COUNTY COUNCIL

OF

HARFORD COUNTY, MARYLAND

BILL NO. 05-22

Introduced by Council President Wagner at the request of the County Executive

Legislative Day No. 05-14 Date May 3, 2005

AN ACT to repeal and re-enact, with amendments, Section 5.10(b)(4), as incorporated by reference in Chapter 29, Harford County Sheriff's Office Pension, of Part I, Administrative Legislation, of the Harford County Code, as amended; to provide for a maximum cost of living rate increase; to provide for the adoption by reference of the Sheriff's Office Pension Plan as amended which is attached hereto and incorporated herein by reference in its entirety and to further provide that the Sheriff's Office Pension Plan as amended is made a part hereof as though fully stated herein; and generally relating to the establishment of a pension plan for certain law enforcement and correctional employees of the Sheriff's Office.

By the Council, May 3, 2005

Introduced, read first time, ordered posted and public hearing scheduled

on: June 7, 2005

at: 6:45 P.M.

By Order: Barbara J Ruth Council Administrator

PUBLIC HEARING

Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on June 7, 2005 and concluded on June 7, 2005.

Barbara J Ruth, Council Administrator

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing Law. Underlining indicates language added to Bill by amendment. Language lined through indicates matter stricken out of Bill by amendment.

WHEREAS, the Sheriff is a state constitutional officer (see, Md. Constitution Art. IV §44 (1981 Repl. Vol.)); and

WHEREAS, the Sheriff and deputies are state officials or employees (see, Md. Code Ann., State Gov't. §12-101(6) (1995 Repl. Vol.); Rucker v. Harford County, Maryland, 558 A.2d 399, 316 Md. 275 (1989)); and

WHEREAS, under the laws of the State of Maryland, the Sheriff is subject to the budget and fiscal policies and the purchasing laws of the County; and the County, through its budget, is required to provide for the compensation of the deputies and certain other expenses associated with the operation of the Sheriff's Office (see, Md. Code Ann. art. 24, §8-101(3); Md. Code Ann., Cts. & Jud. Proc. §2-309 (1995 Repl. Vol.)); and

WHEREAS, legislation was enacted by the County Executive and the County Council in March 1997 to establish the mechanisms for the implementation of a pension for the Sheriff and deputies as part of the County's state-mandated directive to provide a mechanism for the compensation of those deputies the County sees fit to provide for through its budgetary process; and

WHEREAS, the County desires to amend the Sheriff's Office Pension Plan to provide for a cost of living adjustment.

NOW, THEREFORE,

Section 1. Be It Enacted By The County Council of Harford County, Maryland, that Section 5.10(b)(4), as incorporated by reference in Chapter 29, Harford County Sheriff's Office Pension, of Part I, Administrative Legislation, of the Harford County Code, as amended, be, and it is hereby, repealed and re-enacted, with amendments, to read as follows:

Chapter 29. Harford County Sheriff's Office Pension.

§ 29-1. Harford County Sheriff's Office Pension Plan.

The Harford County Sheriff's Office Pension Plan as amended by repealing and reenacting with amendments to [Sections 1.7, Definitions, 5.6, Maximum Limitation on Benefits, and 6.4, Eligible Rollover Distributions,] SECTION 5.10(b)(4) is incorporated herein and adopted by reference in its entirety as though it were fully stated herein.

Section 2. And Be It Further Enacted that this Act shall take effect as of July 1, 2005.

EFFECTIVE: July 1, 2005

The Council Administrator does hereby certify that fifteen (15) copies of this Bill are immediately available for distribution to the public and the press.

Barbara J Ruth

Council Administrator

BILL NO. 05-22

HARFORD COUNTY BILL NO. 05-22

Brief Title Sheriff's Office Pension Plan
is herewith submitted to the County Council of Harford County for enrollment as being the text as finally passed.

CERTIFIED TRUE AND CORRECT

Barbara J Ruth
Council Administrator

Date June 7, 2005

ENROLLED

Robert S. Wagner
Council President

Date June 7, 2005

BY THE COUNCIL

Read the third time.

Passed: LSD 05-17

Failed of Passage: _____

By Order

Barbara J Ruth
Council Administrator

Sealed with the County Seal and presented to the County Executive for approval this 8th day of June, 2005 at 3:00 p.m.

