s benefits to be paid by this Plan to each payee (or the manner in which such amount or percentage is to be determined);
    - (iii) the number of payments or period to which such order relates: and

- (2) which does not:
  - (i) require this Plan to provide any type or form of benefit, or any option, not otherwise provided under this Plan;
  - (ii) require this Plan to provide increased benefits (determined on the basis of actuarial value); or
  - (iii) require the payment of the same benefits to any payee which are payable to another payee pursuant to a prior qualified domestic relations order.

## **8.4 ADMINISTRATIVE AUTHORITY**

### **(a) Sole Responsibility and Control**

Except as otherwise specifically provided herein, the County shall have the sole responsibility for, and the sole control of, the operation and administration of the Plan.

### **(b) Powers, Duties and Responsibilities**

The County shall have the power and authority to take all action and to make all decisions and interpretations which may be necessary or appropriate in order to administer and operate the Plan, including, without limiting the generality of the foregoing, the power, duty and responsibility to:

- (1) resolve and determine all disputes or questions arising under the Plan, including the power to determine the rights of employees, Participants and Beneficiaries, and their respective benefits, and to remedy any ambiguities, inconsistencies or omissions;
- (2) adopt such rules of procedure and regulations as in its opinion may be necessary for the proper and efficient administration of the Plan and as are consistent with the Plan;
- (3) implement the Plan in accordance with its terms and such rules and regulations;
- (4) direct the Trustees with respect to the eligibility of any employee as a Participant and the crediting and distribution of the Trust, which are to be made only upon the basis of instructions from the County pursuant to the terms of the Plan; and
- (5) establish and carry out a funding policy and method consistent with the objectives of the Plan, pursuant to which the County shall determine the Plan's liquidity and financial needs and communicate them to the Trustees (or other fiduciaries who are charged with determining investment policy).

## **8.5 PLAN ADMINISTRATION**

The Plan shall be operated and administered on behalf of the County by a Plan Administrator, which shall be the committee established pursuant to Section 8.6. The Plan Administrator shall be governed by the following:

### **(a) Powers of the Plan Administrator**

Except as the County shall otherwise expressly determine, the Plan Administrator shall have the following powers:

- (1) to make and enforce rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;
- (2) to make and enforce procedures to be followed by employees in filing applications for benefits and for furnishing the evidence necessary to establish the employees' right to benefits;
- (3) to make and enforce determinations concerning the rights of employees applying for or receiving benefits;
- (4) to make and enforce procedures which afford a mechanism for adjusting complaints of an employee dissatisfied with determinations of the Plan Administrator;
- (5) to make and enforce procedures for determining the service credit of employees which affords employees an opportunity to object, in writing, and to establish service credit in advance of retirement;
- (6) to make and enforce procedures for authorizing disbursements from the fund created under the Plan and to authorize disbursements of the fund in accordance with the Plan documents;
- (7) to compute the amount of benefits that shall be payable to any person in accordance with the Plan documents;
- (8) to interpret the Plan;
- (9) to otherwise decide questions concerning the eligibility of any employee to participate in the Plan or to receive benefits from the Plan;
- (10) to employ or engage actuaries to: make actuarial evaluation of the liabilities under the Plan, to recommend the mortality and other tables and interest rates to be used from time to time in actuarial and other computations for any purpose of the Plan, to recommend the amounts of contributions to be made by the County and to perform such other services as the Plan Administrator shall deem necessary or desirable in connection with the administration of the Plan;

- (11) to employ or engage accountants as it shall deem necessary or desirable in connection with the administration of the Plan;
- (12) to employ or engage legal counsel as it shall deem necessary or desirable in connection with the administration of the Plan;
- (13) to employ or engage any other experts as it shall deem necessary or desirable in connection with the administration of the Plan;
- (14) to determine the mortality and other tables and interest rates to be used from time to time in actuarial or other computations for any purpose of the Plan;
- (15) to recommend to the County the amounts of contributions to be made by the County, from time to time, under the provisions of the Plan; and
- (16) to act for the County before all persons in any matter directly pertaining to the Plan.

