



DEFERRED COMPENSATION PLAN OF MONTGOMERY COUNTY, MARYLAND

November 2019

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MONTGOMERY COUNTY, MARYLAND

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DEFERRED COMPENSATION PLAN OF MONTGOMERY COUNTY, MARYLAND

The Deferred Compensation Plan of Montgomery County, Maryland (the "Plan") is adopted by Montgomery County, Maryland and is an amended and restated plan of the plan most recently effective January 1, 2013 and adopted January 1, 2013. Except as otherwise specifically provided herein, this amended and restated Plan is effective on November 1, 2019.

RECITALS

The County established the Plan under Article XI of the Montgomery County Code. The County intends the Plan to qualify as a governmental eligible deferred compensation plan and trust under Section 457(b) of the Internal Revenue Code, so that contributions to the trust established under the Plan will not be taxable to participants before distribution from the Plan.

NOW, THEREFORE, Montgomery County, Maryland hereby adopts the "Deferred Compensation Plan of Montgomery County, Maryland" under the following terms and conditions set forth in this document. Notwithstanding the preceding, to the extent that the terms and conditions conflict with Article XI of the Montgomery County Code, the Montgomery County Code will control.

ARTICLE I General

1.1 Name and Type of Plan - This Plan, which is intended to be an eligible governmental 457 plan, may be referred to as the "Deferred Compensation Plan of Montgomery County, Maryland".

1.2 Applicability - The Plan applies only to an individual who meets the definition of Employee set forth herein, and his or her Beneficiaries. If an Employee has an Account under this Plan, a Severance From Employment does not require a distribution.

ARTICLE II Definitions

The terms defined in this Article have the meaning expressed in these definitions wherever used in this Plan, unless a different meaning is explicitly stated.

Account - The account of a Participant's or Beneficiary's which includes Compensation Deferrals, rollover contributions, plan to plan transfers and Roth Compensation Deferrals and gains and losses allocated or attributable. Each Account shall be divided into one or more of the following sub-accounts, to the extent applicable: Compensation Deferral Account, Rollover Account, Plan to Plan Transfer Account and Roth Compensation Deferral Account.

Administrator - The Chief Administrative Officer of the County or duly authorized designee who exercises the functions and the discretion provided under the terms of the Plan.

Applicable Dollar Amount - The maximum amount of annual elective deferral contributions permitted in a Plan Year under Code Sections 457(b)(2), 457(e)(15) or 414(v).

Beneficiary - Any person or persons designated under Section 9.1 to receive benefits from the Plan after the death of a Participant.

Board - The Board of Investment Trustees of Montgomery County, Maryland acting through its members as authorized and required under Article IX of the Montgomery County Code. The County Council appointed trustees from the County's bargaining units, or recommended by the County's bargaining units, Municipal and County Government Employees Organization, the Fraternal Order of Police (Lodge 35) and the International Association of Firefighters are prohibited from voting on any issue related to the Plan.

Code - The Internal Revenue Code of 1986, as amended.

Compensation - Wages paid to an Employee by the County increased by contributions made under Code Sections 125, 132(f), 457(b) and employment and income taxes withheld by the County and for purposes of automatic enrollment under Section 4.1, base salary.

Compensation Deferrals. Amounts of a Participant's Compensation which he elects to defer into his or her Compensation Deferral Account on a pre-tax basis as set forth in Section 4.1(a).

Compensation Deferral Account - The portion of a Participant's Account attributable to Compensation Deferrals made by a Participant as set forth in Section 4.1(a).

County - Montgomery County, Maryland, or, any participating agency that has adopted the Employees' Retirement System under Chapter 33 Article III or the Retirement Savings Plan under Chapter 33 Article VIII in the Montgomery County Code, and has complied with the provisions of Chapter 33 Article IX of the Deferred Compensation Plan in the Montgomery County Code. The participating agency must be an eligible employer as defined in Internal Revenue Code Section 457(e)(1).

Domestic Partner - A person who was registered as the domestic partner of an Employee with the Office of Human Resources on or before June 27, 2016 in a domestic partnership that did not end before an Employee's death.

Effective Date - The effective date for the amendments made by this amended and restated Plan is November 1, 2019. The Plan was originally adopted on September 30, 1980.

Eligible Retirement Plan - An individual retirement account described in Code Section 408(a), an individual retirement annuity plan described in Code Section 408(b), an individual retirement annuity described in Code Section 408A, a qualified trust described

in Code Section 401(a), an annuity plan described in Code Sections 403(a) or 403(b) or an eligible governmental plan described in Code Section 457(b).

Eligible Rollover Distribution - An Eligible Rollover Distribution is any distribution of all or any portion of a Participant's benefit under an Eligible Retirement Plan except that an Eligible Rollover Distribution does not include:

- (a) Any installment payment for a period of ten or more years;
- (b) A required distribution under Code Section 401(a)(9);
- (c) The portion of any distribution that is not includible in gross income; or
- (d) Any distribution made on account of an unforeseen emergency

Employee - Any person employed by the County, and classified as an employee of the County under Chapter 33 Article IX of the Montgomery County Code. An Employee includes any eligible elected or appointed County official, and any full-time or career-part time County employee. A salaried member of a Montgomery County Board and Commission are included in this definition. An employee of an agency which participates in the Employees' Retirement System, including the Guaranteed Retirement Income Plan, under Article III or the Retirement Savings Plan under Article VIII of the County Code may participate if that agency completed an adoption form approved by the Administrator and submitted any other information requested by the Administrator and that agency is an eligible employer under Code Section 457(e)(1).

Contractual employees, volunteer fire rescue employees, and temporary employees are not eligible to participate. Independent contractors are not eligible to participate in the Plan. An independent contractor is a person that is performing services for the County who does not have an employment relationship with the County.

A person is not an eligible Employee merely because the County provides a source of funding for the wages of such employee, directly or indirectly. The term "Employee" does not include a person who the County does not designate, at the time of hire, as being on the payroll or eligible to participate in or receive benefits under this Plan, even if any governmental or judicial authority subsequently determines the person to be an employee under common law.

An employee hired before March 1, 2005 who is a member of the bargaining unit represented by the Municipal and County Government Employees Organization (MCGEO) is eligible to participate in the Plan if he or she did not make an election to transfer his or her account to or participate in the Montgomery County Union Employees Deferred Compensation Plan. An employee represented by MCGEO who was hired before March 1, 2005 who did not have an account balance under the Plan as of March 1, 2005 may make a one-time election to participate in either the Plan or the Montgomery County Union Employees' Deferred Compensation Plan when and if they elect to participate in a 457 plan. An employee's enrollment in a plan is deemed to be an election.