Barbara J Ruth
Council Administrator

BY THE EXECUTIVE

James M. Harkins
COUNTY EXECUTIVE

APPROVED: Date June 10, 2005

BY THE COUNCIL

This Bill No. 05-22 , having been approved by the Executive and returned to the Council, becomes law on June 10, 2005.

EFFECTIVE DATE: July 1, 2005

Barbara J Ruth
Barbara J. Ruth, Council Administrator

HARFORD COUNTY SHERIFF'S OFFICE PENSION PLAN

ARTICLE 1: PLAN ESTABLISHMENT; NAME; DEFINITIONS, ETC.

1.1 PLAN ESTABLISHED

Harford County has established a pension plan for certain law enforcement and correctional employees of the Office of Sheriff of Harford County by the adoption of this document, entitled the "Harford County Sheriff's Office Pension Plan", as amended from time to time.

1.2 WITHDRAWAL FROM MARYLAND SYSTEMS

By the adoption of this Plan, the County Council of Harford County:

(a) authorizes the withdrawal from the Maryland State Retirement Systems of individuals who are eligible to participate in this Plan and who consent to the withdrawal;

(b) directs that:

(1) each withdrawing individual's accumulated contributions be credited to the individual under this Plan; and

(2) the total reserves resulting from previous contributions by Harford County allocable to the withdrawing individuals be transferred from the Maryland State Retirement Systems to this Plan; and

(c) directs that the County shall continue to make contributions, as required, to the Maryland State Retirement Systems, as provided by law, on behalf of the individuals who choose not to withdraw from the Maryland State Retirement Systems.

1.3 NAME

This Plan may be referred to as the "Harford County Sheriff's Office Pension Plan."

1.4 QUALIFICATION UNDER INTERNAL REVENUE CODE

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

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

1.5 APPLICABILITY

BILL NO. 05-22

The provisions of the Plan shall apply only to an individual who meets the definition of "covered individual" set forth in Section 1.7 of this subtitle and who is credited with an hour of service on or after the effective date.

1.6 CONSTRUCTION OF TERMS

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

1.7 DEFINITIONS

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

(a) **Accrued benefit**

(1) "Accrued benefit" means the benefit to which a participant is entitled, pursuant to the provisions of Section 5.1, expressed as the normal form of monthly benefit commencing at normal retirement date or the actuarial equivalent thereof.

(2) The accrued benefit as of any date preceding the participant's normal retirement date, but expressed as aforesaid, shall be the monthly benefit computed pursuant to Section 5.5.

(3) In no event, however, shall the accrued benefit exceed the maximum limitation determined, as of the date of computation, pursuant to Section 5.6.

(4) (i) The portion of the participant's accrued benefit attributable to the participant's contributions made pursuant to Sections 4.4 and 4.5 shall be equal to the actuarial equivalent of the participant's employee contributions benefit, expressed as the normal form of monthly benefit commencing at normal retirement date.

(ii) The portion of the participant's accrued benefit attributable to County contributions shall be the remainder, if any, of the accrued benefit.

(b) **Actuarial equivalent**

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

Pre-retirement and Post-retirement:

GAM 83 mortality table (Blended 50% male, 50% female) 8% per annum interest rate.

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

(c) **Average compensation**

(1) "Average compensation" means 1/36th of the total amount of a participant's compensation for the 36 consecutive full months of the participant's employment as a covered individual in which his compensation was the highest.

(2) Any period during which a participant was on an unpaid leave of absence which is not credited as creditable service pursuant to Section 3.2(a)(1) or Section 3.4(b)(1) shall be disregarded for purposes of the foregoing, and the existence of such period shall be ignored and shall not be counted in determining the 36 consecutive full months of the participant's employment in which his compensation was the highest.

(3) If the participant's employment as a covered individual does not provide 36 consecutive full months as aforesaid, compensation for all full pay periods will be totaled and divided by the number of full pay periods. This result will then be multiplied by 26 and then divided by 12.

(d) **Beneficiary**

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

(e) **Benefit commencement date**

"Benefit commencement date" means the day on which the sole payment is made or the 1st day of the period for which the 1st in a series of payments constituting the distribution of an accrued benefit is made.

