

**RESOLUTION #2023-012**

**THE JULY 2023 RESTATEMENT OF THE  
CAROLINE COUNTY EMPLOYEES PENSION PLAN**

A Resolution of the County Commissioners of Caroline County, Maryland (the "Commissioners") amending and restating the Caroline County Employees Pension Plan.

**RECITALS:**

**WHEREAS**, The Commissioners restated the Caroline County, Maryland Employees Pension Plan ("Plan"), effective January 1, 2020;

**WHEREAS**, Section 12.01 of the Plan permits the Commissioners to amend the Plan;

**WHEREAS**, Commissioners desire to amend the Plan to increase the retirement benefit and create a plan that is uniform all employees.

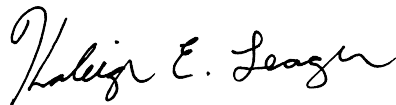
**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the County Commissioners of Caroline County, Maryland that:

**Section 1:** The January 1, 2020 amendment and restatement is amended and restated its entirety, effective July 1, 2023 and is hereby incorporated into this resolution by reference.  
**ATTACHMENT A.**

**ADOPTED:** June 20, 2023

**EFFECTIVE:** July 1, 2023

**ATTEST:**



Kaleigh Leager, Executive Assistant

(SEAL)

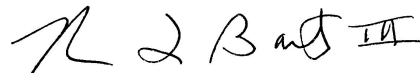
**COUNTY COMMISSIONERS OF  
CAROLINE COUNTY, MARYLAND**



J. Travis Breeding, President



Larry C. Porter, Vice President



N. Franklin Bartz III, Commissioner

**ATTACHMENT A**

**CAROLINE COUNTY, MARYLAND  
EMPLOYEES PENSION PLAN**

**Plan Chronology:**

**July 1, 1969 - Original Effective Date**  
**July 1, 1996 - Amended and Restated**  
**July 1, 1997 - Amended and Restated**  
**January 1, 2003 - Amended and Restated**  
**November 9, 2004 – Amended and Restated**  
**September 7, 2007 – Amended and Restated**  
**July 1, 2009 – Amended and Restated**  
**September 29, 2009 – Amended and Restated**  
**April 27, 2010 – Amended and Restated**  
**April 17, 2012 – Amended and Restated**  
**July 1, 2013 – Amended and Restated**  
**July 1, 2017 – Amended and Restated**  
**January 1, 2020 – Amended and Restated**  
**January 1, 2022 – Amended**  
**May 1, 2022 - Amended**  
**July 1, 2023 – Amended and Restated**

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The County Commissioners of Caroline County, Maryland, hereinafter called the “Commissioners,” hereby amends and restates, in its entirety, the pension plan covering the Employees of the Commissioners and other Eligible Individuals who actively perform at least one Hour of Service on or after July 1, 2023. Eligible Individuals who do not actively perform an Hour of Service on or after July 1, 2023 will be covered by the provisions of the Plan prior to restatement unless clearly indicated otherwise.

## **ARTICLE I**

### **NAME, EFFECTIVE DATE AND PURPOSE**

#### **Section 1.01 - Name**

The name of the Plan is the “Caroline County, Maryland Employees Pension Plan,” hereinafter called the “Plan.”

#### **Section 1.02 - Effective Date**

The effective date of the Plan is July 1, 1969. The effective date of this restatement is July 1, 2023, except as otherwise indicated.

#### **Section 1.03 - Purpose**

The purpose of the Plan is to provide a systematic plan for the retirement of the Eligible Individuals and, under the conditions set forth herein, to provide a pension upon the retirement of a Eligible Individual, the amount of which takes into account the length of service and the compensation paid by the Employer to such Eligible Individual.

#### **Section 1.04 – Income Tax and ERISA Status**

This plan is intended to be a governmental plan as defined by Code section 414(d) and as such is exempt from the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). It is intended that Code sections 401(a)(5)(G) and 401(a)(26)(G) will apply to this plan.



## ARTICLE II

### DEFINITIONS

#### **Section 2.01 – “Accrued Pension Benefit” or “Accrued Benefit”**

Shall mean a Participant’s earned benefit, commencing at the Participant’s Normal Retirement Date in the form of a life annuity, determined in the same manner as the Participant’s Normal Retirement Pension calculated pursuant to Section 4.02, and based on the Participant’s Credited Service and Final Average Earnings at the date the person ceased to be an Eligible Individual. A Participant’s Accrued Benefit shall never be less than the Accrued Benefit on any prior date. In no event, however, shall the Accrued Benefit exceed the maximum limitation determined, as of the date of computation, pursuant to Section 13.01.

#### **Section 2.02 – “Actual Retirement Date”**

Shall mean the date on which an Eligible Individual terminates employment after meeting the eligibility requirements for an Early Retirement Pension, Late Retirement Pension or Normal Retirement Pension. For an Eligible Individual who terminates after becoming eligible for a Deferred Vested Retirement Pension, Actual Retirement Date shall mean the earlier of the Eligible Individual’s Benefit Commencement Date or Normal Retirement Date.

#### **Section 2.03 – “Actuarial Equivalent”**

Shall mean a benefit of equal value when computed in accordance with the actuarial tables, taking into consideration the difference in fund earnings and life expectancy when the benefit commences at a time other than the normal Benefit Commencement Date and the value of additional guarantees provided under an option being utilized. Actuarial equivalence shall be determined using the 1971 Group Annuity Mortality Table (male) for Participants and

Beneficiaries and assuming a rate of investment return of six percent (6%) compounded annually.

**Section 2.04 – “Actuary”**

Shall mean a person who is enrolled with the Joint Commissioners for the Enrollment of Actuaries as provided for in Section 7701(a)(35) of the Code.

**Section 2.05 – “Affiliated Employer”**

Shall mean any corporation which is a member of a controlled group of corporations (as defined in Section 414(b) of the Code) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Section 414(c) of the Code) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Section 414(m) of the Code) and which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to regulations under Section 414(o) of the Code.

**Section 2.06 – “Age”**

Shall mean age at last birthday.

**Section 2.07 – “Annuity Starting Date”**

Shall mean the first day of the first period for which an amount is payable as an annuity or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Participant to such benefit.

**Section 2.08 – “Appointed Officials”**

Shall mean the Eligible Individuals designated by the Commissioners, from time to time, as Appointed Officials.

**Section 2.09 – “Beneficiary”**

Shall mean the individual or individuals designated by a Participant to receive benefits under Article VIII of the Plan upon the death of the Participant. If a Beneficiary is not designated, or not living at the time of a Participant’s death, the Participant’s beneficiary shall be the Participant’s beneficiary under the Employer’s group term life insurance plan. If no Beneficiary is named in that instance, the Participant’s beneficiary shall be the surviving children of the Participant (in equal shares) and if no surviving children, the Participant’s estate.

Notwithstanding any other provision of this Section 2.09, the spouse of the Participant shall automatically be the Beneficiary unless waived pursuant to Section 8.04.

**Section 2.10 – “Benefit Commencement Date”**

Shall mean the effective date of the commencement of benefit payments.

**Section 2.11 – “Code”**

Shall mean the Internal Revenue Code of 1986, as amended from time to time. A reference to a particular section of the Code shall include a reference to any regulations issued under the Section.

**Section 2.12 – “Commissioners”**

Shall mean the County Commissioners of Caroline County, Maryland.

**Section 2.13 – “Committee”**

Shall mean the Retirement Plan Committee designated in accordance with the provisions of Section 10.03 to administer and operate the Plan.