Effective March 1, 2005, an employee who is a member of the bargaining unit represented by the Fraternal Order of Police (Lodge 35) or the International Association of Firefighters

is not eligible to participate in the Plan. An employee hired on or after March 1, 2005 who is a member of the bargaining unit represented by Municipal and County Government Employees Organization (MCGEO) is not eligible to participate in the Plan. A full scope temporary employee hired on or after September 1, 2004 who is a member of the bargaining unit represented by Municipal and County Government Employees Organization (MCGEO) is not eligible to participate in the Plan.

Leave of Absence - An authorized absence from active service that does not constitute a termination or severance of employment under applicable provisions of the Montgomery County Code that govern the employer-employee relationship.

Normal Retirement Age - The age designated by an active Participant, beginning no earlier than the earliest age at which the Participant may retire under the County's retirement plan in which he or she participates, and receive immediate retirement benefits (without consent of the County and without actuarial or similar reduction).

Active Participants who are members of the Employees' Retirement System (ERS) the earliest normal retirement age which may be designated is the following:

Group A and H:	Age 55 with 30 years of credited service or Age 60 with 5 years of credited service
Groups E and J:	Age 55 with 15 years of credited service or Age 46 with 25 years of credited service
Group F:	Age 55 with 15 years of credited service or Any age with 25 years of credited service. Notwithstanding the preceding, the age designated must be at least 40.
Group G:	Any age with 20 years of credited service. Notwithstanding the preceding, the age designated must be at least 40.

Active Participants who are members of the Retirement Savings Plan (RSP) or the Guaranteed Retirement Income Plan (GRIP) the earliest normal retirement age which may be designated is 62.

For all active Participants, the latest normal retirement age which may be designated is age 70.

Participant - Any person so designated in accordance with the provisions of Article III, including, where appropriate according to the context of the Plan, any former Employee who is or may become (or whose Beneficiaries may become) eligible to receive a benefit under the Plan.

Plan - The Plan set forth herein, as amended from time to time.

Plan to Plan Transfer Account - The portion of a Participant's Account established pursuant to Section 4.5.

Plan Year - January 1-December 31.

Rollover Account - The portion of a Participant's Account established pursuant to Section 4.3.

Roth Compensation Deferrals – Amounts of a Participant's Compensation which the Participant elects to defer into his or her Roth Compensation Deferral Account on an after-tax basis as set forth in Section 4.1(b).

Roth Compensation Deferral Account – The portion of a Participant's Account attributable to Roth Compensation Deferrals made by a Participant as set forth in Section 4.1(b).

Severance From Employment - The termination of a person's status as an employee of Montgomery County, Maryland under applicable provisions and regulations of the Montgomery County Code that govern the employer-employee relationship or, if applicable, the termination of an individual from a participating agency.

Trust - The trust fund established under the Plan and Section 33-144 of the Montgomery County Code in compliance with Code Section 457(g) and maintained in accordance with the terms of this Plan and the Montgomery County Code as from time to time amended.

Valuation Date – Every business day of the year.

ARTICLE III **Eligibility and Participation**

3.1 Eligibility - An Employee is eligible to become a Participant on the date he or she first performs service for the County for which he or she is entitled to Compensation.

3.2 Election - Participation in the Plan is voluntary. An Employee hired before June 6, 2010 may not participate unless he or she has completed an application in such manner as may be required by the Administrator, including an agreement to: (a) make Compensation Deferrals or Roth Compensation Deferrals as provided in Section 4.1 or (b) establish a Rollover Account under Section 4.3. An Employee also becomes a Participant if he or she has an account transferred to the Plan under Section 4.5(b). However, he or she will not actively participate in the Plan until he submits a properly completed application in the manner required by the Administrator.

An Employee hired on and after June 6, 2010 will participate in the Plan sixty days after the Employee's date of hire unless the Employee makes a written election not to participate in the Plan. An Employee who does make any written election will participate in the Plan automatically. Notwithstanding the preceding, an Employee is eligible to participate as of his or her date of hire if the Employee makes a written election to participate.

The Administrator may establish a minimum deferral amount and may change such minimums from time to time. The Employee must also select investment options and designate a Beneficiary. Any election will remain in place until a new election is filed. Sections 4.1, 5.1 and 9.1 will govern for an Employee who becomes a Participant automatically by failing to make a written election to participate and who does not select deferral amounts, investment options and a Beneficiary.

3.3 Enrollment Periods – An Employee will become a Participant as soon as practicable following the submission of his or her election form or 60 days following date of hire for Employees hired on and after June 6, 2010 who do not make any written election regarding participation and become automatically enrolled under Section 3.1. The election will be effective no earlier than the first day of the month following the Employee's submission of the election form. In the case of a new Employee, an election may be effective in the calendar month during which the Employee became an Employee if he or she submits the election form before the first day on which the Employee performs services for the County.

3.4 Participant Accounts – After a Participant enrolls, an Account will be established in the name of the Participant and the Account will be credited or charged with: (i) contributions, (ii) withdrawals, and (iii) any income, expenses, gains or losses. The Account shall be fully vested at all times.

3.5 Change in Elections - A Participant may at any time change his or her Compensation Deferral and/or Roth Compensation Deferral election. Unless the election specifies a later date, a change will take effect as soon as administratively possible. The Administrator will designate the manner and form in which election changes will be processed.

3.6 Re-employment - If a Participant has a Severance From Employment, the following rules apply:

(a) Eligibility - A re-employed individual will participate in the Plan accordance with Section 3.2.

(b) Benefit Payments - If, at the time of re-employment, the Participant is eligible to receive or is receiving benefits under the Plan, then it shall be in the sole discretion of the Administrator to determine whether such benefits shall continue or shall cease until such time as they may be paid in conjunction with the amounts accumulated with respect to the Participant's subsequent employment. At the time of re-employment, a sub-account containing the amounts attributable to the prior employment will be established.

3.7 Leaves of Absence - Employment and Plan participation shall not be deemed to have terminated employment if interrupted by a temporary absence from active service by reason of: (a) a Leave of Absence granted by the County on account of vacation, holiday, illness, incapacity (including disability), layoff or jury duty; (b) except as provided under Section 3.9, a Leave of Absence required by law or granted by the County on account of

service in the Armed Forces of the United States, (c) any other Leave of Absence during which the individual remains in active pay status (irrespective of whether the employment relationship has terminated), or (d) any other Leave of Absence, extending for not more than two years, under conditions which are not treated by the County as a termination of employment. If a Participant is on an approved Leave of Absence without Compensation, Compensation Deferrals and/or Roth Compensation Deferrals will discontinue. Notwithstanding the preceding, Compensation Deferrals and/or Roth Compensation Deferrals will only continue if an Employee receives Compensation which is reported on a W-2. Unless otherwise permitted by Federal law, a Participant is not entitled to a distribution upon a Leave of Absence.