(f) **Bifurcated plan contributions benefit**

(1) For those participants who irrevocably elected to transfer to the plan from the Maryland State Retirement Systems effective as of July 1, 1997, the "bifurcated plan contributions benefit" shall be the sum of the following amounts (net of any previous distributions):

(i) the contributions made prior to July 1, 1997, by the participant through after-tax contributions to the Employees' Retirement System of the State of Maryland which would have provided a benefit to the participant if the participant had not transferred from the Maryland State Retirement

Systems, plus earnings previously credited on such contributions, all of which are transferred to the Plan; plus

(ii) simple interest of 4.5% per annum on the amount of contributions described in (i) hereof transferred to the Plan, computed on the participant's termination date.

(2) No other participant shall have a bifurcated plan contributions benefit.

(g) **Break in service**

"Break in service" means a period of separation from employment in any Plan year ending after the date of the covered individual's employment commencement date, if during that Plan year the covered individual does not complete more than 350 hours of employment while a covered individual.

(h) **Cash-out**

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

(i) **Compensation**

(1) "Compensation" for a plan year means base earnings paid by the County for all pay periods ending within such plan year, determined without regard to:

(i) overtime, bonuses, shift differential and other extra remuneration;

(ii) amounts in excess of the applicable dollar limit in effect as of the 1st day of the plan year under Section 401(a)(17) of the Internal Revenue Code and regulations promulgated thereunder, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code (provided, however, that in determining benefit accruals in any plan year beginning on or after July 1, 2002, the applicable dollar limit shall not exceed $200,000, as adjusted for increases in the cost of living, and provided further that in determining benefit accruals in plan years beginning on or after July 1, 2002, the applicable dollar limit for determination periods beginning before July 1, 2002 shall be $150,000 for any determination period beginning in 1996 or earlier, $160,000 for any determination period beginning in 1997, 1998 or 1999, and $170,000 for any determination period beginning in 2000 or 2001).

(iii) contributions, credits or benefits under this Plan or under any other retirement, deferred compensation, fringe benefit or employee welfare benefit Plan; or

(iv) direct reimbursement for expenses;

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

(2) Notwithstanding the preceding, in any month when the participant is employed as a covered individual but is on an unpaid leave of absence which is credited for years of creditable service pursuant to Section 3.2(a) or 3.4(b)(1) or a temporary furlough which is credited for years of creditable service pursuant to Section 3.2(b), his or her compensation during that leave of absence or furlough shall be deemed to be the compensation the participant would have earned during the month(s) he or she was away on that unpaid leave of absence or furlough if the participant had been paid compensation at the rate in effect for his or her position at the end of the calendar month immediately preceding the month in which that unpaid leave of absence or furlough began.

(j) **Coordinator**

"Coordinator" means the Director of the County's Department of Human Resources to whom certain administrative duties may be delegated by the Plan Administrator pursuant to Section 8.5(d).

(k) **County**

"County" means Harford County, Maryland.

(l) **Covered individual**

Except as provided in paragraph (6) below, "covered individual" means any person employed by the Sheriff's Office of the County on or after June 30, 1997 who is employed on a regular, full-time basis and classified as:

(1) in the "certified" or "ranked" law enforcement or correctional services under Grade L or D or a successor grade for comparable positions, as described in the Sheriff's Office Compensation Plan;

(2) a person elected to the Office of Sheriff of the County who does not elect to waive participation in this Plan pursuant to Section 2.1(c);

(3) an employee hired on July 20, 1987 as a "Law Enforcement Deputy", who was reclassified as of July 25, 1988 to "Security Guard" under the law enforcement pay-scale, and reclassified as of July 8, 1989 to "Security Guard" under the unranked pay-scale and who, as of June 30, 1997, is classified as "IPC Booking Clerk II";

(4) an employee hired on November 2, 1970 as a "Law Enforcement Deputy" and who was reclassified as of March 11, 1995 to "Quartermaster, Fleet Manager";

(5) an employee hired on November 30, 1970 as a "Law Enforcement Deputy", who was reclassified as of July 7, 1990 to "Records Manager";

(6) "Covered individual" does not include a person during any period that he or she qualifies as an excluded employee.

For the purposes of this paragraph, the term "Sheriff's Office Compensation Plan" means the compensation plan for employees of the Sheriff's Office as published in the Harford County Government Classification and Compensation Plan as in effect on June 30, 1997 or any subsequent classification and compensation plan adopted by the Sheriff's Office thereafter.