**Section 2.14 – “Compensation”**

Shall mean the monthly equivalent of the Participant's base annual salary rate or wages in effect on the first day of the month (adjusted as necessary for part-time employment). Compensation is determined without regard to:

- (a) Overtime, bonuses, shift differentials, additional holiday pay, allowances and other extra remuneration;
- (b) Amounts in excess of 1/12th of the applicable dollar limit in effect as of the first day of the Plan Year under Section 401(a)(17) of the 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 Code.
- (c) Contributions, credits or benefits under this Plan or under any other retirement, deferred compensation, fringe benefit or employee welfare benefit plan; or
- (d) 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 salary reduction under any plan described in Section 414(h)(2) or 125 of the Code.

**Section 2.15 – “Continuous Service”**

Shall mean the uninterrupted period of service as a Eligible Individual commencing with the Participant’s most recent date of employment. However, a Eligible Individual, other than an Orphans’ Court Judge, shall not be credited with service in any calendar year during which the Eligible Individual served as a part-time employee scheduled to work less than thirty-two hours per week. Partial years of service shall be measured in months rounded to the next higher month.

**Section 2.16 – “Credited Service”**

Shall mean the number of years and months of Continuous Service and Reinstated Service, plus the number of years and months of pre-employment Military Service up to a maximum of three (3) years such Military Service.

- (a) Solely for purposes of determining the amount of the Participant's Normal Retirement Pension, Late Retirement Pension or Early Retirement Pension, a Participant shall receive Credited Service for unused sick leave. Such unused sick leave shall be credited in the same manner that unused sick leave is credited for members of the Law Enforcement Officers' Pension System under Sections 26-308(a) and 20-206 of the State Personnel and Pensions Article of the Maryland Code.
- (b) Unused sick leave shall not be used to determine Years of Eligibility Service as defined in Section 2.48 or Final Average Earnings as defined in Section 2.26.
- (c) Credited Service for unused sick leave will be included in the calculation of a Participant's Deferred Vested Retirement Pension if the Participant's termination of employment was a voluntary termination as determined by the Committee.

**Section 2.17 – “Deferred Vested Retirement Pension”**

Shall mean a pension as provided in Article VII.

**Section 2.18 – “Differential Wage Payments “**

Shall mean differential wage payments as defined in Section 3401(h) of the Code. The Commissioners do not currently make Differential Wage Payments.

**Section 2.19 – “Disability Retirement Pension”**

There is no Disability Retirement Pension under the Plan. A Participant who terminates employment by reason of disability shall become eligible for a Deferred Vested Retirement

Pension as described in Article VII when the Participant meets the requirements of Section 7.01; provided, however that, a Participant whose Vesting Percentage is less than 100% at the time of his or her termination of employment will become one hundred percent (100%) vested in the Participant's Accrued Pension Benefit if the Committee determines the Participant is unable to perform his/her duties by reason of disability. The Deferred Vested Retirement Benefit shall commence on the first day of the month coinciding with or next following his or her sixty-fifth (65<sup>th</sup>) birthday or Earlier Benefit Commencement Date elected by the Participant in accordance with Section 7.02 and shall continue in equal monthly installments as provided in Article IX.

**Section 2.20 – “Early Retirement Age”**

(a) Effective July 1, 2023, “early retirement age” shall mean the date the Participant reaches age 50 with 20 years of service. With respect to periods prior to July 1, 2023, “early retirement age” shall be determined under the provisions of the Prior Plan.

**Section 2.21 – “Early Retirement Pension”**

Shall mean a pension as provided in Article VI.

**Section 2.22 – “Election Period”**

Shall mean a reasonable period of time ending on the Annuity Starting Date.

**Section 2.23 – “Eligible Individual”**

Shall mean:

- (a) Each Participant in the Prior Plan
- (b) Each permanent employee of the Commissioners scheduled to work at least thirty-two (32) hours per week
- (c) Each permanent employee in a State-authorized exempt position scheduled to work at least thirty-two (32) hours per week for such a position;

(d) Each employee of the Sheriff's Office scheduled to work at least thirty-two (32) hours per week who is not a participant in the Law Enforcement Officers Pension System

€. Notwithstanding any other provision of this Plan, effective July 1, 2017, individuals serving as County Commissioners will not be Eligible Individuals.

**Section 2.24 – “Employee Contributions Benefit”**

Shall mean the sum of the following amounts (net of any previous distributions):

(a) The contributions made by the Participant through salary reduction and "picked up" by the Commissioners, as described in Section 3.03; plus

(b) Interest on the amounts described in (a) above computed on June 30 of each year as follows and compounded annually:

(i) 2.5% of the amount contributed during the current Plan Year.

(ii) 5.0% of any amount contributed or transferred prior to the current Plan Year.

**Section 2.25 – “Employer”**

Shall mean the County Commissioners of Caroline County, Maryland, the common law employer of any Eligible Participant who is not an employee of the Commissioners and any successor or successors which shall adopt this Plan.

**Section 2.26 – “Final Average Earnings”**

Final Average Earnings shall mean the Participant's Compensation received during the sixty (60) consecutive calendar months of Credited Service which produces the highest average when divided by five (5), or if the Participant has fewer than sixty (60) complete calendar months of employment with the Employer, the average of Participant's Compensation received from the Employer during all complete calendar months prior to the Participant's termination of employment.

**Section 2.27 – “Hour or Hour of Service”**

Shall mean each Hour for which an Eligible Individual is directly or indirectly paid, or entitled to payment, by the Employer for the performance of duties.

**Section 2.28 – “Late Retirement Pension”**

Shall mean a pension as provided in Article V.

**Section. 2.29 – “Leave of Absence”**

Shall mean the period of time in which an Eligible Individual remains absent from service without pay for any reason other than quit, discharge, retirement or death; including, but not limited to, approved leave of absence, layoff, maternity leave and military leave consistent with the Personnel Rules and Regulations of the Employer.

**Section 2.30– “Limitation Year”**

Shall mean the Plan Year

**Section 2.31 – “Military Service”**

Shall mean active military duty in the armed forces of the United States, including initial training and call-ups to active federal duty with the National Guard or Military Reserve.

**Section 2.32 – “Normal Retirement Age”**

(a) With respect to all Participants other than Orphans’ Court Judges, and effective July 1, 2023, “normal retirement age” shall be the earlier of the date the Participant achieves 25 Years of Eligibility Service or reaches age 62 with 5 Years of Eligibility Service. For periods prior to July 1, 2023, “normal retirement age” shall be determined under the provisions of the Prior Plan.

(b) With respect to Orphans’ Court Judges, “normal retirement age” shall be the date the Orphans’ Court Judge attains age 65.



**Section 2.33 – “Normal Retirement Date”**

Shall mean the first day of the calendar month coincident or next following the Participant’s Normal Retirement Age.

**Section 2.34 – “Normal Retirement Pension”**

Shall mean the pension as provided in Article IV.

**Section 2.35 – “Orphans’ Court Judge”**

Shall mean an elected or appointed judge of the Orphans’ Court of Caroline County.

**Section 2.36 – “Participant”**

Shall mean any Eligible Individual who becomes a participant of the Plan as provided in Article III. Effective July 1, 2007, Participant shall include any Eligible Individual on a Leave of Absence for Military Service.