3.8 Severance From Employment - A right to distribution under the Plan because of retirement or other termination of employment will occur only if a Participant has a Severance From Employment.

3.9 Military Service - An Employee whose employment is interrupted by qualified military service under Code Section 414(u) may elect to make additional Compensation Deferrals and/or Roth Compensation Deferrals upon resumption of employment with the County equal to the maximum Compensation Deferrals and/or Roth Compensation Deferrals that the Employee could have elected during that period if the Employee's employment with the County had continued (at the same level of Compensation) without the interruption or leave reduced by the Compensation Deferrals and/or Roth Compensation Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or if sooner, for a period equal to three times the period of the military leave).

An Employee who is performing qualified military service for a period of more than 30 days is deemed to have a Severance From Employment for purposes of receiving a distribution from the Plan. However, if the Participant elects to receive a distribution, the Participant may not make Compensation Deferrals and/or Roth Compensation Deferrals for six (6) months following the date of distribution.

ARTICLE IV **Contributions**

4.1 Compensation Deferrals - Participants may elect to defer Compensation into a Compensation Deferral Account and/or a Roth Compensation Deferral Account in accordance with the following:

(a) Amount of Deferrals-General - A Participant may elect to defer Compensation into his or her Compensation Deferral Account and/or Roth Compensation Deferral Account, that would otherwise have been paid to him or her, in any amount permitted by the Administrator under ordinary payroll procedures, provided that such amount does not exceed the lesser of: 100% of Compensation for the calendar year, or the Applicable Dollar Amount. The ~~Applicable Dollar Amount~~ Annual Deferral Limit is adjusted for cost of living to the extent provided under Code Section 415(ed).

For a Participant who does not complete an election form and becomes automatically enrolled in the Plan under Section 3.1, 1% of Compensation as of the Participant's date of hire shall be deferred on a pre-tax basis into the Participant's Compensation Deferral Account. As of the first payroll period following each March 1 and September 1, each Participant who became automatically enrolled and did not subsequently complete an election form will have 1% of Compensation as of that March 1 or September 1 deferred on a pre-tax basis into the Participant's Compensation Deferral Account.

A Participant who is age 50 or older by the end of any calendar year, may elect to defer an additional amount of Compensation into his or her Compensation Deferral Account or Roth Compensation Deferral Account as a catch-up contribution, up to the maximum amount in effect under Code Section 414(v). The maximum elective deferral amount for a year is adjusted for cost of living to the extent provided under Code Section 415(ed).

(b) Effective March 2013, a Participant may elect to make Roth Compensation Deferrals into the Participant's Roth Compensation Deferral Account. A Participant irrevocably designates such contribution as a Roth Compensation Deferral that is being made in lieu of all or a portion of the pre-tax Compensation Deferrals that the Participant is otherwise eligible to make. The Roth Compensation Deferrals are included in the Participant's income at the time the Participant would have received that amount had the Participant not made an election to contribute the amount to the Plan.

(c) Additional Compensation Deferrals or Roth Compensation Deferrals - In the last three calendar years ending before the Participant's Normal Retirement Age (as identified by their retirement group on page 6) he or she may elect to make additional Compensation Deferrals or Roth Compensation Deferrals through the catch-up provisions of Code Section 457(b)(3). The maximum amount that may be deferred under this Plan in any one of such years is the lesser of: (1) twice the Applicable Dollar Amount, or (2) the sum of: (a) an amount equal to (A) the Applicable Dollar Amount for the current year plus each prior year beginning after December 31, 2001 during which the Participant was an Employee, minus (B) the amount that the Participant deferred under the Plan during these years plus (b) an amount equal to (A) the aggregate limit in Code Section 457(b)(2) for each year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee, minus (B) Contributions to Pre-2002 Coordination Plans for these years. Additional Compensation Deferrals or Roth Compensation Deferrals cannot exceed a Participant's Compensation. A Participant may not make the Additional Compensation Deferrals or Roth Compensation Deferrals under this provision in the year he or she attains Normal Retirement Age as defined by their retirement group.

Contributions to Pre-2002 Coordination Plans means any employer contributions, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension, Code Section 403(b) annuity contract and Code Section 408(p) simple retirement account or

under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), including plans, arrangements or accounts maintained by any employer for whom the Participant performed services. However, contributions for any calendar year are only taken into account if the total of such contributions does not exceed the aggregate limit of Code Section 457(b)(2) for that year. To the extent that combined deferrals for pre-2002 years exceed the maximum deferral limits of Code Section 457(b), these amounts are disregarded.

A Plan Year will only be taken into account if (a) the Participant was eligible to participate in the Plan during all or a portion of the year and (b) amounts deferred, if any, were subject to the Applicable Dollar Limit or any other limit imposed by Code Section 457(b).

The Applicable Dollar Amount does not include the Code Section 414(v) catch-up contribution amount in any year when a Participant elects the 457 catch-up contributions under this Section, and the Code Section 414(v) catch up contributions are not taken into account as part of the calculation for prior years contributions.

A Participant must affirmatively elect to make 457 catch-up contributions by making the required application filing and designation of Normal Retirement Age with the Administrator. An election may only be made once by a Participant in relation to the Participant's service with the County, and his or her eligibility for this Plan, including plans previously adopted by the County.

(d) Contribution Procedures – Compensation Deferrals or Roth Compensation Deferrals will be made through regular payroll deductions. Compensation Deferrals or Roth Compensation Deferrals will be deducted by the County from the Compensation of the contributing Participants, and shall be paid by the relevant County authority having management authority over payroll to the Board and credited to the Participants' Accounts with reasonable promptness, and credited within 15 business days of the month following the month in which such amounts would otherwise have been paid.

The Administrator, in consultation with the Board, may establish procedural rules for the administration of a payroll deduction system, including limitations on the frequency of, and minimum notice periods for, changes, suspensions and terminations of payroll deductions by Participants. These procedural rules include the right of the Administrator, or other relevant payroll authority, to limit or reduce otherwise allowable Compensation Deferrals or Roth Compensation Deferrals to allow payment of FICA tax or other mandatory payroll deductions.

