

**THE CITY OF BALTIMORE  
DEFERRED COMPENSATION PLAN**

January 1, 2020 Restatement

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**ARTICLE 1**

**INTRODUCTION AND PURPOSE OF PLAN**

- 1.1 Establishment of Plan.** The Board of Trustees of The City of Baltimore Deferred Compensation Plan ("Plan") hereby adopt this January 1, 2020 Restatement of the Plan. This January 1, 2020 restatement continues the Plan as previously restated effective January 1, 2004, and as amended on several occasions since that date. The Plan's original effective date was April 1, 1975. The Plan is intended to satisfy the requirements of an eligible deferred compensation plan under Internal Revenue Code Section 457(b) and will be interpreted accordingly.
- 1.2 Purpose of Plan.** The Plan enables Employees to defer a portion of their Compensation on a pre- or post-tax basis and receive benefits at termination of employment, retirement or death or in the event of financial hardship due to unforeseeable emergencies. Participation in the Plan does not create an employment contract between any Employee and the Employer.

## ARTICLE 2

### DEFINITIONS

Whenever used in the Plan, the following terms have the meanings set forth below.

**Account Balance** -- the bookkeeping account maintained for each Participant which reflects the value of the Participant's Annual Deferrals, the earnings or losses of the Investment Options in which the Account is invested, and any distribution made to the Participant or the Participant's Beneficiary. A Participant's Account Balance also includes any Roth Contribution Account, any account established under Article 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after the Participant's death, and any account established for an alternate payee (as defined in Code Section 414(p)(8)).

**Administrator** -- the Board of Trustees, acting on behalf of the Employer. The Board may designate a Recordkeeper as an administrative services provider to carry out certain nondiscretionary, administrative functions under the Plan, as described in Article 7.

**Annual Deferral** -- the amount of Compensation deferred in any calendar year pursuant to an Employee's election in accordance with Article 3. Annual Deferrals include Designated Roth Contributions.

**Beneficiary** -- the person or persons designated by the Participant to receive benefits under the Plan after the death of a Participant in accordance with Section 5.5.

**Board of Trustees or Board** -- the Board of Trustees for the Retirement Savings Plan of the City of Baltimore established under Baltimore City Code Article 22A – Retirement Savings Plan, Subtitle 2 -- "Administration", plus one additional voting member who is collectively selected by the City of Baltimore's public safety unions.

**Business Day** -- any day on which the New York Stock Exchange is open for business.

**Code** -- the Internal Revenue Code of 1986, as amended.

**Compensation** -- the annual base salary or wage authorized for a Participant, including pay for conversion of leave, and excluding overtime pay, differential pay, environmental pay, hazardous duty pay, or other fringe benefits, or any like additional payments.

Compensation also includes amounts paid to a Participant who has had a Severance from Employment to the extent such amounts are paid by the later of 2½ months after the Participant's Severance from Employment or the end of the calendar year in which the Severance from Employment occurred, in accordance with T. Reg. §1.457-(4)(d)(1).

Compensation also includes military differential wage payments as defined in Code Section 3401(h).

**Designated Roth Contributions** -- an Annual Deferral that is designated irrevocably by the Participant at the time of the deferral election as a "designated Roth contribution" as defined in Code section 402A(c)(1), that is made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make. A Designated Roth Contribution is includible in the

Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a deferral election.

**Employee** -- any permanent officer or employee of the Mayor and City Council of Baltimore, including any such officer or employee of an agency, department, unit, subdivision, or instrumentality of the Mayor and City Council, any elected official of the Mayor and City Council of Baltimore, and any employee of the Baltimore City Public School System who is not eligible to participate in the Maryland State Retirement and Pension System.

**Employer** -- the Mayor and City Council of Baltimore and the Baltimore City Public School System.

**Expense Payment Account** -- see Section 9.11.

**Includible Compensation** -- an Employee's wages reportable in Box 1 of Form W-2 for a year for services to the Employer, subject to a maximum of \$280,000 (or such higher maximum as may apply under Code section 401(a)(17)), and increased (up to the dollar maximum) by any compensation reduction election under Section 125, 132(f), 401(k), 403(b) or 457(b) of the Code. Includible Compensation excludes employer "pick up" contributions under Code Section 414(h)(2). Includible Compensation includes amounts paid to a Participant who has had a Severance from Employment to the extent such amounts are paid by the later of 2½ months after the Participant's Severance from Employment or the end of the calendar year in which the Severance from Employment occurred, in accordance with T. Reg. § 1.457-4(d)(1). In addition, pursuant to T. Reg. § 1.457-4(d)(1), Includible Compensation includes payments made to an individual who does not currently perform services for the Employer by reason of qualified military service as defined in Code Section 414(u)(5), to the extent those payments do not exceed the amount the individual would have received if the individual had continued to perform services for the Employer rather than enter qualified military service.