**Section 2.37 – “Per Pay Compensation**

Shall mean one-twenty-sixth (1/26<sup>th</sup>) of the Participant's base annual salary rate or wages for Participant's grade and step in effect for that pay period (adjusted as necessary for part-time employment). Per-pay Compensation is determined without regard to:

- (a) Overtime, bonuses, shift differentials, additional holiday pay, shoes allowances, field training allowances, plain clothes allowances and other extra remuneration;
- (b) Amounts in excess of 1/26<sup>th</sup> of the applicable dollar limit in effect as of the first day of the Plan Year under Section 401(a)(17) of the 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 Code.
- (c) Contributions, credits or benefits under this Plan or under any other retirement, deferred compensation, fringe benefit or employee welfare benefit plan; or

(d) 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 salary reduction under any plan described in Section 414(h)(2) or 125 of the Code.

**Section 2.38 – “Plan Administrator”**

Shall mean the Committee designated in accordance with the provisions of Section 10.03 to administer and operate the Plan.

**Section 2.39 – “Plan Year”**

Shall mean the twelve (12) month period commencing on a July 1<sup>st</sup>.

**Section 2.40 – “Prior Plan”**

Shall mean the January 1, 2020 Restatement of the Plan.

**Section 2.41– “Reinstated Service”**

Shall mean, for a former Eligible Individual who terminated employment with the Employer in “good standing” as defined in the Personnel Rules and Regulations of the Employer and who again becomes an Eligible Individual, all Credited Service and Years of Eligibility Service credited to the Eligible Individual at the time of the Eligible Individual’s earlier termination of employment.

**Section 2.42 – “Survivor’s Pension”**

Shall mean the pension as provided in Article VIII.

**Section 2.43 – “Trust”**

Shall mean the legal entity resulting from the trust agreement between the Employer and the Trustees who receive the contributions of the Employer and hold, invest and disburse funds to or for the benefit of Participants and their Beneficiaries.

**Section 2.44 – “Trust Fund”**

Shall mean the total of contributions made by the Employer to the Trust pursuant to the Plan, increased by profits, gains, income and recoveries received and decreased by losses, depreciation, benefits paid and expenses incurred in the administration of the Trust and the Plan. Trust Fund includes all assets acquired by investment and reinvestment which are held in the Trust by the Trustees.

**Section 2.45 – “Trustees”**

Shall mean the party or parties, individual or corporate, named in the trust agreement executed by the Employer and the Trustees and any additional or successor Trustee or Trustees, duly appointed by the Employer, acting hereunder.

**Section 2.46 – “USERRA”**

Shall mean the Federal Uniformed Services Employment and Reemployment Rights Act of 1994.

**Section 2.47 – “Vesting Percentage”**

Shall mean the percentage computed based on Years of Eligibility Service in accordance with the following table:

<b><u>Years of Eligibility Service</u></b>	<b><u>Vesting Percentage</u></b>
Less than 5 Years	0%
5 Years	50%
6 Years	60%
7 Years	70%
8 Years	80%
9 Years	90%
10 or more Years	100%

Provided, however, for Eligible Individuals hired prior to September 16, 1997, and all Orphans’ Court Judges regardless of employment date, Vesting Percentage shall be 100% upon completing five (5) Years of Eligibility Service. A Participant shall be 100% vested in his/her Accrued Benefit

upon attainment of Normal Retirement Age if employed with the Employer on that date. In no event shall the Vesting Percentage for an Eligible Individual who was employed by the Employer on June 30, 2013, be less than determined under the provision of the Prior Plan.

**Section 2.48 – “Years of Eligibility Service”**

Shall mean an Eligible Individual’s years of Continuous Service and Reinstated Service, plus the number of years and months of Military Service, up to a maximum of three (3) years of pre-employment Military Service.

## ARTICLE III

### PARTICIPATION IN THE PLAN

#### Section 3.01 - Eligibility

- (a) Except as provided below, each Eligible Individual, automatically becomes a Participant of the Plan as of date of employment.
- (b) Appointed Officials who are appointed on or after July 1, 2013 and are not Participants prior to their appointment are not eligible to participate in the Plan.
- (c) Employees contracted by an Employer shall not participate in the Plan.
- (d) A Participant who is not eligible for an immediate or deferred pension under the Plan will cease to be a Participant on the date the Participant ceases to be an Eligible Individual.
- (e) A Participant eligible for an immediate or deferred pension will cease to be a Participant upon receiving all the benefits to which the Participant is entitled under the provisions of the Plan.

#### Section 3.02 - Notification - Description of Plan

The Employer shall notify each Eligible Individual when he becomes a Participant and shall supply each such Eligible Individual with a description of this Plan, and, if requested, a copy of this Plan document.

#### Section 3.03 – Participant contributions.

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

- (a) Participant contributions.

- (i) Effective for the first pay period beginning on or after July 1, 2013, and for each pay period thereafter, each Participant (other than an Orphans' Court Judge) shall make contributions to the Plan in accordance with this section 3.03.
  - (ii) The Participant contributions referred to in this Section 3.03 shall be (a) picked up by the Employer as described in Section 414(h)(2) of the Code, (b) deducted from the pay of the contributing Participants as salary reduction contributions, and (c) paid by the Commissioners to the Trustees with reasonable promptness after the total of such contributions during any month has been determined, and in any event by the end of the succeeding month.
  - (iii) The Participant contributions referred to in subsection (a)(i) of this Section 3.03 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.
  - (iv) The Participant contributions referred to in subsection (a)(i) of this Section 3.03, although designated as Participant contributions, are being paid by the Commissioners in lieu of contributions by the Participant pursuant to Section 414(h)(2) of the Code.
  - (v) No Eligible Individual will have a right to elect to receive any portion of the participant contributions described in this subsection (a) in cash in lieu of participant contributions deducted from his or her pay and contributed to the Plan.
- (b) Amount of Participant Contributions
- (i) Effective July 1, 2023, the amount of the participant contributions for Participants (other than Orphans' Court Judges) will be 6% of the Participant's Per-pay Compensation.

- (ii) Effective July 1, 2024, the amount of the participant contributions for Participants (other than Orphans' Court Judges) will be 7% of the Participant's Per-pay Compensation.
  - (iii) The amount of the participant contributions for Orphans' Court Judges will be zero.
  - (iv) For periods prior to July 1, 2023, the amount of participant contributions shall be determined under the provisions of the Prior Plan.
- (c) *Suspension of contributions.* A Participant's salary reduction contributions shall be automatically suspended for any payroll period during which the Participant is not an Eligible Individual or during which he or she is on an unpaid Leave of Absence.
  - (d) *Withdrawals of pick-up contributions.* A Participant who has reached his or her termination of employment may elect, at any time, to receive a cash-out of the Employee Contributions Benefit by filing a written notice of such election with the County's Office of Human Resources. Such Cash-out shall constitute full payment of all benefits due to such Participant under the Plan.
  - (e) *Forfeiture of remaining Accrued Benefit.* In the event of a Cash-out to a Participant pursuant to subsection (c), then, subject to the buy-back provisions of Section 10.08, the Participant shall forfeit the entire remaining portion of his or her Accrued Benefit.
  - (f) *Vesting of pick-up contributions.* Notwithstanding any provisions of this Plan to the contrary, Participant contributions picked up by the Commissioners and made to the Plan shall be fully vested at all times.
  - (g) *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 his or her Accrued Benefit.

- (h) *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 contributions picked up by the Commissioners shall be treated as a priority distribution ahead of any other distribution to Participants based upon the remainder of the Trust.

**Section 3.04 Participation requirements.**

An Eligible Individual's participation in this Plan, and the agreement to make contributions hereunder, as described in Section 3.03, is mandatory as a condition of employment with the Employer.