(b) **Limits on Power**

The Plan Administrator shall have no power to:

- (1) amend or terminate the Plan;
- (2) determine County contributions;
- (3) affect the employer-employee relationship between the County and any employee; or
- (4) retain and/or discharge any one or more of the Trustees, all of which powers are reserved to the County unless expressly granted to the Plan Administrator.

(c) **Fiduciary Duties, Powers and Responsibilities**

Fiduciary duties, powers and responsibilities (other than those reserved to the Trustees, with respect to management or control of Trust assets) may be allocated among the fiduciaries (if there be more than one) to whom such duties, powers and responsibilities have been delegated, so long as such allocation is pursuant to action of the County or by written agreement executed by the involved fiduciaries and approved by the County, in which case such fiduciary shall not have any liability, with respect to any duties, powers or responsibilities not allocated to him or her, for the acts or omissions of any other fiduciary. Any person may serve in more than one fiduciary capacity under the Plan, including those of Plan Administrator and Trustee.

(d) **Specialized Advice or Assistance**

(1) **Appoint persons or firms; rely upon advice**

- (i) The Plan Administrator may appoint any persons or firms, or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the administration and operation of the Plan.
- (ii) The Plan Administrator shall be entitled to rely conclusively upon, and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such firms or persons.

(2) **Delegate Duties, Powers or Responsibilities to County Employee**

- (i) The Plan Administrator shall have the power and authority to delegate from time to time by written instrument all or any part of its duties, powers or responsibilities under the Plan, both ministerial and discretionary, as it deems appropriate, to a person who will assist the Plan Administrator (the "Coordinator"), and in the same manner to revoke any such delegation of duties, powers or responsibilities.
- (ii) Any action of the Coordinator in the exercise of such delegated duties, powers or responsibilities shall have the same force and effect for all purposes hereunder as if such action had been taken by the Plan Administrator.
- (iii) Further, the Plan Administrator may authorize the Coordinator to execute any certificate or document on behalf of the Plan Administrator, in which event any person notified by the Plan Administrator of such authorization shall be entitled to accept and conclusively rely upon any such certificate or document executed by such person as representing action by the Plan Administrator until such third person shall have been notified of the revocation of such authority.
- (iv) The Plan Administrator shall not be liable for any act or omission of any person to whom the Plan Administrator's duties, powers or responsibilities have been delegated, nor shall the Coordinator have any liabilities with respect to any duties, powers or responsibilities not delegated to him or her.

(e) **Liability**

All representatives of the County and the Plan Administrator shall use ordinary care and diligence in the performance of their duties pertaining to the Plan, but no such individual shall incur any liability:

- (1) by virtue of any contract, agreement, bond or other instrument made or executed by the individual or on the individual's behalf in his or her official capacity with respect to the Plan;
- (2) for any act or failure to act, or any mistake or judgment made, in his or her official capacity with respect to the Plan, unless resulting from his or her gross negligence or willful misconduct; or
- (3) for the neglect, omission or wrongdoing of any other person involved with the Plan.

The Plan shall indemnify and hold harmless each such individual from the effects and consequences of his or her acts, omissions and conduct in his or her official capacity with respect to the Plan, except to the extent that such effects and consequences shall result from his or her own willful misconduct or gross negligence; provided, however, that any person who shall claim the right to any payment or damage as a result of the actions of any individual in connection with the performance of the individual's duties pertaining to the Plan shall be entitled to look only to the Trust fund created by the Plan for payment. Such person shall have no other right, claim or demand therefor against the County.

(f) **Liability Insurance**

- (1) The Plan may purchase, from Plan assets, as an expense of the Plan, liability insurance for the Plan and/or for its fiduciaries to cover liability or losses occurring by reason of an act or omission of a fiduciary, providing such insurance contract permits recourse by the insurer against the fiduciary in the case of breach of fiduciary obligation by such fiduciary.
- (2) Any fiduciary may purchase, from and for his or her own account, insurance to protect himself or herself in the event of a breach of fiduciary duty and the County may also purchase insurance to cover the potential liability of one or more persons who serve in a fiduciary capacity with regard to the Plan.