**Investment Option** -- any investment product approved by the Board and offered to Participants and Beneficiaries for investment of their Account Balances under the Plan.

**Normal Retirement Age** -- age 70 ½. For purposes of the special catch-up limit under Section 4.3, a Participant may designate in writing a Normal Retirement Age that is earlier than age 70 ½, but not earlier than the earliest age at which the Participant may retire and receive, under the Fire and Police Employees' Retirement System, the Employees' Retirement System, or the Elected Officials' Retirement System, immediate retirement benefits without reduction for commencement before some later specified age. If the Participant is a qualified police or firefighter as defined under Code Section 415(b)(2)(H)(ii)(I), the designated Normal Retirement Age may be as low as age 40. If the Participant is a Non-hybrid member of the Retirement Savings Plan (and thus is not a Class D member of the Employees' Retirement System), the Participant's designated Normal Retirement Age may not be earlier than age 65.

**Participant** -- an individual (other than a Beneficiary) who has an Account Balance under the Plan.

**Plan** -- the City of Baltimore Deferred Compensation Plan, as set forth herein, as amended.

**Plan Year** -- the calendar year.

**Recordkeeper** -- see Section 7.1. The current Recordkeeper is Nationwide Retirement Solutions, Inc.

**Roth Contribution Sub-Account** -- see Section 3.3(c).

**Severance from Employment** -- the date that the Employee dies, retires or otherwise has a termination from employment with the Employer.

**Trust Agreement** -- the trust agreement under which the Plan trustee holds all of the assets of the Plan. The current trustee is Nationwide Trust Company, FSB, a division of Nationwide Bank.

**Trust Fund** -- the trust fund created under Article 8.

## ARTICLE 3

### PARTICIPATION AND CONTRIBUTIONS

3.1 **Eligibility.** Each Employee will be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by the Employer or, in the case of an Employee elected or appointed to office, on the date he or she assumes office.

3.2 **Election Required for Participation.**

(a) An Employee may become a Participant by electing to defer a portion of his or her Compensation subject to the limits of Article 4, and have that amount contributed as an Annual Deferral on his or her behalf. This participation election must be made on forms provided by the Administrator for that purpose or through the Plan's website. The minimum deferral amount is \$10 per pay period, or such other minimum as the Administrator may specify.

(b) An Employee making a participation election may also direct that his or her Account Balance be allocated among the available Investment Options. The Account Balance of an Employee who fails to select an Investment Option automatically will be invested in the Investment Option designated by the Administrator as the default Investment Option, until such time as the Participant affirmatively selects an Investment Option.

(c) An Employee making a participation election may also designate a Beneficiary pursuant to Section 5.5.

(d) Any election under this Section 3.2 will remain in effect until a new election is made pursuant to Section 3.7. If a Participant has a Severance from Employment and is later rehired, their participation election from before the Severance will not be reinstated and the Participant must make a new participation election in order to resume Annual Deferrals.

3.3 **Designated Roth Contributions.**

(a) A Participant may make Designated Roth Contributions, subject to the limits of Article 4.

(b) Unless specifically stated otherwise, Designated Roth Contributions will be treated as Annual Deferrals for all purposes under the Plan. Designated Roth Contributions will comply with all applicable requirements under Code sections 402A and 457(b) and related Treasury Regulations.

(c) Contributions and withdrawals of Designated Roth Contributions will be credited and debited to a separate subaccount maintained for each Participant ("Roth Contribution Sub-Account") within the Participant's Account Balance. The Plan will maintain a record of the amount of Designated Roth Contributions in each Participant's Roth Contribution Sub-Account. Gains, losses and other credits or charges will be



separately allocated on a reasonable and consistent basis to each Participant's Roth Contribution Sub-Account and to the remainder of his or her Account Balance. No contributions other than Designated Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Contribution Sub-Account.

(d) Notwithstanding Section 5.8, a direct rollover of a distribution from a Roth Contribution Sub-Account may only be made to another designated Roth contribution account under an applicable retirement plan described in Code Section 402A(e)(1) or to a Roth IRA described in Code Section 408A, and only to the extent the rollover is permitted under Code Section 402(c).

**3.4 Commencement of Deferrals.** An Employee's election to defer Compensation made under Section 3.2 will become effective on the first pay date of the calendar month following the month in which the election is made, or as soon as administratively practicable thereafter.

**3.5 Information Provided by the Participant.** Each Employee enrolling in the Plan must provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including whether the Employee is a participant in any other eligible plan under Code Section 457(b).

**3.6 Contributions Made Promptly.** Annual Deferrals by the Participant will be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance.