**Section 3.05 Reemployment.**

If an Eligible Individual or Participant who terminates employment is subsequently reemployed, his or her status with respect to the Plan shall be governed by the following:

- (a) Eligibility for participation. If the reemployed Eligible Individual was not a Participant prior to his or her termination of employment, the Eligible Individual shall become a Participant in accordance with the provisions of Section 3.03. If the reemployed Eligible Individual was an active Participant prior to such termination, or the individual's Reemployment Commencement Date, his or her participation shall commence immediately upon the resumption of status as an Eligible Individual.
- (b) Effective July 1, 2017, if, at the time of his reemployment commencement date, the Participant is receiving benefits under the plan, such benefits 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.



(c) Vesting. Subject to subsection (c). below, if the reemployed Eligible Individual was a Participant prior to his or her termination, that Eligible Individuals prior Years of Eligibility Service shall be aggregated with Years of Eligibility Service performed after his or her Reemployment Commencement Date for purposes of determining eligibility to receive his or her Accrued Benefit (with respect to the periods before and after the Period of Severance).

(d) Cash-out.

(i) If, after his or her termination of employment, (a) the Participant receives a cash-out of his or her Employee Contributions Benefit or a lump sum in lieu of a Deferred Vested Retirement Pension (a “Cash Out”), and (2) the Participant resumes status as an Eligible Individual, then the Years of Eligibility Service with respect to which the distribution was received shall be disregarded in subsequent determinations of Participant’s eligibility to receive his or her Accrued Benefit.

(ii) However, if the Participant resumes status as an Eligible Individual, and repays to the Trust the full amount of the Cash Out, plus interest from date of distribution to date of repayment at the rate of 5% per annum, compounded annually, in a single lump sum payment, within one year from the date of reemployment, his or her eligibility will be determined taking into account Credited Service and Years of Eligibility Service before as well as after the termination of employment.

(i) If repayment is completed by the rehired Eligible Individual within 90 days of the original Cash Out, no interest will be charged.

- (ii) A rehired Eligible Individual continuing in service for an Employer who does not pay back a Cash Out as provided in this section will not receive credit for prior years of service and will be treated as a new employee.
- (iii) The full amount of any repayment, including interest, shall be treated as an after-tax Employee contribution

## ARTICLE IV

### NORMAL RETIREMENT PENSION

#### Section 4.01 - Eligibility

A Normal Retirement Pension shall be granted to each Participant who retires upon attaining the Participant's Normal Retirement Date.

#### Section 4.02 - Amount

The annual Normal Retirement Pension benefit for a Participant will be determined under the provisions of this Section 4.02:

(a) If the Participant's Normal Retirement Date precedes July 1, 2016, the annual Normal Retirement Pension shall be equal to the greater of (i) 1.6% of the Participant's Final Average Earnings multiplied by the Participant's Credited Service or (ii) 2.0% of the Participant's Final Average Earnings multiplied by the Participant's Credited Service, to a maximum of 30 years. The maximum annual benefit determined pursuant to this Section 4.02(a)(ii) shall be 60% of Final Average Earnings, plus unused sick leave credited in accordance with Section 2.16.

(b) If the Participant's Normal Retirement Date occurs on or after July 1, 2016, the annual Normal Retirement Pension shall be equal to 2.0% of the Participant's Final Average Earnings multiplied by the Participant's Credited Service up to 30 years. The maximum benefit determined pursuant to this Section 4.02(b) shall be 60% of Final Average Earnings, plus unused sick leave credited in accordance with Section 2.16.

(c) For an Orphans' Court Judge with twenty (20) or more years Credited Service, the monthly pension shall be \$100. If the Orphans' Court Judge has less than twenty (20) years

Credited Service, the minimum monthly pension shall be \$5 multiplied by the Participant's Credited Service.

**Section 4.03 - Period of Payment**

The Normal Retirement Pension benefit shall commence on the first day of the month coinciding with or next following the Participant's Normal Retirement Date and shall continue in equal monthly installments as provided in Article IX.

## ARTICLE V

### LATE RETIREMENT PENSION

#### **Section 5.01 - Eligibility**

A Participant of the Plan who has attained Normal Retirement Date may retire on the first day of any month following Normal Retirement Date. In such event, the payment of benefits to which such Participant has earned entitlement shall be deferred to the Participant's Actual Retirement Date.

#### **Section 5.02 - Amount**

Unless an optional method is effective as described in Article IX, the annual Late Retirement Pension shall be the Participant's Accrued Pension Benefit based on Credited Service and Final Average Earnings at the Participant's Actual Retirement Date.

#### **Section 5.03 - Period of Payment**

The Late Retirement Pension benefit shall commence as of the first day of the month coinciding with or next following the Participant's Actual Retirement Date and shall continue in equal monthly installments as provided in Article IX.

## ARTICLE VI

### EARLY RETIREMENT PENSION

#### Section 6.01 - Eligibility

(a) An Early Retirement Pension shall be granted to each Participant of the Plan who retires prior to becoming eligible to receive a Normal Retirement Pension but on or after the Participant's Early Retirement Age.

(b) Notwithstanding any other provision of this Plan, an Eligible Individual who terminated employment with the Commissioners during 2015 upon expiration of his leave under the Family Medical Leave Act will be eligible for an Early Retirement Pension as calculated under Section 6.02.

#### Section 6.02 - Amount

Unless an optional method of payment is effective, as described in Article IX, the annual Early Retirement Pension shall be the Participant's Accrued Pension Benefit at the date the Participant terminates employment with the Employer.

An eligible Participant may elect to have benefit payments commence on the first day of the month coinciding with or next following Normal Retirement Date or on the first of any month coinciding with or following attainment of eligibility for an Early Retirement Pension. A Participant who elects to have benefit payments commence prior to Normal Retirement Date shall have the amount determined above reduced one-thirtieth ( $1/30^{\text{th}}$ ) for each year the Participant's Benefit Commencement Date precedes Normal Retirement Date. The reduction for partial years shall be a straight line interpolation.

**Section 6.03 - Period of Payment**

(a) Except as provided in subsection (b) below, an Early Retirement Pension shall commence as of the first day of the month coinciding with or next following the Participant's Normal Retirement Date or earlier Benefit Commencement Date elected by the Participant in accordance with Section 6.02 and shall continue in equal monthly installments as provided in Article IX.

(b) Early Retirement Pension Benefits under Section 6.01(b) will commence December 1, 2016.

## ARTICLE VII

### **DEFERRED VESTED RETIREMENT PENSION**

#### **Section 7.01- Eligibility**

A Participant who ceases to be an Eligible Individual for reasons other than death or disability, prior to becoming eligible for a Normal Retirement Pension or Early Retirement Pension but after completing five (5) or more Years of Eligibility Service shall be eligible to receive Deferred Vested Retirement Pension. Any Participant in the Plan who ceases to be an Eligible Individual for reasons other than death prior to becoming eligible for a Normal Retirement Pension or an Early Retirement Pension, and who is ineligible to receive a benefit under this Article VII shall be ineligible to receive a benefit from the Plan, other than a withdrawal of the Participant's Employee Contributions Benefit pursuant to Section 3.03(d).

#### **Section 7.02 - Amount**

Unless an optional method of payment is effective, as described in Article IX, the annual Deferred Vested Retirement Pension shall be the Participant's Accrued Benefit at the date the Participant terminates employment with the Employer multiplied by the Participant's Vesting Percentage.