Any FICA or other payroll tax that may be imposed on the Participant with respect to Compensation Deferrals or Roth Compensation Deferrals shall, unless otherwise determined by the County, be deducted from the non-deferred remainder of the Participant's Compensation.

(e) Distribution of Excess Deferrals - Amounts contributed to this Plan in excess of the limitations set forth in this Article IV will be distributed to the Participant along with any income allocable thereto. The Administrator shall also authorize distributions to the Participant any amount that, when combined with deferrals to the Montgomery County Union Employees Deferred Compensation Plan and other Code Section 457 plans not administered by the County, causes the Participant's total yearly contributions to all such plans to exceed the maximum amount of contributions specified in Code Section 457(c). In any case the excess contribution shall be distributed with income (but not loss) allocable to the contribution, and the distribution shall occur as soon as it is administratively practical to determine the amount of the excess contribution, and to make the distribution. If making the distribution would cause the Account to have a negative balance, the County will make up the difference. Distributions made pursuant to this subsection will be in accordance with Code Section 457 and applicable regulations.

No such amount shall be distributed unless the Administrator has determined that an excess deferral has actually occurred.

For purposes of Section 4.1, a Participant is not treated as having made Compensation Deferrals or Roth Compensation Deferrals to the extent excess deferrals are distributed.

(f) Withdrawals of Compensation Deferrals with No Written Election - A Participant who becomes automatically enrolled in the Plan under Section 3.1 may elect to withdraw Compensation Deferrals for which the Participant did not make a written election and were contributed on the Participant's behalf. The Participant must elect the withdrawal no later than 90 days after the date the Compensation would otherwise have been included in gross income. The withdrawal includes amounts on the first date Compensation Deferrals were made and ends no later than the last day of the pay period after the Participant makes the election (adjusted for allocable gains and losses to the date of distribution). The amount withdrawn may be reduced by any generally applicable fees. The Plan will report the distribution to the Participant as gross income for the taxable year in which the withdrawal is made.

4.2 Participation in Multiple 457(b) Plans - If the Participant is or has been a participant in one or more other eligible 457(b) plans, then this Plan and all other plans shall be considered as one plan for purposes of applying the limits set forth in this Article IV. For this purpose, the Administrator shall take into account any other such other eligible plan maintained by the County and shall also take into account any other eligible 457(b) plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. The Participant is required to notify the Administrator of any other 457 plans in which he or she participates.

4.3 Rollover Contributions - A Participant (whether or not he or she is an Employee) may contribute to the Plan any amount which constitutes an Eligible Rollover Distribution from an Eligible Retirement Plan. A Participant may only rollover after-tax contributions if it is a direct rollover from another Roth elective deferral account under an applicable

retirement plan described in Code Section 402A(e)(1). Such rollover to the Plan will become part of the Participant's Rollover Account and shall be fully vested at all times. The Administrator shall separately account for rollover contributions and shall record whether it originated from an eligible Code Section 457 Plan or from some other type of Eligible Retirement Plan. The Administrator may require a Participant to provide such documentation as it deems necessary to confirm that the plan is an Eligible Retirement Plan or an applicable retirement plan described in Code Section 402(c)(8).

4.4 Transfers for Purchase of Service Credit - A Participant (whether or not he or she is an Employee) may direct that all or a portion of his or her Account be paid as a direct trustee-to-trustee transfer to a defined benefit governmental plan to purchase permissive service credit or to repay service credits, provided that (a) the other plan permits such a transfer, and (b) the Participant demonstrates to the Administrator's satisfaction that the transfer is to a defined benefit governmental plan (as defined in Code Section 414(d)) and the transfer is either for the purchase of service credit (as defined in Code Section 415(n)(3)(A)) or for the repayment of service credits permissible by Code Section 415(k)(3).

4.5 Plan-To-Plan Transfers to the Plan –

(a) General - The Administrator may permit Participants who are participants in another eligible governmental Code 457(b) plan to transfer assets to the Plan. The Administrator may require such documentation from the plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10), to confirm that such plan is an eligible deferred compensation plan within the meaning of Code Section 457(b), and to assure that transfers are provided for under such other plan. The amount transferred will be credited to the Participant's Account and shall be held, accounted for, administered and otherwise treated in the same manner as other contributions, except that the transferred amount will not be considered an annual deferral for purposes of determining the maximum amount in Section 4.1. Notwithstanding the preceding, any compensation deferrals made during the same Plan Year as the transfer will be taken into account for purposes of Section 4.1 in accordance with Section 4.2.

(b) Among the County's 457(b) Plans - The Administrator may permit a Participant who was a member of the bargaining unit represented by the Fraternal Order of Police (Lodge 35) or the International Association of Firefighters and becomes an eligible Employee to transfer his or her account from the Montgomery County Union Employees Deferred Compensation Plan into the Plan. A Participant who was a member of the bargaining unit represented by the Municipal and County Government Employees Organization (MCGEO) and becomes an eligible Employee not represented by MCGEO will have his or her account from the Montgomery County Union Employees Deferred Compensation Plan transferred into the Plan by the Montgomery County Union Employees Deferred Compensation Plan trustee. The transfer of such a former MCGEO member's account will be transferred as soon as administratively practicable.

The Participant whose account is transferred must have an Account balance immediately after the transfer at least equal to the amount immediately before the transfer. The account transferred will be credited to the Participant's Account and will be held, accounted for, administered and otherwise treated in the same manner as other contributions, except that the transferred amount will not be considered an annual deferral for purposes of determining the maximum amount in Section 4.1. Notwithstanding the preceding, any compensation deferrals made during the same Plan Year as the transfer will be taken into account for purposes of Section 4.1 in accordance with Section 4.2.

The Administrator may require such documentation from the plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10), to confirm that such plan is an eligible deferred compensation plan within the meaning of Code Section 457(b), and to assure that transfers are provided for under such other plan.

4.6 Plan-to Plan Transfers - Outgoing Transfers -

(a) General - The Administrator may permit a Participant to transfer all or a portion of their Account to another eligible governmental Code Section 457(b) plan. A transfer is permitted only if the Participant has had a Severance From Employment and is an employee of the entity that maintains the other eligible governmental plan. A transfer is permitted only if the other eligible governmental plan provides for plan to plan transfers and for the Participant to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

After the transfer, the Plan will have no liability to pay benefits to the Participant under this Plan to the extent of the amount so transferred for the Participant. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with Code Section 457 or the corresponding regulations.

Plan to Plan Transfers of Accounts which contain a Roth Compensation Deferral Account will only be made if the plan to which the Roth Compensation Deferral Account will be transferred permits the transfer and will separately account for the Roth Compensation Deferrals.