**3.7 Amendment of Annual Deferrals Election.**

(a) Subject to other provisions of the Plan, a Participant may at any time change the amount of his or her Annual Deferrals, his or her Investment Option selection and his or her designated Beneficiary.

(b) A change in the amount of Annual Deferrals and in the selection of Investment Options must be made on forms provided by the Administrator for that purpose, through the Plan's website, or through such other customer service provided by the Recordkeeper. However, the Employer retains the authority to limit the frequency of changes to the amount of Annual Deferrals, applied uniformly to all similarly situated Employees, as it deems appropriate. A change in Beneficiary must be made on forms provided by the Administrator for that purpose or through the Plan's website.

(c) Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals will take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the selection of Investment Option(s) for an existing Account Balance will take effect as of the end of the Business Day in which the change is received by the Recordkeeper, or as of the end of the next following Business Day if the Recordkeeper determines that the change is received too late in the day to be given effect on the day of receipt. A change in the selection of Investment Option(s) for future Annual Deferrals will take effect as soon as administratively practicable. A change in the Beneficiary designation will take effect upon receipt by the Administrator.

**3.8 Leave of Absence.** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals will continue to the extent that Compensation continues. If a Participant is on a leave of absence without Compensation (including for a period of disability), then on termination of such leave and return to active employee status, the Participant must make a new election under Section 3.2 in order to resume Annual Deferrals.

## ARTICLE 4

### ANNUAL DEFERRAL LIMITS

- 4.1 **Basic Annual Deferral Limit.** Subject to Sections 4.2 and 4.3, a Participant's Annual Deferrals for any calendar year cannot exceed the lesser of (i) the Applicable Dollar Amount or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount set forth under Code Section 457(e)(15), as adjusted.
- 4.2 **Age 50 Catch-up Contributions.** A Participant who is age 50 or more by the end of a calendar year may make additional Annual Deferrals, up to the age 50 catch-up amount for the year. The age 50 catch-up amount for a calendar year is the amount set forth under Code Section 414(v)(2), as adjusted.
- 4.3 **Special Catch-up Limit.** For each of the last three calendar years preceding the year in which a Participant attains Normal Retirement Age, the Participant's Annual Deferral limit under this Article 4 is the greater of (i) and (ii), where (i) is the sum of the limits under Sections 4.1 and 4.2, and (ii) is the lesser of:
- (a) Two times the Applicable Dollar Amount under Section 4.1 for each such year; or
  - (b) The sum of:
    - (1) An amount equal to the aggregate limit under Section 4.1 for the current year plus each prior calendar year beginning after 2001 during which the Participant was an Employee, minus the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
    - (2) An amount equal to the aggregate limit under Code Section 457(b)(2) for each calendar year beginning after 1978 and before 2002 during which the Participant was an Employee (determined without regard to Sections 4.2 and 4.3), minus the aggregate contributions to Pre-2002 Coordination Plans (as defined in Section 4.4(c)) for such years.

However, in no event can the deferred amount be more than the Participant's Includible Compensation for the year.

- 4.4 **Special Rules.** For purposes of this Article 4, the following rules will apply:
- (a) If the Participant is or was a participant in one or more other eligible plans under Code Section 457(b), then deferrals under such other plans will be aggregated with Annual Deferrals under this Plan when applying the limits of this Article 4. For this purpose, the Administrator will take into account any other such eligible plan maintained by the Employer and will also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

(b) In applying Section 4.3, a year will be taken into account only if the Participant was eligible to participate in the Plan during all or a portion of the year and Compensation deferred, if any, under the Plan was subject to the maximum amount described in Section 4.1 or any other plan limit required by Code Section 457(b).

(c) For purposes of Section 4.3(b)(2), the term “contributions to Pre-2002 Coordination Plans” means any employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any eligible Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP), 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 the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 4.3(b)(2) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code section 457(b)(2) for that year.

(d) For purposes of Sections 4.1, 4.2 and 4.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals (as defined in Section 4.5) under the plan are distributed. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

#### **4.5 Correction of Excess Deferrals.**

(a) If a Participant's Annual Deferrals for any calendar year exceeds the limits of this Article 4, or if a Participant's Annual Deferrals for any calendar year exceeds the limits of this Article 4 when combined with amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limit (“Excess Deferral”), as adjusted for earnings or losses, will be distributed to the Participant.

(b) The federal income tax treatment of any excess Annual Deferrals under this Section 4.5 that are attributable to Designated Roth Contributions will be governed by the provisions of Code Section 402A.

#### **4.6 Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee’s employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made by 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 interruption or leave.

## ARTICLE 5

### DISTRIBUTION OF BENEFITS

#### **5.1 Event of Distributions.**

(a) A Participant's Account Balance may not be paid to the Participant (or the Participant's Beneficiary) until one of the following events occurs:

- (1) the Participant's Severance from Employment;
- (2) the calendar year in which the Participant attains age 70 ½;
- (3) the Participant's death;
- (4) an unforeseeable emergency, subject to Section 5.6;
- (5) the Participant elects a small Account Balance distribution under Section 5.7.