An eligible Participant may elect to have benefit payments commence on the first day of the month coinciding with or next following the Participant's sixty-fifth (65<sup>th</sup>) birthday or the first day of any earlier month after the Participant's Normal Retirement Age or Early Retirement Age.

A Participant who elects to have benefit payments commence prior to Age 65 shall have the amount determined above reduced one-thirtieth (1/30<sup>th</sup>) for each year the Participant's Benefit Commencement Date precedes Age 65. The reduction for partial years shall be a straight line interpolation.



In lieu of a deferred pension, an eligible Participant may elect a lump sum which is the Actuarial Equivalent of the Participant's Deferred Vested Retirement Pension payable as a defined annuity commencing at Age 65. A lump sum will only be payable under this Article VII if the lump sum benefit is less than \$50,000.

**Section 7.03 - Period of Payment**

The Deferred Vested Retirement Pension shall commence on the first day of the month coinciding with or next following the sixty-fifth (65<sup>th</sup>) birthday or earlier Benefit Commencement Date elected by the Participant in accordance with Section 7.02, and shall continue in equal monthly installments as provided in Article IX.

## ARTICLE VIII

### SURVIVOR'S PENSION

#### **Section 8.01 - Eligibility**

If a Participant dies prior to Benefit Commencement Date, the Beneficiary of the deceased Participant (including a Participant who is on a Leave of Absence for Military Service) shall be entitled to a death benefit in the form of a Survivor's Pension.

#### **Section 8.02 - Amount**

The Survivor's Pension shall be equal to the present value of the Participant's Accrued Benefit. The Beneficiary of a Participant shall be eligible to elect any optional form of payment pursuant to Section 9.02 of the Plan.

#### **Section 8.03 - Period of Payment**

The Survivor's Pension shall commence as of the first day of the month following the Participant's death. Benefits may commence at a later date selected by the Beneficiary, but no later than the Participant's Normal Retirement Date. Benefits shall continue in monthly installments, if applicable, pursuant to the election of the optional form of benefit.

#### **Section 8.04 - Spousal Waiver of Survivor's Pension**

A Participant may, with written spousal consent, that a non-spouse Beneficiary receive the Survivor's Pension in lieu of the spouse. This election may be made at any time and the waiver may be revoked in favor of the spouse at any time prior to the Participant's death or retirement.

## ARTICLE IX

### NORMAL AND OPTIONAL FORMS OF PENSION

#### Section 9.01 - Normal Form of Pension

The normal form of pension for a Participant, other than an Orphans' Court Judge, eligible for a Normal, Late, Early, or Deferred Vested Retirement Pension shall be a pension payable monthly for the life of the Participant continuing through the month in which the Participant dies except as provided in Section 9.03. For an Orphans' Court Judge, the normal form of Pension Benefit shall be a pension payable monthly for the life of the Participant and continuing through the month in which the Participant dies with the guarantee that no less than one hundred twenty (120) monthly payments shall be made, as described under Section 9.02(a)(iii).

#### Section 9.02 - Optional Forms of Pension

- (a) In lieu of any other form of pension, a Participant may elect to receive a pension of Actuarial Equivalent value in accordance with any of the following options:
- (i) A lump sum benefit. This lump sum option shall not apply to Participants retiring with a Accrued Benefit with a lump sum value greater than \$50,000; or
  - (ii) A joint and contingent survivor pension providing for an actuarially adjusted pension payable to and during the lifetime of the retired Participant with the provision that following the Participant's death after the Participant's Benefit Commencement Date, such adjusted pension shall continue to be paid to and during the lifetime of the Participant's Beneficiary at the same rate or at the rate of two-thirds (2/3rds) or one-half (1/2) of the Participant's adjusted pension; or
  - (iii) A joint and contingent survivor pension with one hundred percent (100%) of the Participant's pension continued to the spouse after the Participant's death, without

actuarial reduction; provided, however, that his option is not available to a participant hired on or after July 1, 2013; or

(iv) A life period certain pension providing for an actuarially adjusted pension payable to and during the lifetime of the retired Participant with the provision that, in the event the Participant shall die before receiving payment of such adjusted pension for a period of one hundred twenty (120) months (“Select Period”) after the Participant’s death such adjusted pension shall continue for the remainder of said Select Period to the Participant’s Beneficiary as he shall nominate by written designation filed with the Plan Administrator. If the Participant’s Beneficiary dies before payment of all payments provided in this option, payment will be made to the Participant’s estate.

(v) Withdrawal of the Participant’s Employee Contributions Benefit in a single lump sum pursuant to Section 3.03(d).

(b) If distribution of the Participant’s entire interest is not made in a single lump sum, the distribution must be made in one or more of the following ways:

(i) over the lifetime of the Participant;

(ii) over the lifetime of the Participant and one or more designated beneficiaries;

(iii) over a period certain not extending beyond the life expectancy of the Participant; or

(iv) over a period certain not extending beyond the joint life and last survivor expectancy of the Participant and one or more designated beneficiaries.

**Section 9.03 - Commencement of Benefits**

(a) The payment of all benefits under the Plan to the Participant shall begin on or before the sixtieth (60th) day after the close of the Plan Year in which the latest of following occurs:

- (i) The Participant attains Normal Retirement Date;
- (ii) Termination of the Participant's service with the Employer;
- (iii) The date specified in the election made by the Participant; or
- (vi) The date on which the Participant submits a written application for benefits to the Plan Administrator.

(b) Required minimum distributions: Effective, January 1, 2020 In no event will distributions commence later than the later of April 1 of the calendar year following the calendar year in which the Participant attains Age seventy and one-half (72) or April 1 of the calendar year following the calendar year in which the Participant retires (required beginning date). If payment is made as a lump sum payment, the participant will receive his entire interest on or before his required beginning date. If payment is not made as a lump sum, then the participant will commence receiving benefits in the form of periodic annuity payments with the first monthly payment commencing on the required beginning date and continuing monthly thereafter. Payments must meet the requirements of Section 9.02(B) and the incidental death benefit requirements of Code Section 401(a)(9)(G). If distributions commence to a participant prior to his required beginning date in a form that meets the requirements of this required minimum distributions subsection, then they annuity starting date shall be treated as the required beginning date. Once payments have begun, they may not be changed. Payments will be non-increasing or increase only as follows:

- (i) By a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the annuity starting date, or if later, the date of the most recent percentage increase.
- (ii) If additional benefits accrue after the participant's first distribution date, the increase that accrues during the calendar year shall be distributed beginning with the payment due on January following the end of the year in which such benefit accrues. Such increase will be distributed as soon as administratively practical and will be paid in the same form as when benefits commenced.

If the Plan Administrator is unable to effect commencement of benefits because they are unable to locate the Participant or beneficiary, the commencement of benefits may be delayed until sixty (60) days after the Participant or beneficiary is located. In the event that actual commencement of periodic benefits is later than the effective date of payments, retroactive payment will be made to such effective date.

#### **Section 9.04 - Distribution After Death**

- (a) If the distribution of a Participant's interest has begun in accordance with a method selected in Section 9.01 or Section 9.02 and the Participant dies before the entire interest has been distributed to the Participant, the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution selected pursuant to Section 9.01 or Section 9.02 as of the Participant's date of death.
- (b) If a Participant dies before receiving any distributions of interest under the Plan
  - (i) the Participant's entire death benefit shall be distributed to the Participant's beneficiaries no later than December 31 of the calendar year which contains the

fifth (5<sup>th</sup>) anniversary of the Eligible Individual's death. However, the five (5) year distribution requirement shall not apply to any portion of the deceased Participant's interest which is payable to or for the benefit of a designated beneficiary. In such event, such portion may be distributed over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such designated beneficiary) provided such distribution begins not later than the December 31 of the calendar year immediately following the calendar year in which the participant died.