(b) Among the County's 457(b) Plans - The Administrator may permit a Participant who becomes ineligible to participate in the Plan and who becomes a participant in the Montgomery County Union Employees Deferred Compensation Plan to transfer all or a portion of his or her Account into that plan. The Participant whose Account is being transferred must immediately after the transfer have an account at least equal to the amount immediately before the transfer. The Participant whose deferred amounts are being transferred must not be eligible to make additional Compensation Deferrals or Roth Compensation Deferrals under the Plan. The Montgomery County Union Employees Deferred Compensation Plan must provide for transfers.

After the transfer, the Plan will have no liability to pay benefits to the Participant under this Plan to the extent of the amount so transferred for the Participant.

The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with Code Section 457 or the corresponding regulations.

4.7 Compensation Deferrals after Severance From Employment. A Participant may make Compensation Deferrals with respect to compensation as defined in Treasury Regulation Section 1.415(c)-2(e)(3)(ii), relating to compensation paid within two and half months following Severance from Employment. The Participant must make the election before the first day of the month in which the amount would otherwise be paid or made available and the Compensation must be paid by the later of 2½ months after Severance From Employment or the end of the calendar year that includes the date of Severance From Employment.

ARTICLE V

Allocation of Funds

5.1 Right of Participants to Specify Investments - Each Participant has the right to designate the percentage of his or her Account which is to be invested in any one or more investments as may be made available from time to time by the Board, under Section 11.3, and shall have the right to thereafter designate amounts to be withdrawn from any one or more investment and invested in one or more other investments then available, in accordance with the following:

(a) Such change in designation shall occur under rules and procedures established by the Board and may include (i) filing necessary signed forms, in good order, with the Administrator or its designee, or (ii) through electronic means. The maintenance by the Board of electronic or automated method of investment selection, or of methods that permit daily change in investment selection, shall not constitute a guarantee against any loss in value that may occur through a temporary inability to change such selection through use of such methods.

(b) All contributions and other amounts added to a Participant's Account, and all distributions subtracted therefrom, shall be invested or withdrawn in accordance with the then effective investment designation.

(c) In the event the Administrator or its designee receives a revised investment designation which appears incomplete, unclear or improper, the Participant's investment designation then in effect shall remain in effect.

(d) It is intended that all Participants and Beneficiaries direct the investment of their Accounts to the extent set forth in this Section 5.1. If the Administrator or its designee possesses at any time instructions as to the investment of less than all of the Participant's Account or the Participant became automatically enrolled under Section 3.1 and did not select any investment option(s), the Participant or Beneficiary shall be deemed to have designated that the non-directed portion of his or her Account be invested in the

appropriate Life Cycle Fund based on his or her individual retirement date. These Funds are considered default options.

(e) If the Board removes a particular investment option that had been available for designation by Participants, the Board may automatically transfer the balance in the removed option to another option which has similar investment characteristics if the Board notifies the affected Participants that the option is being removed from the Plan and that the investments would be redirected if they fail to take action.

ARTICLE VI

Entitlement to Benefits

6.1 Termination of Employment – Upon a Participant’s Severance From Employment, a Participant may receive a distribution of his or her Account in any form permitted under Section 7.2.

6.2 Death – If a Participant dies before receiving a distribution of his or her Account, his or her Beneficiary will receive the Account, according to the provisions of Article VII. Before a distribution occurs, the Administrator must receive satisfactory proof of death.

ARTICLE VII

Distribution of Benefits

7.1 Method of Payment. - Upon a Severance From Employment, a Participant may elect to receive his or her Account in one of the forms of benefits in Section 7.2.

The election by the Participant must be in writing and filed with the Administrator prior to the date on which benefits are due to commence. The election shall specify the portion of the account to be distributed, and/or the type and manner of payments.

7.2 Rules for Distribution – A Participant may receive a distribution of his or her Account in one of the following forms:

(a) Lump Sum. A Participant will receive his or her entire Account in one lump sum payment.

(b) Flexible Lump Sum Payments. A Participant elects to receive a portion of his or her Account in a lump sum payment. Participants will receive minimum required distributions in accordance with Code Section 401(a)(9).

(c) Installment Payments – A Participant may elect to receive his or her Account in equal installments over a period elected by him or her. Payments may be monthly, quarterly, semiannually or annually.

Installment payments may be made over a fixed period of time as elected by the Participant but may not extend beyond: (A) the life expectancy of the Participant or (B) the life expectancy of the Participant and his or her designated Beneficiary. Life

expectancies will be determined by using the tables set forth under the applicable Treasury regulations for minimum required distributions under Code Section 401(a)(9).

(d) Minimum Required Distributions - All distributions (including the amount of the distribution) shall comply with the minimum distribution rules of Code Section 401(a)(9)), including the incidental death benefit requirements, and the corresponding Treasury Regulations, regardless of any other provision of this Plan.

7.3 Timing of Benefit Commencement - Benefits under the Plan to each Participant will commence no later than April 1 after the end of the year in which occurs the latest of: (i) the date on which the Participant attains age 70½; or (ii) the Participant's Severance From Employment. If distribution does not occur until this time, the distribution for that year must equal the minimum amount required for the year the event occurred and the amount for the year after the event occurred.

7.4 Special Provisions - Death Benefits –

(a) Before Commencement of Benefits. As soon as practicable following the death of a Participant, but in no event later than the December 31st of the year containing the 5th anniversary of the Participant's death, the Participant's Beneficiary will receive the Participant's Account in a lump sum.

Alternatively, if the Beneficiary is a person, he or she may elect to receive installments (monthly, quarterly, semiannually or annually) over his or her life expectancy in accordance with the Treasury Regulations. In any year, a Beneficiary may elect to receive a greater amount than the amount calculated. Distributions must begin no later than the December 31st following the year in which the Participant died.

In the case of a spousal Beneficiary, the Beneficiary may elect to defer distribution under this Section but may not defer the distribution later the later of (a) the end of the calendar year following the calendar year in which the Participant died or (b) the end of the calendar year in which the Participant would have attained age 70½.

Notwithstanding the preceding, if the Participant's Account balance is \$1,000 or less, the account balance must be distributed in a lump sum as soon as administratively feasible after the Participant's death.

(b) After Commencement of Benefits. If a Participant dies while benefits are being paid to him or her, his or her remaining Account balance will be paid to his or her Beneficiary at least as rapidly as being paid to the Participant. Alternatively, the Beneficiary can elect to receive the Account balance in a lump sum.