(g) **Fiduciary's Benefits**

Nothing in the Plan shall be construed so as to prevent any fiduciary from:

- (1) receiving any benefit to which the fiduciary may be entitled as a Participant or Beneficiary; or
- (2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly incurred in the performance of his or her duties under the Plan (except that no person so serving who receives compensation as an employee of the County shall receive compensation from the Plan, except for reimbursement of expenses properly incurred); or
- (3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of the County or any related entity.

However, the fiduciary shall not be entitled to vote or act upon, or execute on behalf of the Plan documents specifically relating to, his or her own participation in the Plan.

(h) **Organization; Voting**

- (1) The Plan Administrator shall adopt such formal organization and method of operation as it shall deem desirable for the conduct of its affairs.
- (2) The Plan Administrator shall act as a body, and the individual members shall have no powers and duties as such, except as provided herein.
- (3) The Plan Administrator shall act by vote of a majority of its members at the time in office (other than those disqualified from voting pursuant to Section 8.5(g)), either at a meeting or in writing without a meeting.

(i) **Decisions Final**

Except as set forth in Section 8.12, the determination of the Plan Administrator on any matter pertaining to the Plan within the powers and discretion granted to it shall be final and conclusive on the County, the Trustees, all Participants and Beneficiaries and all those persons dealing in any way or capacity with the Plan.

## **8.6 RETIREMENT PLAN COMMITTEE**

The Retirement Plan Committee shall serve as Administrator. Except to the extent that the County has retained any power or authority, or allocated duties and responsibilities to another fiduciary, said Committee shall have full power and authority to administer and operate the Plan in accordance with its terms and, in acting pursuant thereto, shall have full power and authority to deal with all persons in any matter directly connected with the Plan, including, but not limited to, the Trustees, other fiduciaries, insurance companies, investment advisors, other advisors and specialists, Participants, Beneficiaries and their representatives, in accordance with the following provisions:

(a) **Individuals serving on the Committee**

The Committee shall consist of those individuals who hold the following positions in the employment of the County or the Carroll County Sheriff's Office:

- (1) Director, Department of Management and Budget (or designee);
- (2) Director, Department of Human Resources (or designee);
- (3) County Attorney (or designee);
- (4) Bureau Chief, Benefits; and
- (5) Two Participants participating in either this Plan or the Law Officers Pension Plan selected by the County Commissioners of Carroll County, Maryland

(b) **Compensation, acceptance of duties and responsibilities**

Subject to his or her right to resign at any time, each member of the Committee shall serve without compensation at the pleasure of the County, and the County may appoint, and may revoke the appointment of, additional members to serve with the Committee as may be determined to be necessary or desirable from time to time. Each member of the Committee, by accepting appointment to the Committee, shall thereby be deemed to have accepted all of the duties and responsibilities of such appointment, and to have agreed to the faithful performance of his or her duties hereunder.

(c) **Organization; voting**

- (1) The Committee shall adopt such formal organization and method of operation as it shall deem desirable for the conduct of its affairs.
- (2) The Committee shall act as a body, and the individual members of the Committee shall have no powers and duties as such, except as provided herein.
- (3) The Committee shall act by vote of a majority of its members at the time in office (other than those disqualified from voting pursuant to Section 8.5(g), either at a meeting or in writing without a meeting.

(d) **Decisions final**

Except as set forth in Section 8.12, the determination of the Committee on any matter pertaining to the Plan within the powers and discretion granted to it shall be final and conclusive on the County, the Trustees, all Participants and beneficiaries and all those persons dealing in any way or capacity with the Plan.

**8.7 MUTUAL EXCLUSION OF RESPONSIBILITY**

Neither the Trustees nor the County shall be obliged to inquire into or be responsible for any act or failure to act, or the authority therefor, on the part of the other.