(ii) the beneficiary may elect whether the five (5) year or life expectancy rule shall apply. The election must be made no later than the earlier of the September 30 of the calendar year in which distribution would be required to begin, or the September 30 of the Calendar year which contains the fifth (5<sup>th</sup>) anniversary of the participant's (or if applicable, the surviving spouse's) death. If the participant's designated beneficiary does not make an election under this provision, distributions will be made in accordance with the life expectancy rule.

- a. In the event the Participant's spouse is the Sole Designated Beneficiary, the requirement that distributions commence within one year of a Participant's death shall not apply. In lieu thereof, such distribution must commence no later than the date on which the deceased Participant would have attained age sixty-five (65). If the surviving spouse is the participant's sole beneficiary and dies before the distributions to such spouse begin, then the required minimum distribution provisions of this subsection shall apply as if the spouse were the Participant.

- b. This plan is intended to be a governmental plan as defined by the Code Section 414(d) and will rely on the special rule for governmental plans that comply with a reasonable and good faith interpretation of Section 401(a)(9) of the Code as described in Reg. 1.401(a)(9)-1Q&A-2(d) .



## ARTICLE X

### ADMINISTRATION OF THE PLAN

#### Section 10.01 – Administrative Authority

(a) *Sole responsibility and control.* Except as otherwise specifically provided herein, the Commissioners shall have the sole responsibility for and the sole control of the operation and administration of the Plan.

(b) *Powers, duties and responsibilities.* The Commissioners 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:

- (i) Resolve and determine all disputes or questions arising under the Plan, including the power to determine the rights of Eligible Individuals, Participants and Beneficiaries, and their respective benefits, and to remedy any ambiguities, inconsistencies or omissions;
- (ii) 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;
- (iii) Implement the Plan in accordance with its terms and such rules and regulations;
- (iv) Direct the Trustees with respect to the eligibility of any Eligible Individual as a Participant and the crediting and distribution of the Trust, which are to be made only upon the basis of instructions from the Commissioners pursuant to the terms of the Plan; and

(v) Establish and carry out a funding policy and method consistent with the objectives of the Plan, pursuant to which the Commissioners 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).

(c) *Act through Commissioners.* Subject to the power to delegate in the manner described in Section 10.02, the Employer shall act through the Commissioner.

**Section 10.02 -- Commissioners Administration.**

The Plan shall be operated and administered on behalf of the Commissioners by the Committee which shall be governed by the following:

(a) *Powers of the Committee.* Except as the Commissioners shall otherwise expressly determine, the Committee shall have the following powers:

- (i) To make and enforce rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;
- (ii) To make and enforce procedures to be followed by Eligible Individuals in filing applications for benefits and for furnishing the evidence necessary to establish the Eligible Individuals' right to benefits;
- (iii) To make and enforce determinations concerning the rights of Eligible Individuals applying for or receiving benefits;
- (iv) To make and enforce procedures which afford a mechanism for adjusting complaints of an Eligible Individual dissatisfied with determinations of the Committee;

- (v) To make and enforce procedures for determining the service credit of Eligible Individuals which affords Eligible Individuals an opportunity to object, in writing, and to establish service credit in advance of retirement;
- (vi) To make and enforce procedures for authorizing disbursements from the fund created under the Plan and to authorize disbursements from the Trustees of the fund in accordance with the Plan documents;
- (vii) To compute the amount of benefits that shall be payable to any person in accordance with the Plan documents;
- (viii) To interpret the Plan;
- (ix) To otherwise decide questions concerning the eligibility of any Eligible Individual to Participate in the Plan or to receive benefits from the Plan;
- (x) To employ or engage actuaries to make actuarial evaluations 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 Commissioners and to perform such other services as the Committee shall deem necessary or desirable in connection with the administration of the Plan;
- (xi) To employ or engage accountants as it shall deem necessary or desirable in connection with the administration of the Plan;
- (xii) To employ or engage legal counsel as it shall deem necessary or desirable in connection with the administration of the Plan;
- (xiii) To employ or engage any other experts as it shall deem necessary or desirable in connection with the administration of the Plan;

- (xiv) 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;
- (xv) To recommend to the Commissioners the amounts of contributions to be made by the Commissioners, from time to time, under the provisions of the Plan; and
- (xvi) To act for the Commissioners before all persons in any matter directly pertaining to the Plan.

(b) *Limits on power.* The Committee shall have no power to:

- (i) Amend or terminate the Plan;
- (ii) Determine Commissioners contributions; or
- (iii) Affect the employer-employee relationship between the Commissioners and any Eligible Individual,

all of which powers are reserved to the Commissioners unless expressly granted to the Committee.

(c). *Fiduciary powers, duties and responsibilities.* Fiduciary duties, powers and responsibilities (including 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 Committee or by written agreement executed by the involved fiduciaries and approved by the Committee in which case, such fiduciary shall have any liability, with respect to any duties, powers or responsibilities not allocated to him, 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 Committee and Trustee.

(d). *Specialized advice or assistance.*

(i) *Appoint persons or firms; rely upon advice.* The Committee 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. The Committee 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.

(ii) *Delegation to Coordinator.* The Committee 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 the Human Resources Manager of the Commissioners (the "Coordinator"), and in the same manner to revoke any such delegation of duties, powers or responsibilities. 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 Committee. Further, the Committee may authorize the Coordinator to execute any certificate or document on behalf of the Committee, in which event any person notified by the Committee 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 Committee until such third person shall have been notified of the revocation of such authority. The Committee shall not be liable for any act or omission of any person to whom the Committee'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.* The Trustees and the Committee shall use ordinary care and diligence in the performance of their duties pertaining to the Plan, but no such individual shall incur any liability:

(i) By virtue of any contract, agreement, bond or other instrument made or executed by the individual or on his or her behalf in the individual's official capacity with respect to the Plan;

(ii) 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 the individual's gross negligence or willful misconduct; or

(iii) For the neglect, omission or wrongdoing of any other person involved with the Plan.

(f) *Indemnity.* The Plan shall indemnify and hold harmless each such individual from the effects and consequences of the individual's 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 the individual's 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 their duties pertaining to the Plan, shall be entitled to look only to the Trust fund created by the Plan for payment. Such individual shall have no other right, claim or demand therefor against the Commissioners.

(g) *Liability insurance.* The Plan shall purchase, using Plan assets and as an expense of the Plan, liability insurance for the Plan and for its fiduciaries to cover liability or losses occurring by reason of an act or omission of a fiduciary.

(h) *Fiduciary's benefits.* Nothing in the Plan shall be construed so as to prevent any fiduciary from:

- (i) Receiving any benefit to which he or she may be entitled as a Participant or Beneficiary; or
- (ii) 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 Eligible Individual shall receive compensation from the Plan, except for reimbursement of expenses properly incurred); or
- (iii) Serving as a fiduciary in addition to being an officer, employee, agent, or other representative of the Commissioners 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.

**Section 10.03 -- Retirement Plan Committee.**

Except to the extent that the Commissioners has retained any power or authority, or allocated duties and responsibilities to another fiduciary, the 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:

- (i) County Administrator, as Chair of the Committee;
- (ii) Director of Human Resources,
- (iii) County Attorney,
- (iv) Director of Finance
- (v) A member of the Employee Advisory Board selected by the Employee Advisory Board.