7.5 Benefits on Termination of Employment - Payment of benefits to a Participant may begin within a reasonable period of time following his or her Severance From Employment

unless the Participant (subject to the minimum distribution rules of Code Section 401(a)(9)), elects to defer distribution to a later date. A failure to request payment of benefits shall constitute an election to defer distributions. Before the commencement of benefits, the Account of a Participant whose benefits are deferred will continue to be invested according to the elections last made by the Participant, and the Participant will continue to have the right to designate his or her investments as if he or she were still employed. Failure to make an affirmative election for payment of benefits does not postpone distribution beyond the latest date required under Section 7.3.

Notwithstanding the preceding, if the Participant's Account balance is \$1,000 or less, the account balance must be distributed in a lump sum as soon as administratively feasible after Severance from Employment even if the Participant does not otherwise request a distribution.

7.6 In Service Distributions – Distributions from the Plan while the Participant remains employed may only be made as follows:

(a) A Participant who has attained age 70½, but who has not had a Severance From Employment with the County, may receive a distribution from his or her Account.

(b) Any Participant who has not had a Severance From Employment may receive a distribution from his or her Rollover Account. The Administrator has the right to determine the date or dates as of which withdrawals will be permitted, but at least one such distribution date shall be provided in any Plan Year. Regardless of the number of distribution dates, a Participant shall not be permitted to make more than one withdrawal in any Plan Year.

7.7 Rollovers from the Plan – A Participant, a spousal Beneficiary of a Participant or a Participant's former spouse who is an alternate payee under a domestic relations order may elect to have any Eligible Rollover Distribution transferred directly to an Eligible Retirement Plan specified by him or her. The Administrator of the Plan shall provide such notices to Participants of their rights under this section as are required by the Internal Revenue Code. A non spousal Beneficiary may only rollover a distribution to a properly established inherited individual retirement account or annuity (IRA).

In addition, a direct rollover from a Roth Deferral Compensation Account may only be made to a retirement plan described in Code Section 402A or to a Roth IRA described in Code Section 408A.

ARTICLE VIII **Unforeseen Emergencies**

8.1 Unforeseen Emergency – "Unforeseen Emergency" means a severe financial hardship to a Participant or Beneficiary resulting from a sudden unexpected illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Code Section 152); loss of the

Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. Imminent foreclosure of or eviction from the Participant's primary residence, the need to pay for medical expenses (including non-refundable deductibles and the cost of prescription drug medication), and the need to pay for the funeral expenses of a spouse or a dependent (as defined in Code Section 152) may each constitute an unforeseen emergency. However, neither the purchase of a home nor the payment of college tuition is an unforeseen emergency.

If a Participant has an Unforeseen Emergency, he or she may apply to the Administrator (or its designee) for a withdrawal from his or her Account. The Administrator will consider the relevant facts and circumstances of each case, and shall have the right, in its sole discretion, to allow such withdrawal, or to allow the Participant to withdraw a part of the sum requested, or to refuse to allow any withdrawal. In no event shall the aggregate amount of the distribution exceed the amount determined by the Administrator to be reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay for any federal, state, or local taxes or penalties reasonably anticipated to result from the distribution), to the extent that the emergency is not or may not be relieved through reimbursement or compensation from insurance or otherwise; by liquidation of the assets of the Participant, to the extent that liquidation of such assets would not itself cause financial hardship; or by stopping the Participant's Compensation Deferrals and/or Roth Compensation Deferrals under this Plan. A Participant may not make Compensation Deferrals and/or Roth Compensation Deferrals for six (6) months after receiving a withdrawal due to an Unforeseen Emergency.

In administration of the provisions hereunder the Administrator shall make or restrict such distributions, and impose such requirements, as are established in the Code and corresponding regulations.

ARTICLE IX

Beneficiaries; Participant Data

9.1 **Designation of Beneficiaries** - Each Participant may designate any person or persons (who may be named contingently or successively) to receive such benefits as may be payable under the Plan after his or her death. Such designation may be changed by the Participant by filing a new designation. Each designation will revoke all prior designations by the Participant, shall be in a form prescribed by the Administrator, and will be effective only when filed in writing with the Administrator during his or her lifetime. A person that has an Account in the Plan because of the death of a Participant, or a person maintaining an Account with the Plan under the terms of a domestic relations order, may also designate a Beneficiary under the provisions of this Article. If upon the death of Participant there is more than one designated beneficiary, then a separate Account will be established for each Beneficiary.

In the absence of a valid Beneficiary designation, or if, at the time any benefit payment is due to a Beneficiary, there is no living Beneficiary eligible to receive the payment, validly named by the Participant, the Board shall distribute, after the Administrator authorizes the benefits, any such benefit payment to the Participant's spouse or Domestic Partner), if then living, otherwise to the Participant's then living children otherwise to the Participant's estate. In determining the existence or identity of anyone entitled to a benefit payment, the Administrator and Board may rely conclusively upon information supplied by the Participant's Personal Representative. In the event of a lack of adequate information, or in the event that any question arises with respect to any such payment, then, notwithstanding the foregoing, the Administrator, in its sole discretion, may authorize the Board to distribute such payment to the Participant's estate without liability for any tax or other consequences.

9.2 Information to be Furnished by Participants and Beneficiaries - Any communication, statement or notice addressed to a Participant or Beneficiary at his or her last post office address filed with the Administrator, or if no such address was filed with the Administrator then at the last post office address as shown on the County's records as employer, shall be binding on the Participant or Beneficiary for all purposes of the Plan.

9.3 Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments will be considered a payment to such Participant or Beneficiary and shall be deemed a complete discharge of any liability for such payments under the Plan.

ARTICLE X **Administration**

10.1 Administrative Authority - Except for the powers of the Board, and as otherwise specifically provided herein, the Administrator shall have the sole responsibility for and the sole control of the operation and administration of the Plan, and 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 the powers set forth in Article IX Section 33-143 of the Montgomery County Code and also, without limiting the generality of the foregoing, the power, duty and responsibility to:

(a) 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.

(b) Adopt such rules of procedure as in its opinion may be necessary for the proper and efficient administration of the Plan and are consistent with the Plan.

(c) Implement the Plan in accordance with such rules.

(d) Decide the eligibility of any Employee as a Participant and his or her right to receive benefits.

(e) Incur expenses in the administration of the Plan and shall be entitled to rely conclusively upon, and shall be fully protected in any action or omission taken by him or her in good faith reliance upon, the advice or opinion of any firms or persons hired to give specialized advice or assistance.