(b) The federal income tax treatment of distribution of a Roth Contribution Account will be governed by the provisions of Code Section 402A.

#### **5.2 Severance of Employment Distribution.**

(a) (1) A Participant who has a Severance of Employment may receive distribution of his or her Account Balance by filing written application on forms provided by the Administrator.

(2) Distribution to the Participant must commence no later than April 1 of the year following the later of the year in which the Participant attains age 70 ½ or the year in which the Participant has a Severance of Employment. The amount of such required minimum distribution will be determined in accordance with Code Section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code Section 414(d).

(b) A Participant (or the Participant's Beneficiary) may elect a distribution in the form of:

(1) A single or partial lump sum cash payment.

(2) Periodic installment payments on a quarterly, monthly or annual basis over a fixed period of years or a fixed dollar amount as elected by the Participant. Subject to subsection (c), if a fixed period of years is elected, the amount payable each year is:

(i) the Participant's Account Balance at the end of the preceding year, multiplied by

(ii) a fraction, the numerator of which is 1 and the denominator of which is the number of years remaining in the installment payment period.

(3) Purchase of a single-premium, nontransferable, immediate or deferred annuity contract that provides one or more of the following payment options:

(i) a single-life annuity under which the Participant receives equal monthly payments during his or her lifetime, with no further payments after the Participant's death.

(ii) a joint and survivor annuity under which the Participant receives equal monthly payments during his or her lifetime, and on the Participant's death, monthly payments continue to the Participant's designated Beneficiary during the Beneficiary's lifetime, if the Beneficiary survives the Participant.

(iii) a guaranteed annuity under which the Participant receives equal monthly payments during his or her lifetime, and if the Participant dies before receiving monthly payments for a guaranteed period of 5, 10, or 15 years, as elected by the Participant, the Participant's designated Beneficiary will continue to receive monthly payments for the remainder of the guaranteed period.

(c) The Participant's entire Account Balance must be distributed over the life of the Participant or the joint lives of the Participant and designated Beneficiary, or over a period not extending beyond the life expectancy of the Participant or the joint life expectancies of the Participant and designated Beneficiary. Notwithstanding any other provision of the Plan, the elected form of distribution must comply with required distribution rules under Code Section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code Section 414(d), including any minimum distribution incidental benefit requirements.

**5.3 Reemployment After Distributions Have Begun.** If a Participant receives a distribution of his or her Account Balance following Severance from Employment and is later reemployed as an Employee, such reemployment will not affect amounts previously distributed or still being distributed in accordance with an installment or annuity method of distribution in effect at the date of reemployment. A reemployed Participant may resume making Annual Deferrals in accordance with Article 3. However, a reemployed Participant may elect to cease distribution of installment payments during the period of reemployment by application to the Administrator. Upon a reemployed Participant's subsequent Severance from Employment, if the Participant elected to cease distributions of installment payments, the Participant must make a new application under Section 5.2 to receive a distribution from his or her Account Balance.

**5.4 Death Benefit Distributions.**

(a) If a Participant dies after distribution of his or her Account Balance has begun, any remaining portion of the Account Balance will continue to be distributed to

the Participant's Beneficiary in accordance with the method of distribution in effect before the Participant's death.

(b) If a Participant dies before distribution of his or her Account Balance has begun, the Participant's Beneficiary will be entitled to receive the Participant's Account Balance in a lump sum cash payment as soon as administratively practicable after date of death.

(c) Notwithstanding any other provision in the Plan to the contrary, if distribution of a Participant's Account Balance begins after the Participant's death, the entire Account Balance must be distributed no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death, and distribution must otherwise comply with Code Section 401(a)(9) and the regulations thereunder, as applicable to a governmental plan as defined in Code Section 414(d).

## **5.5 Beneficiary Designation.**

(a) A Participant may designate a Beneficiary or Beneficiaries, and change such designation at any time, in writing on forms provided by the Administrator for that purpose or through the Plan's website. Any such designation or change will take effect upon receipt by the Administrator. Participants may designate primary and secondary Beneficiaries, and may designate multiple Beneficiaries to share equally in or receive specific percentages of the Participant's Account Balance.

(b) If a Beneficiary designation is changed after installment payments have begun, the length of the installment payment period may not change. A Beneficiary designation may not be changed after an annuity contract has been purchased, unless expressly allowed under the terms of the contract.

(c) If the Administrator determines that there is no valid Beneficiary designation, or if all designated Beneficiaries predecease the Participant, the Participant's Account Balance will be paid to the Participant's surviving spouse, or if there is no surviving spouse, to the Participant's estate. If any question or dispute arises regarding payment of a Participant's Account Balance following the Participant's death, the Administrator may retain the Account Balance until it is satisfied that the right to payment has been finally determined.