(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 Commissioners, and the Commissioners 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 thereunder.

(c) *Organization; voting.*

(i) The Committee shall adopt such formal organization and method of operation as it shall deem desirable for the conduct of its affairs.

(ii) 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.

(iii) 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 subsection (h) of Section 10.05, either at a meeting or in writing without a meeting.



(d). *Decisions final.* Except as set forth review in Section 10.06, 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 Commissioners, the Trustees, all Participants and beneficiaries and all those persons dealing in any way or capacity with the Plan.

**Section 10.04 -- Uniformity of Discretionary Acts.**

Whenever in the administration or operation of the Plan discretionary actions by the Commissioners, the Committee 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 Code.

**Section 10.05 -- Fiduciary Standards.**

The Committee 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 individual 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.

**Section 10.06 - Review Procedure**

An Eligible Individual aggrieved by a decision of the Committee may request that the Committee review its decision, and the Committee shall then review its decision. The decision of the

Committee following such review upon request of an Eligible Individual shall be final and conclusive.

**Section 10.07 - Trust Fund**

All assets of the Plan shall be held in a Trust Fund. The Trustees, subject to the Trust Agreement between the Trustees and the Employer, shall have the responsibility for investment management of the assets of the Plan. The Trustees will be permitted to commingle the assets of the Trust Fund with its general account or one or more of its separate accounts or one or more of its commingled accounts designed for the investment of the assets of pension plans qualified under the Code. The Trustees shall cause to be prepared, at least annually, a report with respect to the value of the assets accumulated under the Plan and the transactions of the Trust Fund. Copies of this report shall be promptly furnished to the Employer and the Actuary.

## ARTICLE XI

### AMENDMENT AND TERMINATION OF PLAN

#### Section 11.01 - Amendments of Plan

The Employer shall have the right to amend this Plan in any and all respects at any time and from time to time provided, however, that: (a) no amendment shall increase the duties or liabilities of the Trustees without their written consent, (b) no amendment shall deprive any Participant of any of the accrued vested benefits to which the Participant is entitled under this Plan; (c) no amendment shall provide for the use of funds or assets held by the Trust other than for the benefit of Participants and no funds held by the Trust shall ever revert to or be used or enjoyed by the Employer prior to the satisfaction of all liabilities hereunder to its Participants and their beneficiaries; (d) no amendment may change the vesting schedule with respect to the future accrual of benefits for any Participant unless each Participant with three (3) or more Years of Vesting Service is permitted to elect to have the vesting schedule which was in effect before the amendment used to determine the Participant's vested benefit; and (e) any merger or consolidation with, or transfer of assets or liabilities to, any other plan will be valid only if each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit the Participant would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan had then terminated).

Any such amendment shall be by resolution duly adopted by the Employer and a certified copy of such amendment shall be filed with the Trustees. The Eligible Individuals shall be promptly notified if any provision of this Plan is substantially changed by amendment.

**Section 11.02 - Termination of Plan**

The Employer reserves the right to terminate its participation in this Plan at any time. Such termination shall be by a resolution duly adopted by the Commissioners, a certified copy of this resolution shall be delivered to the Trustees and the Commissioners shall promptly notify all Eligible Individuals.

**Section 11.03 - Action to be Taken on Termination of Plan**

Upon the termination, or partial termination, of the Plan by the Employer, the rights of all affected Participants to benefits accrued to the date of such termination or partial termination, to the extent funded as of such date, shall be fully vested and non-forfeitable. If the Plan is terminated in full, the Employer shall instruct the Trustee to apply the funds to pay the expenses, fees, and other charges under the Plan either outstanding or incurred as part of administration or liquidation of the Plan. .

If, after following the order of allocations set forth above, there is any amount remaining, then such amount shall be deemed to have occurred as the result of actuarial error and shall be returned to the Employer. The Actuary to the Plan shall certify that the amount that is being returned to the Employer is not needed to satisfy all of the liabilities under the Plan as to the Participants, their beneficiaries and any alternate payees.

## ARTICLE XII

### LIMITATION ON BENEFITS

#### **Section 12.01 -- Maximum Limitation on Benefits.**

(a) *Maximum benefit.* To the extent necessary to prevent disqualification under Section 415 of the Code, and subject to the remainder of this Section, the maximum monthly benefit to which any Participant may be entitled at any time (the “Maximum Benefit”) shall be equal to one-twelfth (1/12) of the amount set forth in Section 415(b)(1)(A) of the Code, as adjusted by C/L Increases, (the “Monthly Dollar Limit”). The rate of benefit accrual shall be frozen or reduced accordingly to comply with the limitations.

(b) *Actuarial adjustment of monthly dollar limit.* The Monthly Dollar Limit shall be subject to actuarial adjustment as follows:

(i) 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 Code), the Monthly Dollar Limit shall be reduced so that it is the actuarial equivalent of the single life annuity. For purposes of this paragraph (i), the Monthly Dollar Limit shall be the actuarial equivalent of the straight life annuity limit based on a 5% interest rate and the applicable mortality table under Treasury Regulation §1.417(e)-1(d)(2) that is effective for the annuity starting date.

(ii) 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. For purposes of this paragraph (ii), the Monthly Dollar Limit shall be the actuarial equivalent of the age 62 amount based on a 5% interest rate and the applicable mortality table

under Treasury Regulation §1.417(e)-1(d)(2) that is effective for the annuity starting date and the age 62 dollar amount multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan to the annual amount of the straight life annuity under the Plan commencing at age 62.

(iii) With respect to a benefit beginning after age 65, the 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.

(c) *Reducing dollar limit.* The dollar limit shall be reduced (but not by more than 90%) by 1/10th for each year of service less than 10, considering only those years of service during any part of which the Participant was participating in the Plan.

(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 Code, with respect to any Participant who is also a participant in:

(i) Any other tax-qualified pension plan maintained by the Commissioners, including a defined benefit plan in which an individual medical benefit account (as described in Section 415(l) of the Code) has been established for the Participant;

(ii) Any welfare plan maintained by the Commissioners in which a separate account (as described in Section 419A(d) of the Code) has been established to provide post-retirement medical benefits for the Participant; and/or

(iii) Any retirement or welfare plan, as aforesaid, maintained by a related employer, as described in Section 414(b), (c), (m) or (o) of the Code.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

#### **Section 13.01 - Employees' Trust**

This Plan is created for the exclusive benefit of the employees of the Employer and shall be interpreted in a manner consistent with its being an employees' trust, as defined in Section 401(a) of the Code. Therefore, under no circumstances shall any funds contributed to this Plan or any assets of this Plan or Trust ever revert to or be used or enjoyed by the Employer, nor shall any such funds or assets ever be used other than for the benefit of Eligible Individuals and their beneficiaries, prior to the satisfaction of all liabilities under this Plan to the Eligible Individuals and/or Beneficiaries.

Notwithstanding the above, an Employer contribution may be returned to the Employer upon the occurrence of the following event: In the case of an Employer contribution which in the sole opinion of the Plan Administrator is made by virtue of a mistake of fact, this section shall not prohibit the return of such contribution to the Employer within one (1) year after the payment of the contribution.

#### **Section 13.02 - Additional Limitations on Liability**

Neither the Employer, the Plan Administrator, nor the Trustees in any way guarantees this Plan against loss or depreciation, nor do they guarantee the payment from the Trust of any benefit which may become due hereunder to any present or former Participant.