(f) Delegate by written instrument all or any part of his or her duties, powers or responsibilities. Any action of such person in the exercise of such delegated duties, powers or responsibilities shall have the same force and effect as if such action had been taken by the Administrator. Further, the Administrator may authorize one or more persons to execute any certificate or document on behalf of the Administrator, in which event any person notified by the 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 Administrator until such third person shall have been notified of the revocation of such authority.

All representatives of the Administrator, its staff, or other persons to whom the Administrator has delegated responsibility, shall use ordinary care and diligence in the performance of their duties pertaining to the Plan, but, except to the extent required by law, no such individual shall incur any liability: (i) by virtue of any contract, agreement, bond or other instrument made or executed in their official capacity with respect to the Plan, (ii) for any act or failure to act, or any mistake or judgment made, in their official capacity with respect to the Plan, unless resulting from gross negligence or willful misconduct, or (iii) for the neglect, omission or wrongdoing of any other person involved with the Plan. Such persons shall be entitled to the indemnification provisions of Maryland law for the effects and consequences of their acts, omissions and conduct in their official capacity with respect to the Plan, except to the extent that such effects and consequences shall result from their own willful misconduct or gross negligence. If any matter arises as to which an individual is entitled to indemnity hereunder, the indemnitees shall give the Administrator, Board, or the County, as the case may be, prompt written notice thereof.

10.2 Uniformity of Discretionary Acts - Whenever in the administration or operation of the Plan discretionary actions by the Administrator or the Board are required or permitted, such action shall be consistently and uniformly applied to all persons similarly situated.

10.3 Fiduciary Standards - The Administrator, the Board and all other persons in any fiduciary capacity with respect to the Plan shall discharge their duties with respect to the Plan: (i) only 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, (ii) 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 (iii) in accordance with the statutes, documents and instruments governing the Plan.

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 the reimbursement of expenses properly incurred in the performance of his or her duties under the Plan or (iii) serving as a fiduciary in addition to being an officer, employee, agent or other representative of the County.

10.4 Payment of Administration Expenses - Expenses incurred in the administration and operation of the Plan may be paid by the Board out of the Plan or from County assets, as directed by the Administrator. If expenses are allocated among Participants' Accounts, the Board may calculate same as a percentage of a Participant's deferred salary, or Account value or as a sum in dollars assessed upon the status and/or value of a Participant's Account as of the closing date for statements of such account. In allocating such expenses the Board need not assess the same charge or type of charge against every account, but may establish different charges based on the size of the account, the investment option the Participant has selected, or the type and number of transactions with respect to an individual Participant. The Board, in its discretion, may adopt methods under which Participants can elect to pay directly (rather than through reduction of account values or by deferral of salary) their proportionate share of Plan administration expenses.

10.5 Records - The Board's records, and any records of the Administrator pertaining to a Participant's account, shall be open to inspection during normal business hours by a Participant or his or her designated representative.

10.6 Claims Procedures - In the event that any Participant or Beneficiary (hereinafter referred to as the "Claimant") believes that he or she is entitled to a benefit under the Plan that has been rejected in whole or in part by the Administrator, and such benefit has not been paid or commenced, or if such benefit has been paid or commenced under terms or in an amount with which the Claimant is not in agreement, said Claimant shall have the right to file a written claim with the Administrator setting forth the reason he or she believes they are entitled to the benefit, or setting forth the nature of the dispute with the terms or amount of the benefit, as the case may be. Such claim shall be delivered or mailed to the Administrator. The Administrator will respond in writing within 60 days of receiving the request. The Administrator may respond in writing within 150 days if the written consent of the claimant is obtained. The Administrator has the discretion to review all Plan terms and a decision by the Administrator is binding on all parties.

Any reference herein to the "Claimant" shall be deemed to include any person named by the Claimant as his or her duly authorized representative, provided that such representative delivers to the Administrator a written power of attorney or otherwise satisfies the Administrator that he or she has been duly authorized to act for the Claimant.

Notwithstanding the foregoing, the claims procedures contained in this Section 10.6 shall be applied consistent with any applicable requirements contained in the Montgomery County Code.

Any claim under this Section must be brought within one year from when the claim arose.

ARTICLE XI **The Trust Fund**

11.1 Trust - All contributions under the Plan shall be paid to the Plan and deposited in the Trust. 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 any agreement under which it is maintained, shall in all respects constitute a part of the Plan. Montgomery County Government reserves the right to select, and from time to time to change, the Board, as provided in Chapter 33 Article III and Article IX of the Montgomery County Code, or any amendment thereto. The Board reserves the right to create separate or additional trusts and by express appointment designate additional trustees of such entities, or to create and administer master or group trusts that hold assets of this and other tax qualified plans, or other plans permitted to participate in group trusts under the Internal Revenue Code. The Board has all the powers set forth in Chapter 33 of Article XI of the Montgomery County Code.

11.2 Prohibition Against Diversion of Funds - It shall be impossible by operation of the Plan or Trust, by natural 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.

11.3 Investments -

(a) The Board may select for Participant designation such investment options as it deems appropriate and are not prohibited under Chapter 33 of Article XI the Montgomery County Code.

(b) The Board, without necessity of Plan amendment, may change the number and type of investment options available for Participant selection, may add additional options, and may limit or terminate the availability of, or modify the investment policy of, any separate investment option, and/or terminate the availability of separate investment options entirely.

(c) Notwithstanding any other provision of the Plan, neither the Board nor any individual member, nor the County, nor any other person who may be a fiduciary with respect to the Plan shall have any liability, fiduciary or otherwise, for any loss arising from or as a result of any investment designation by the Participant and all such persons are specifically absolved of any statutory, judicial, legal or other responsibility with respect thereto (including any responsibility to determine the appropriateness of any individual Participant's investment designations). Nothing in this provision is intended to eliminate, lessen or restrict any liability of any such person under Chapter 33 Article III, Section 33-

61C and Article IX, Section 33-145 (a) (2) of the Montgomery County Code, however, this does not preclude indemnification of a fiduciary in accordance with Chapter 33 Article III, Section 33-61A or Article IX, Section 33-145 (a) (2) of the Montgomery County Code.

ARTICLE XII

Trust Provisions

12.1 Declaration of Trust - All funds held under this Plan are held in trust pursuant to Code Section 457(g) and Chapter 33 Article IX of the Montgomery County Code for the exclusive benefit of the Participants and their Beneficiaries, to be held and administered according to the terms of this Plan and Trust. No provision of this Plan and Trust, including the reserved power of amendment, may allow any portion of the Trust to be used for any purpose other than the exclusive benefit described herein.