(d) Beneficiaries who cannot be located are handled in accordance with Section 9.6(c).

## **5.6 Unforeseeable Emergency Distributions.**

(a) A Participant may request a withdrawal for a severe financial hardship due to an unforeseeable emergency before Severance from Employment by submitting a written application to the Recordkeeper accompanied by evidence of the unforeseeable emergency. The Recordkeeper may require such evidence as deemed necessary to determine if a withdrawal is permitted. If the Participant has an unforeseeable emergency, the Participant may elect to receive a lump sum distribution equal to an amount not to exceed the amount reasonably necessary to satisfy the emergency need,

which may include amounts necessary to pay federal, state or local income taxes or penalties reasonably anticipated to result from the distribution, as determined by the Recordkeeper. The withdrawal will be taken pro rata from the Participant's Investment Options. The Administrator may impose a reasonable fee upon unforeseeable emergency withdrawals.

(b) An "unforeseeable emergency" is defined as a severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant's spouse or dependents (as defined in Code section 152(a) without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)); 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 natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code section 152(a) without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including nonrefundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 5.6, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency. This definition will be applied in accordance with T. Reg. § 1.457-6(c)(2).

(c) A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of Annual Deferrals under the Plan. The Plan may suspend a Participant's Annual Deferrals while the Participant's request for a severe financial hardship withdrawal due to an unforeseeable emergency is pending. Payment of a severe financial hardship withdrawal due to an unforeseeable emergency will result in mandatory suspension of a Participant's Annual Deferrals for a period of six months from the date of payment.

(d) Withdrawal due to an unforeseeable emergency may not be taken from a Participant's Roth Contribution Account.

## **5.7 Distribution of Small Account Balances.**

(a) Upon written request to the Administrator, a Participant who has not had a Severance from Employment may elect to receive a distribution of his or her total Account Balance in a lump sum if (1) the Account Balance does not exceed \$5,000, (2) no Annual Deferral has been made for the Participant during the two year period immediately prior to the date of distribution, and (3) the Participant has not previously received a distribution of his or her Account Balance under this Section 5.7.

(b) If a Participant has a Severance from Employment and the Participant's total Account Balance is less than \$1,000, then the total Account Balance will



automatically be distributed to the Participant (without the Participant applying) as soon as administratively practicable after 90 days after the Severance from Employment.

## **5.8 Direct Rollovers.**

(a) Notwithstanding any provision of the Plan to the contrary, a Distributee may elect to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan in a direct rollover, at the time and in the manner prescribed by the Administrator.

(b) An "Eligible Rollover Distribution" means any distribution of all or a portion of a Participant's Account Balance, except that an Eligible Rollover Distribution does not include:

(1) any distribution that is one of 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 a designated Beneficiary, or for a specified period of 10 years or more;

(2) any distribution made under Section 5.6 as a result of an unforeseeable emergency; or

(3) any distribution to the extent such distribution is a required minimum distribution under Code section 401(a)(9).

(c) An "Eligible Retirement Plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a governmental entity described in Code Section 457(e)(1)(A), an annuity contract described in Code Section 403(b), or a Roth IRA described in Code Section 408A, that accepts the Distributee's Eligible Rollover Distribution. However, for an Eligible Rollover Distribution to a designated Beneficiary other than the surviving spouse, an Eligible Retirement Plan is only an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) that is treated as an inherited IRA in accordance with Code Section 402(c)(11).

(d) A "Distributee" includes a Participant or former Participant or the Participant's or former Participant's designated Beneficiary. In addition, the Participant's or former Participant's spouse or former spouse are Distributees with regard to the interest of the spouse or former spouse.

**5.9 Amount of Account Balance.** The amount of any payment under this Article 5 will be based on the Account Balance on the preceding valuation date, plus Annual Deferrals made to the Plan from the valuation date to the date of distribution. For this purpose, "valuation date" means each Business Day or such other valuation date as specified by the provider of a particular Investment Option offered under the Plan.

## ARTICLE 6

### ROLLOVERS AND TRANSFERS

#### **6.1 Rollover Contributions to the Plan.**

(a) A Participant who receives an Eligible Rollover Distribution (as defined in Section 5.8(b)) from another eligible retirement plan (as defined in Code Section 402(c)(8)) may request to have all or a portion of such Eligible Rollover Distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code Section 402(c)(8).

(b) A separate sub-account will be maintained for the Participant for any eligible rollover distribution paid to the Plan. The rollover contribution will be invested in accordance with the Participant's current Investment Option(s) selected for his or her Annual Deferrals.