**8.8 UNIFORMITY OF DISCRETIONARY ACTS**

Whenever in the administration or operation of the Plan, discretionary actions by the County, the Plan Administrator or the Trustees are required or permitted, such action shall be consistently and uniformly applied to all persons similarly situated, and no such action shall be taken which shall discriminate in favor of "highly compensated employees" as defined in Section 414(q) of the Internal Revenue Code.

**8.9 FIDUCIARY STANDARDS**

The Plan Administrator and all other persons in any fiduciary capacity with respect to the Plan shall discharge their duties with respect to the Plan:

- (a) solely in the interest of the Participants and Beneficiaries and for the exclusive purposes of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering and operating the Plan;
- (b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
- (c) in accordance with the documents and instruments governing the Plan.

#### **8.10 LITIGATION**

In any action or judicial proceeding affecting the Plan and/or the Trust, except as may be otherwise required by law, no Participant or Beneficiary shall be entitled to any notice or service of process, and any final judgment entered in such action shall be binding on all persons interested in, or claiming under, the Plan.

#### **8.11 PAYMENT OF ADMINISTRATION EXPENSES**

Expenses incurred in the administration and operation of the Plan shall be paid by the Trustees out of the Trust unless the County, in its discretion, elects to pay them.

#### **8.12 REVIEW PROCEDURE**

An employee aggrieved by a decision of the Plan Administrator may request that the Plan Administrator review its decision, and the Plan Administrator shall review its decision. The decision of the Plan Administrator following such review upon request of an employee shall be final and conclusive.

## **ARTICLE 9: AMENDMENT AND TERMINATION**

### **9.1 RIGHT TO AMEND**

The County shall have the right to amend the Plan at any time by ordinance, and all parties claiming any interest under this Plan shall be bound thereby. Notwithstanding any other provision of County law, no County resolution or ordinance which relates to the subject matter or the Plan or conflicts with, narrows, or expands any term of this Plan shall be effective unless the County acts by ordinance which specifically amends the provisions of this Plan. No amendment shall reduce a Participant's Accrued Benefit or deprive a Participant of an already vested interest to the extent funded unless required by law. No amendment shall cause any assets of the Trust to revert to the County except that, if after the Plan is terminated there are assets remaining after all Plan liabilities have been provided for, such assets may be returned to the County. No amendment which affects the rights, duties, responsibilities, or immunities of the Trustees shall be binding upon the Trustees in the absence of their consent thereto.

### **9.2 RIGHT TO TERMINATE**

It is the present intention of the County to maintain the Plan throughout the County's existence. Nevertheless, the County reserves the right, at any time, by ordinance to permanently discontinue further contributions to the Trust or to terminate the entire Plan and Trust.

### **9.3 AUTOMATIC TERMINATION OF CONTRIBUTIONS**

The liability of the County to make contributions to the Trust shall automatically terminate upon liquidation of the County, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of creditors.

### **9.4 ALLOCATION AND DISTRIBUTION**

#### **(a) Causation**

- (1) This Section shall become operative upon any of the following events:
  - (i) a complete termination of the County's liability to make further contributions to the Trust;
  - (ii) a complete discontinuance of contributions by the County to the Trust; or
  - (iii) a complete termination of the Plan.
- (2) The provisions of this Section also shall become operative in the event of a partial termination of the Plan, but only with respect to that portion of the Plan attributable to the Participants to whom the termination is applicable.

(b) **Effective Date Set by Resolution of the County**

The effective date of any termination or discontinuance of contributions shall be as set forth in a resolution adopted by the County.