12.2 Trustees - The Board of Investment Trustees are the individual members appointed and serving as members of the Board of Investment Trustees, except the members recommended and appointed from the Municipal and County Government Employees Organization, the Fraternal Order of Police (Lodge 35) and the International Fire Fighters Association. No individual trustee shall have any power over the Trust, any portion thereof, or asset held therein, other than such power as is delegated to him or her by the Board as a whole. Each trustee, except the trustees recommended and appointed from Municipal and County Government Employees Organization, the Fraternal Order of Police (Lodge 35) and the International Association of Firefighters shall have the authority, responsibility and power (including the power to delegate responsibility) as set forth in Chapter 33 Article IX of the Montgomery County Code.

12.3 Identification of Funds - The Board, in their management of the Trust funds, shall sufficiently identify each account, investment, share, bond, contract or other investment asset so that it can at all times be identified as an asset of this Trust, and so that the interest of each Participant in the Trust can be determined. This requirement shall not prevent: (i) the maintenance of accounts for future Plan administration expense with the County; (ii) the use by the Board of common, group or collective trust vehicles as authorized under Revenue Ruling 81-100 and applicable provisions of the Internal Revenue Code; (iii) the use of such common, group or Master Trust arrangements with other plans under the authority of the Board, or; (iv) the delegation of authority (and consequent transfer of trust funds) to a trustee or trustees separate and distinct from themselves, such as a bank or trust company authorized by law to maintain Trust investments. Use of any such vehicles or trustees shall not lessen or increase the fiduciary responsibility of the Board members under all applicable law to ensure that the interests of the Participants and Beneficiaries are protected, and adequately accounted for.

12.4 Investment Powers - The Board shall have the authority set forth in Article XI to select the investment options under this Plan that are available for Participant selection. To the extent that funds are not currently allocable to a Participant directed account or a Participant becomes automatically enrolled under Section 3.1 and does not select an investment option(s), the Board shall have full authority to invest such sums in the

appropriate Life Cycle Fund based on a targeted retirement date. These options are considered default options.

ARTICLE XIII **Amendment**

13.1 Right to Amend - The Administrator, after consulting the Board, shall have the right to amend the Plan document in writing, at any time, and with respect to any provisions. No amendment can be made that modifies or limits the requirement that Plan assets be held for the exclusive benefit of Participants and their Beneficiaries.

13.2 Amendment Required by Federal Law - Notwithstanding the provisions of Article 13.1, the Plan may be amended at any time, retroactively if required, if found necessary in order to conform to the provisions and requirements of the Code, or any similar act or any amendments thereto or regulations promulgated thereunder; no such amendment shall be considered prejudicial to any interest of a Participant or Beneficiary hereunder.

ARTICLE XIV **Termination**

14.1 Right to Terminate - It is the intention of the County to maintain the Plan. Nevertheless, the County, by passage of statutory amendment duly enacted under law, reserves the right, at any time, to terminate contributions to the Trust or to terminate the entire Plan and may do so by amending or repealing the statutes authorizing the Plan.

14.2 Suspension of Contributions - In the event that contributions under the Plan are suspended, the Board and Administrator shall continue all aspects of the Plan, other than contributions during the period of suspension, in which event distributions will be made, as each Participant becomes entitled to a distribution, in accordance with the provisions of this Plan allowing the distribution of benefits.

14.3 Complete Termination - In the event of a complete termination of the Plan the Plan may be terminated by: (a) automatic distribution of all Accounts, at the earliest times permitted by the Code; (b) automatic transfer of Accounts to special investment options; (c) special methods of charging termination or winding-up expenses.

14.4 Plan Mergers - 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 would have been entitled to receive immediately before the transaction (if the Plan had then terminated).

ARTICLE XV **Miscellaneous**

15.1 Limitations on Liability - 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 Board or any insurance or investment company, except as provided by law or by any Plan provision. Neither the County nor the Board in any way guarantees the Trust from loss or depreciation, nor does the Board 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, the Administrator, or the Board (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. Neither the County, the Administrator, nor the Board shall be liable to any person for failure on its part to make contributions, nor shall any action lie to compel such contributions. Neither the County, the Administrator, nor the Board (or any person connected therewith) shall have any liability to any person by reason of the failure of the Plan to attain and/or maintain status as an eligible plan under Code Section 457, or the failure of the Trust to attain and/or maintain tax exempt status under Code Section 501(a), regardless of whether or not such failure is due to any act or omission (willful, negligent or otherwise) of the Board or the Administrator (or any person connected therewith).

15.2 Construction - The Plan is intended to comply with all requirements for status as an eligible plan under Code Section 457 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 having such status. 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.

Except to the extent preempted by federal law, the laws of the State of Maryland, and the Montgomery County Code shall govern, control and determine all questions arising with respect to the Plan and the interpretation and validity of its respective provisions.

If the indefinite continuance of the Plan would be in violation of the law, then the Plan shall continue for the maximum period permitted by law and shall then terminate, whereupon distribution of the Trust shall be made as provided in Section 14.3 hereof. Participation under the Plan will not give any Participant the right to be employed by the County nor any right or claim to any benefit under the Plan unless such right or claim has specifically accrued hereunder.

15.3 Anti-Alienation – Except as provided in Sections 15.4 and 15.5, no portion of any account or benefit, or interest of a Participant may be sold, transferred, assigned, pledged,

charged or used as collateral; and no such account or interest shall be subject to attachment or seizure by a creditor, including Montgomery County, Maryland acting as a creditor.

15.4 IRS Levy. - Notwithstanding Section 15.3, the Administrator may pay from a Participant's Account, the amount that the Administrator determines is lawfully demanded under a levy issued by the Internal Revenue Service with respect to a Participant or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant.

15.5 Domestic Relations Orders. - Notwithstanding Section 15.3, a judgment, decree or order which the Administrator determines to qualify as a domestic relations order as defined under Code Section 414(p) will be paid as directed in the order. Payment may be made regardless of whether the Participant is eligible for a distribution. The Administrator will establish reasonable procedures for determining the status of a domestic relations order. If the Alternate Payee does not elect a distribution, an Account in his or her own name will be established.

15.6 Mistaken Contributions – If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) will be returned to the Participant or, to the extent required or permitted by the Administrator, to the County.

IN WITNESS WHEREOF, this Plan is executed this ____th day of ____ 2019.

Montgomery County, Maryland

By: _____
Chief Administrative Officer

Attest to Consultation:

Chair, Board of Investment Trustees