(c) The Plan will accept a rollover contribution from another designated Roth contribution account only under an applicable retirement plan described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code section 402(c) and T. Reg. §1.402A-2. The administrator or other responsible party of such plan must provide this Plan with a statement indicating the first year of the five taxable year period and the portion of the rollover distribution that is attributable to investment in the contract under Code Section 72 or a statement that the distribution is a "qualified distributor" as defined in Code Section 402A(d)(2). Any rollover contribution that includes designated Roth contributions must be accounted for separately from other rollover contribution amounts.

**6.2 Plan-to-Plan Transfers to the Plan.** Participants who are participants in another eligible governmental plan under Code Section 457(b) may transfer assets to this Plan as provided in this Section 6.2, but only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10) and T. Reg. §1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in T. Reg. §1.457-2(f). The amount so transferred will be credited to the Participant's Account Balance and will be treated in the same manner as an Annual Deferral by the Participant under the Plan, except that transferred amounts will not be considered in determining the maximum deferral under Article 4.

**6.3 Plan-to-Plan Transfers from the Plan.** Participants and Beneficiaries may elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of Code Section 457(b) and T. Reg. §1.457-2(f). A transfer is permitted for a Participant under this Section 6.3 only if the Participant has a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted only if the other eligible

governmental plan provides for the acceptance of plan-to-plan transfers with respect to Participants and Beneficiaries and for each Participant or Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

Upon the transfer of assets under this Section 6.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan will be discharged to the extent of the amount so transferred. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.3 (e.g., to confirm that the receiving plan is an eligible governmental plan and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to T. Reg. §1.457-10(b).

- 6.4** **Permissive Service Credit Transfers.** A Participant may elect to have any portion of his or her Account Balance transferred to a tax-qualified, governmental defined benefit plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving governmental defined benefit plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3). A transfer for such purpose may be made before the Participant has a Severance from Employment.

## ARTICLE 7

### ADMINISTRATION

**7.1 Plan Administration – Board of Trustees.** The Plan is administered by the Board of Trustees acting on behalf of the Employer in accordance with Code Section 457 and regulations thereunder. The Board is established under and governed by Baltimore City Code Article 22A – Retirement Savings Plan, Subtitle 2 – “Administration”, the provisions of which are incorporated herein by reference and supersede any inconsistent provision of this Plan, except as otherwise expressly provided herein.

The Board may delegate specific duties and responsibilities under the Plan, including by contracting with an administrative service provider (such as the Recordkeeper) to perform specific, nondiscretionary administrative functions under the Plan. Any reference in this Plan to the Administrator includes a reference to the Recordkeeper to the extent of duties and responsibilities delegated by the Board to the Recordkeeper. The Board may also delegate specific duties and responsibilities under the Plan to a custodial bank to serve as trustee of the Plan.

**7.2 Administrative Appeal.**

(a) Right of Appeal. Any person aggrieved by a determination made or action taken with respect to a person’s eligibility to participate in or benefits under this Plan may appeal that determination or action to the Board. Notwithstanding the preceding sentence, the Deferred Compensation Plan Unforeseeable Emergency Withdrawal Appeal Process set forth in Appendix A will apply to a determination made or action taken with respect to any unforeseeable emergency withdrawal request.

(b) When and How Taken. A notice of appeal must be filed with the Board within one year of the determination or action in question.

(c) Hearing. On receipt of a notice to appeal, the Board must hold a hearing on the appeal as soon as administratively practicable. Except as otherwise provided in this Section 7.2 or by rule or regulation of the Board, the hearing must be conducted in an orderly but informal manner and formal rules of evidence and trial procedures do not apply.

(d) Counsel. The person filing the appeal may be represented by counsel at the hearing. The Plan will be represented by the City Solicitor or the Solicitor’s designee.

(e) Witnesses. All witnesses testifying at the hearing must do so under oath or by affirmation, subject to the penalties of perjury.

(f) Decision. As soon as administratively practicable after the hearing, the Board must render its decision and notify the person filing the appeal of that decision. In its decision, the Board may affirm, modify, or reverse the determination or action from which the appeal was taken.

**7.3 Judicial and Appellate Review.**

(a) Judicial Review. A party aggrieved by a final decision of the Board under Section 7.2 may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) Appellate Review. A party to the judicial review may appeal the court's final judgment to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

## ARTICLE 8

### TRUST FUND

A Trust Fund is hereby created to hold all of the assets of the Plan. All amounts of Annual Deferrals, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights will be held and invested in the Trust Fund in accordance with this Plan. The Trust Fund, and any subtrust established under the Plan, will be established pursuant to a written agreement that constitutes a valid trust under the laws of the State of Maryland. The Trust Fund is intended to be exempt from taxation under Code Sections 457(g) and 501(a). The assets of the Trust Fund will be held in trust for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. It will be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries or to pay expenses of Plan administration in accordance with Section 9.11. For purposes of this Article 8, custodial accounts and annuity contracts will be treated as held in trust so long as such custodial accounts and annuity contracts satisfy the requirements set forth in T. Reg. §1.457-8(a)(3).