(c) **Actions Upon Termination or Discontinuance of Contributions**

- (1) Upon the effective date of any such event, then, notwithstanding any other provisions of the Plan, subject to Section 9.5:
  - (i) no persons who were not theretofore Participants shall be eligible to become Participants;
  - (ii) no further benefits shall accrue; and
  - (iii) the Accrued Benefits of all Participants not theretofore vested, and not theretofore forfeited, shall immediately become fully vested.
- (2) The Accrued Benefits of all Participants and Beneficiaries shall be determined and distributed to them, as soon as is practicable after such termination or discontinuance, in accordance with Article 6.
- (3) The assets in the Trust shall be allocated for the purposes set forth below and in the order set forth below, to the extent the assets are sufficient therefor. The allocations may be implemented by distribution of Trust assets, or by the purchase and distribution by the Trustees of insurance company annuity contracts, or by a combination of these methods.

**9.5 PRIORITIES FOR ALLOCATION OF TRUST ASSETS**

Upon termination of the Trust, the Trustees shall liquidate all assets remaining in the Trust. After deduction of estimated expenses in liquidating and distributing the Trust, and any reasonable compensation for the Trustees agreed upon with the County, the balance of the Trust assets shall be allocated so as to provide the Accrued Benefits otherwise payable under the Plan pursuant to the following order of priorities:

(a) **Participants in First Priorities**

To provide Accrued Benefits for each Participant who:

- (1) had begun to receive benefits at least three years prior to the effective date of the termination of the Plan;
- (2) would have begun to receive retirement benefits at least three years prior to the effective date of the termination of the Plan but for the fact that commencement of benefits was deferred; or

- (3) would have been eligible to receive retirement benefits at least three years prior to the effective date of the termination of the Plan but for the fact that the Participant did not actually retire; and

(b) **Other Participants**

To provide Accrued Benefits for all other Participants, in the following order of preference:

- (1) for each Participant who would have qualified under the priority described in subsection (a) above but for the fact that the entitling event occurred or would have occurred within three years of the effective date of the termination of the Plan; and
- (2) for all other Participants in the priority described in this subsection (b).

(c) **Trust Assets According to Priority**

- (1) Trust assets shall be utilized under a particular priority only after all Accrued Benefits set forth in all preceding priorities shall have been fully provided for.
- (2) For purposes of the allocation of funds within each priority, as set forth in this Section 9.5, funds will be credited to each Participant to provide the Accrued Benefits to which he or she is so entitled, but only to the extent that such Accrued Benefits have not been provided under a preceding priority.
- (3) Any reductions in Accrued Benefits within a particular priority (or within any particular preference set forth within a priority) as set forth above, due to insufficient Trust assets, shall be allocated pro-rata among the Participants within that priority (or preference) on the basis of then present values of the respective Accrued Benefits described in that priority (or preference) for each such Participant.
- (4) Any reference to Accrued Benefits payable to Participants shall also be deemed to include Accrued Benefits payable to Beneficiaries of deceased Participants.
- (5) If any balance of Trust assets remains after all of the allocations described above, and after all liabilities with respect to Participants and retired Participants and their Beneficiaries, if any, are satisfied, then the balance shall be returned to the County, and the Trust shall terminate. Upon making such distribution, the Trustees shall be discharged from all obligations under the Trust and no Participant shall have any further right or claim therein.

(d) **Death of Participant After Effective Date of Termination**

Notwithstanding any provision to the contrary in Section 9.4 and this Section 9.5, if a Participant dies during the interim between the effective date of termination of the Plan and the distribution of Trust assets, and if the Participant's Benefit Commencement Date

had not yet occurred as of the effective date of termination, the amount distributable to the Participant or to the Participant's Beneficiary, and the timing thereof, shall be determined pursuant to Section 5.8.

## **9.6 ALTERNATIVE TO IMMEDIATE DISTRIBUTION OF THE TRUST**

### **(a) Event Entitling Participant to Benefit**

As an alternative to immediate distribution of the Trust, the County, in its discretion, and subject to its option at any time to require the complete distribution of the Trust to the then Participants in accordance with Section 9.4, may defer commencement of benefits to each Participant until such Participant reaches an event which would otherwise entitle him or her to benefit commencement pursuant to Sections 5.1 through 5.5, at which time the provisions of Sections 6.1 through 6.4 shall become applicable.