#### **Section 13.03 - General Undertaking of All Parties**

All parties to this Plan and all persons claiming any interest whatsoever hereunder agree to perform any and all acts and execute any and all documents and papers which may be necessary or desirable for the carrying out of this Plan or any of its provisions.

**Section 13.04 - Agreement to Bind Heirs, Etc.**

The terms and conditions of this Plan shall be binding upon the heirs, executors, administrators, successors and assigns, as such terms shall apply, of any and all parties hereto present and future.

**Section 13.05 - Spendthrift Clause**

No Eligible Individual shall have the right to assign, alienate, transfer, encumber, or otherwise subject to lien any of the benefits provided under the Plan, and the right of any Participant, former Participant, Eligible Individual, or beneficiary to any benefit or to any payment hereunder or to any separate account shall not be subject to alienation, transfer, assignment, or encumbrance or otherwise subject to lien, except to the extent provided for by a Qualified Domestic Relations Order as defined in Section 414(p) of the Code.

**Section 13.06 - Invalidity of Certain Provisions**

If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof and this Plan shall be construed and enforced as if such provision had not been included.

**Section 13.07 - Right to Employment**

Nothing contained in the Plan or the establishment of the Trust hereunder or any modification thereof, or the creation of any fund or account for the payment of any benefit, shall be construed to give any Eligible Individual, Participant or Beneficiary any right to employment or continued employment with the Employer which he or she would have had, if the Plan not been created.

**Section 13.08 - Incapacity**

In the event that any Participant is unable to care for his or her affairs because of illness or accident, any payment due under the Plan (unless, a duly qualified guardian or other legal representative had been appointed) may be paid to the Participant's spouse, parent, brother, sister



or other person deemed by the Plan Administrator to have incurred expenses for the care of such Participant.

**Section 13.09 - Return to Employment While In Receipt of Benefits**

A Participant who is receiving retirement benefits under the Plan who then returns to work shall continue to receive accruals for benefit purposes. However, any increase in accruals shall be offset by the Actuarial Equivalent value of retirement benefits received by the Participant but in no instance shall the additional accruals be reduced to an amount less than zero. Should a Participant elect a lump sum payment and then return to employment, the Actuarial Equivalent value of such lump sum shall offset any additional accruals, but in no instance shall the additional accruals be reduced to an amount less than zero.

**Section 13.10 - Settlement of Small Pensions**

In the event that the lump sum value of the pension provided for any Participant or beneficiary of the Plan is \$5,000 or less, the Trustees shall cause such pension to be satisfied by the payment to the Participant or beneficiary entitled thereto, of a lump sum which is the Actuarial Equivalent of the pension to which the Participant is entitled. The lump sum shall be calculated utilizing the interest rate specified for lump sums in Section 2.03.

**Section 13.11 - Forfeitures**

Forfeitures, if any, will not be applied to increase the pension benefits any Participant would otherwise receive under the Plan.

**Section 13.12 - Permissible Purchase of Annuity Contracts**

The Plan Administrator, in lieu of paying the pension to which a Participant is entitled directly from the funds of the Trust, may direct the Trustees to purchase from an insurance company, any type of annuity contract which will provide retirement benefits in an amount identical to that

which the retired Participant was entitled under this Plan. Upon the purchase of an annuity contract for the benefit of a retired Participant, such contract may either be assigned to the retired Participant or retained by the Trustees for the benefit of the retired Participant. In the event of delivery to the retired Participant, such annuity contract shall be endorsed as nontransferable. If necessary, due to subsequent insolvency of the insurance company, remaining pension benefits due the Participants shall be paid for from the Trust.

**Section 13.13 - Governing Law**

Subject to Federal law, the Plan shall be construed, administered and enforced in accordance under the laws of the State of Maryland.

**Section 13.14 – Masculine, Feminine, Singular and Plural**

References to masculine gender shall include the feminine and the singular shall include the plural and the plural the singular wherever the person or entity or context shall plainly so require.

**Section 13.15 - Withholding Taxes**

The Plan Administrator may make any appropriate arrangements to deduct from all amounts paid under the Plan any taxes required to be withheld by any government or government agency. The Participant and/or Beneficiary shall bear all taxes on amounts paid under the Plan to the extent that no taxes are withheld, irrespective of whether withholding is required.

**Section 13.16 - Prevention of Escheat**

If the Trustee is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person (including a notice of payment so due mailed to the last known address of such Participant or other person as shown on the records of the Employer), such payment and all subsequent

payments otherwise due to such Participant or other person shall be forfeited three (3) years after the date such payment first became due; provided, however, that such payment and any subsequent payments shall be reinstated retroactively, no later than sixty (60) days after the date on which the Participant or person is identified or located.

**Section 13.17 - Direct Rollover of Eligible Distributions**

- (a) This Section applies to distributions made on or after January 1, 1993. 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 and that meet the requirements of Code Section 402(F), to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (b) For purposes of this Section, the following definitions apply:
  - (i) 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 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 ten (10) years or more, any distribution to the extent such distribution is required under Section 401(a)(9) of the Code, and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities). Notwithstanding the above, for taxable years beginning after

December 31, 2006, eligible rollover distributions shall include after-tax employee contributions that are not includable in gross income provided that such amounts may only be transferred to an eligible retirement plan (excluding a 457(B) Plan) that agrees account separately for the portion of such distribution which is not includable in gross income.

(ii) Eligible Retirement Plan - An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an eligible governmental deferred compensation plan as described in Section 457(B) (only if such plan accepts such rollovers and agrees to separately account for such rollover), or a qualified trust described in Section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to a beneficiary who is not the surviving spouse, an eligible retirement plan is an individual retirement account as described in Code Section 408(A) or individual retirement annuity as described in Code Section 408(B) other than and endowment contract, provided that a direct transfer is made.

(iii) Distributee - A Distributee includes an Eligible Individual or former Eligible Individual. In addition, the Eligible Individuals or former Eligible Individuals surviving spouse and the Eligible Individuals or former Eligible Individuals spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined, in Section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse. Effective

for distributions after December 31, 2008, distribute also means the employee's designated beneficiary who is not the employee's spouse.

(iv) Direct rollover — A Direct rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**Section 13.18 -- Distributions to Non-Spouse Beneficiaries.**

Notwithstanding any provision of the Plan to the contrary that would otherwise limit the options of the Beneficiary of a deceased Participant who is not a Distributee (within the meaning of Section 13.17), the Committee 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 Code in accordance with the provisions of Section 402(e)(11) of the Code.

**Section 13.19 - USERRA**

Notwithstanding any provision of this Plan to the contrary, accrual of benefits and service credits with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

**Section 13.20 – Appointed Officials**

- (a) An Appointed Official who has attained age fifty-five (55) with twenty (20) Years of Credited Service shall be eligible to retire on the first of the month on or after meeting the above stated eligibility requirements with an immediate unreduced pension benefit.
- (b) An Appointed Official whose employment is terminated by the Employer for any reason other than good cause shall be eligible to retire on the first day of the month on or after termination of employment with an immediate unreduced early pension benefit.

**13.21 - Transfer to State of Maryland Pension System**

An Employee who transfers to a State of Maryland Pension System shall not receive any benefits under this Plan for service credited under such State of Maryland Pension System.

**13.22 – Annual Cost-of-Living Review**

The Employer shall, during annual budget deliberations, consider whether a cost-of-living adjustment to Plan benefits shall be provided to Plan Participants in pay status.

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