The trustee will be the Board, or such other person or entity that is designated by the Board as trustee and agrees to act in that capacity hereunder. The trustee will hold and invest all the assets of the Trust Fund in accordance with the terms of this Plan and the Trust Agreement. The trustee will ensure that all investments, amounts, property and rights held under the Trust Fund are held for the exclusive benefit of Participants and their Beneficiaries or to pay expenses of Plan administration in accordance with Section 9.11. The Board, the Employer and the trustee will be liable to pay benefits under this Plan only to the extent of amounts that are available under the Investment Option(s) selected by Participants and Beneficiaries, and the Board will not be responsible for the investment or performance results of such Investment Option(s).

## ARTICLE 9

### MISCELLANEOUS

- 9.1 **Nonassignability.** Except as provided in Sections 9.2 and 9.3, the interests of each Participant or Beneficiary under this Plan are not subject to the claims of creditors. Participants and Beneficiaries may not sell, assign, transfer or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be nonassignable and nontransferable. Furthermore, no unpaid benefits will be subject to attachment, garnishment or execution for the payment of any debts or judgments or be transferable by operation of law in the event of bankruptcy or insolvency of the Participant or any other person.
- 9.2 **Domestic Relations Orders.** A Participant's Account Balance may be subject to division under a domestic relations order between the Participant and the alternate payee (as defined in Code Section 414(p)(8)) if the order is determined to a qualified domestic relations order (as defined in Code Section 414(p)(1) and modified by Code Section 414(p)(11)). The Administrator will establish reasonable procedures for determining the qualified status of a domestic relations order and for effectuating distribution pursuant to a qualified domestic relations order. Distribution may be made immediately to an alternate payee pursuant to a domestic relations order without regard to whether the Participant is eligible for a distribution of benefits under the Plan and may only be made in a form of distribution permitted under the Plan. If distribution is not made immediately to the alternate payee, a separate Account Balance will be established for the alternate payee to which the assigned portion will be transferred. The alternate payee has the same rights and obligations as a Participant regarding the separate Account Balance, including selecting Investment Options.
- 9.3 **IRS Levy.** Notwithstanding Section 9.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.
- 9.4 **Mistaken Contributions.** If any 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 the mistaken contribution (adjusted for investment earnings or losses) will be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.
- 9.5 **Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder 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, including a guardian or other legal representative that has been duly appointed. Such payments will be considered a payment to such Participant or Beneficiary and will, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

## 9.6 **Unlocatable Participants and Beneficiaries.**

(a) The Administrator will take all reasonable steps to locate a Participant or Beneficiary who is required to receive a distribution of benefits under Sections 5.2 or 5.4. If after taking all reasonable steps the Administrator determines that it is unable to locate a Participant or Beneficiary who is required to receive a distribution of benefits under those Sections, the Participant's or Beneficiary's Account Balance will be handled in accordance with the Recordkeeper's unclaimed property procedures.

(b) If a Participant or Beneficiary applies for a distribution of benefits, and at any time thereafter benefit payments to the Participant or Beneficiary become undeliverable, the Administrator will take all reasonable steps to locate the Participant or Beneficiary. If after taking all reasonable steps the Administrator determines that it is unable to locate the Participant or Beneficiary, the Participant's or Beneficiary's Account Balance will be handled in accordance with the Recordkeeper's unclaimed property procedures.

(c) If the Administrator becomes aware that a Participant has died, the Administrator will take all reasonable steps to locate the Participant's Beneficiary(ies). If after taking all reasonable steps the Administrator determines that it is unable to locate the Beneficiary(ies), the Participant's Account Balance will be handled in accordance with the Recordkeeper's unclaimed property procedures.

9.7 **Applicable Law.** This Plan will be construed under the laws of the State of Maryland and is established with the intent that it meets the requirements of an eligible deferred compensation plan under Code Section 457(b). The provisions of this Plan will be interpreted whenever possible in conformity with the requirements of Code Section 457(b).

9.8 **Severability.** If any provision of this Plan is invalid or unenforceable, the remaining provisions of the Plan will continue to be fully effective.

9.9 **Headings.** The headings of articles, sections or other subdivisions hereof are included solely for convenience of reference, and if there is any conflict between such headings and the text of the Plan, the text will control.

9.10 **Gender and Number.** The masculine pronoun, whenever used herein, will include the feminine pronoun, and the singular will include the plural, except where context requires otherwise.