### **(b) Separate Account**

During the interim period, there shall be established and maintained a separate account in the name of each Participant, based upon the values established pursuant to Sections 9.4 and 9.5 (but subject to Section 9.8). The separate account shall thereafter define and measure the amount available for benefits distributable to the Participant, and there shall be credited or charged thereto any income, expenses, gains or losses (whether or not realized, based upon fair market value of invested assets) attributable or allocable thereto as of each Trust valuation date (or the date of complete distribution of the Trust) with respect to the period since the last valuation date.

## **9.7 MODIFICATION OF ALLOCATION PROVISIONS**

The provisions set forth in Sections 9.4 through 9.6 shall be subject to such modification, retroactively if required, without necessity of formal amendment to the Plan, as may be necessary in order to cause the termination of the Plan and/or Trust and any distributions made pursuant thereto and to conform to any requirements which may be imposed by the Internal Revenue Service to prevent disqualification of the Plan and/or Trust, and no such modification shall be deemed prejudicial to the interest of any Participant or Beneficiary.

## **9.8 PLAN COMBINATIONS AND TRANSFERS**

In the case of any merger or consolidation of the Plan with, or transfer of assets or liabilities of the Trust to, any other Plan, the transaction shall be structured so that each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the transaction which is at least equal to the benefit he or she would have been entitled to receive immediately before the transaction (if the Plan had then terminated).

## ARTICLE 10: MISCELLANEOUS PROVISIONS

### 10.1 LIMITATIONS ON LIABILITY OF COUNTY

(a) **No Rights Except as Provided by Law, Plan Provision, or Terms of Insurance or Annuity Policy**

Neither the establishment of the Plan or Trust, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the County (or any person connected therewith), the Trustees or any insurance company, except as provided by law, by any Plan provision or by the terms of any insurance or annuity policy.

(b) **County Does Not Guarantee the Trust**

The County does not in any way guarantee the Trust from loss or depreciation, nor does the County guarantee the payment of any money which may be or become due to any person from the Trust. Any person having a right or claim under the Plan shall look solely to the Trust assets, and in no event shall the County (or any person connected therewith) be liable to any person on account of any claim arising by reason of the provisions of the Plan or of any instrument or instruments implementing its provisions, or for the failure of any Participant, Beneficiary or other person to be entitled to any particular tax consequences with respect to the Plan, the Trust or any contribution thereto or distribution therefrom.

(c) **County Not Liable for Failure to Make Contributions**

The County shall not be liable to any person for failure on its part to make contributions as provided in Section 4.1, nor shall any action lie to compel the County to make such contributions.

(d) **County Not Liable for Failure of Plan to Qualify Under Internal Revenue Code**

The County (or any person connected therewith) shall not have any liability to any person by reason of the failure of the Plan to attain and/or maintain qualified status under Section 401(a) of the Internal Revenue Code, or the failure of the Trust to attain and/or maintain tax exempt status under Section 501(a) of the Internal Revenue Code, regardless of whether or not such failure is due to any act or omission (willful, negligent or otherwise) of the County (or any person connected therewith).

## 10.2 CONSTRUCTION

(a) **Intended to Comply with Requirements for Qualification Under Internal Revenue Code**

The Plan is intended to comply with all requirements for qualification under Section 401(a) of the Internal Revenue Code and, if any provision of the Plan is subject to more than one interpretation or construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the Plan being so qualified.

(b) **Severability**

In case any provision of the Plan shall be held to be illegal or void, such illegality or invalidity shall not affect the remaining provisions of the Plan, but shall be fully severable, and the Plan shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

(c) **Laws of State of Maryland Shall Govern**

Except to the extent preempted by the laws of the United States of America, the laws of the State of Maryland shall govern, control and determine all questions arising with respect to the Plan and the interpretation and validity of its respective provisions. Participation under the Plan shall not give any Participant the right to be retained in the service of the County nor any right or claim to any benefit under the Plan unless such right or claim to such benefit has specifically accrued hereunder.