## 9.11 **Expense Payment Account.**

(a) An Expense Payment Account will be established within the Trust Fund to hold any revenue sharing or similar payments received by the Plan from or with respect to an Investment Option. The Expense Payment Account will be invested as directed by the Board.

(b) Any reasonable expenses incurred in the administration of the Plan may be paid from the Expense Payment Account, in accordance with expense payment guidelines



adopted under the Retirement Savings Plan. Administration expenses not paid from the Expense Payment Account will be paid by the Employer.

(c) Any balance in the Expense Payment Account that the Board determines exceeds the amount needed to pay administration expenses may be reallocated as determined by the Board.

ARTICLE 10

AMENDMENT OR TERMINATION


10.1 **Amendment or Termination of the Plan.** The Board of Trustees may amend this Plan at any time, provided that no amendment will increase the duties or liabilities of the trustee without written consent of the trustee. Any amendment to the Plan will be set forth in writing, and a copy will be provided to the trustee following its adoption. The Board of Estimates may terminate the Plan. However, no termination or amendment will affect the rights of a Participant or a Beneficiary to the receipt of benefits attributable to Compensation deferred before termination or amendment.

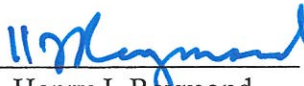
10.2 **Distribution Upon Termination.** Upon termination of the Plan, the Board of Trustees will direct distribution of the assets of the Plan and Trust Fund to Participants and Beneficiaries in a manner that is consistent with and satisfies the provisions of Article 5 as soon as administratively practicable after a resolution to terminate the Plan is adopted.

**IN WITNESS WHEREOF**, the undersigned Board of Trustees has, as of the date set forth below, executed this Restatement of the Plan to take effect on January 1, 2020.


ATTEST:

BOARD OF TRUSTEES OF THE  
RETIREMENT SAVINGS PLAN OF THE  
CITY OF BALTIMORE

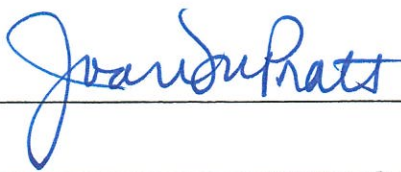
  
\_\_\_\_\_  
Alternate Custodian of the City Seal

BY:  (SEAL)  
Henry J. Raymond  
Chairman

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY ON  
BEHALF OF THE CITY SOLICITOR

  
\_\_\_\_\_  
Ehen Williams-Callahan  
ERS General Counsel

APPROVED BY THE BOARD OF ESTIMATES

  
\_\_\_\_\_  
OCT 30 2019 Date

## APPENDIX A

### **DEFERRED COMPENSATION PLAN UNFORESEEABLE EMERGENCY WITHDRAWAL APPEAL PROCESS**

If a Participant's request for an unforeseeable emergency withdrawal pursuant to Section 5.6 of the Plan is finally denied by the Recordkeeper in whole or in part, and if the Participant has completed the Recordkeeper's internal appeal process, the Participant may appeal the denial to the Appeal Committee. The Appeal Committee will consist of three persons appointed by the Board for the purpose of hearing such appeals.

A Participant must file an appeal in writing with the Plan in accordance with appeal directions provided by the Recordkeeper. The Participant must include with the written appeal copies of all documents that the Participant originally submitted to the Recordkeeper and a copy of the Recordkeeper's denial.

A Participant must file an appeal within 60 days after the date on which the Participant receives notice of the Recordkeeper's final denial. A Participant who does not file an appeal within that timeframe may not appeal the decision, and the Participant is deemed to have waived any administrative remedies. In pursuing the appeal, the Participant (or his or her duly authorized representative) may review pertinent Plan documents and may submit issues and comments in writing. However, if the Participant has new or additional documentation of an unforeseeable emergency that he or she would like to be considered by the Plan, the Participant must submit such documentation to the Recordkeeper for further consideration before filing an appeal to the Appeal Committee.

Once the Plan receives an appeal, the materials provided by the Participant will be sent to each member of the Appeals Committee. As soon as administratively practicable (but in no event later than 30 days after receiving the materials), the Appeals Committee will render a decision to uphold the appeal, deny the appeal or send the Participant's claim back to the Recordkeeper for further consideration. The Appeals Committee's decision will be in writing and will include the specific reasons for the decision. If the Appeals Committee in its discretion believes that it would be helpful, the Committee may (but is not required to) discuss the appeal with the Participant before rendering a decision.

The Appeals Committee will provide its decision to the Plan, which will forward a copy of the decision to the Participant and to the Recordkeeper. The decision will be implemented in accordance with the Board of Trustees' Unforeseeable Emergency "UE" Process.

The decision of the Appeal Committee is presumptively correct and is final and binding on all parties, subject only to the right of the Participant to seek judicial review pursuant to Section 7.3 of the Plan.