(m) **Deferred retirement**

"Deferred retirement" means retirement, as described in Section 5.3, which occurs after the participant's normal retirement date.

(n) **Effective date**

"Effective date" means the effective date of the Plan, which shall be July 1, 1997 at 12:00:01 a.m. (Eastern Daylight Savings Time).

(o) **Employee contributions benefit**

"Employee contributions benefit" means the sum of the following amounts (net of any previous distributions):

(1) the contributions made by the participant through salary reduction and "picked up" by the County, as described in Section 4.4(a)(1); plus

(2) the contributions described in Section 4.5 other than (i) contributions comprising a participant's special pick-up contributions benefit, which were made by the participant to the Maryland State Retirement Systems and transferred to this Plan and which were not picked up by the County and (ii) contributions comprising a participant's bifurcated plan contributions benefit, which were made by the participant to the Maryland State Retirement Systems and transferred to this Plan, plus, in both cases, earnings previously credited on such contributions; plus

(3) interest on the amounts described in paragraphs (1) and (2) above computed on June 30 of each year as follows and compounded annually:

(i) 2.25% of the amount contributed during the current Plan year.

(ii) 4.5% of any amount contributed or transferred prior to the current Plan year.

(p) **Employment commencement date**

"Employment commencement date" means the date on which a covered individual first performs an hour of service.

(q) **Excluded employee**

(1) "Excluded employee" means any person employed by the Sheriff's Office during any period that he or she qualifies under any of the following subparagraphs:

(i) the person is classified as in a part-time position;

(ii) the person is classified as a contractual or appointed employee who is not granted the right to participate in this Plan by the express terms of his or her employment contract or appointment, respectively;

(iii) the person is classified as a casual, emergency, seasonal, substitute, summer or temporary employee;

(iv) the person is elected to the Office of Sheriff of Harford County and has waived participation in this Plan pursuant to Section 2.1(c);

(v) for periods after June 30, 1997, the person did not elect to participate in this Plan pursuant to Section 2.1(a) and thereby remained a participant in the Maryland State Retirement Systems; or

(vi) the person's conditions of employment are determined by collective bargaining, unless and until a mutually satisfactory agreement shall have been reached with the person's collective bargaining representative for coverage of that person under this Plan.

(2) Periods during which a person is an excluded employee shall not be credited with respect to years of creditable service (or one-twelfth ($1/12^{th}$) increments thereof) nor credited with respect to hours of service for purposes of determining years of eligibility service.

(r) **Hour of service**

(1) "Hour of service" means each hour for which an individual, in his or her capacity as a covered individual, is directly or indirectly paid, or entitled to payment, for the performance of duties for the Sheriff's Office.

(2) Hours of service include normal working hours, paid holidays, compensatory hours, sick leave and other paid leave, but not overtime hours.

(3) In addition, hours of service include annual leave, but not annual leave for which a covered individual is paid as a result of his or her termination date.

(4) Hours of service also include hours for which an individual is not paid, but would be entitled to payment but for a temporary furlough declared by the Sheriff's Office.

(s) **Internal Revenue Code**

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

(t) **Maryland State Retirement Systems**

"Maryland State Retirement Systems" means, collectively, the Employees' Retirement System of the State of Maryland and the Employees' Pension System of the State of Maryland.

(u) **Military service**

"Military service" means:

(1) induction into the armed forces of the United States for training and service under the Selective Training and Service Act of 1940 or a subsequent act of a similar nature;

(2) membership in a reserve component of the armed forces of the United States on active duty or ordered or assigned to active duty;

(3) enlistment into the armed forces of the United States; or

(4) with respect to a person separated from employment on or after July 1, 1991, active duty with the commissioned corps of the Public Health Service, the National Oceanic and Atmospheric Administration, or the Coast and Geodetic Survey from:

(i) December 7, 1941, to December 31, 1946, both inclusive;

(ii) June 25, 1950, to January 31, 1955, both inclusive; or

(iii) December 22, 1961, to May 7, 1965, both inclusive.

(v) **Normal retirement date**

(1) For any participant other than the Sheriff of Harford County, "normal retirement date" means the earlier of:

(i) the 1st day of the month coincident with or next following the date on which the participant has completed 25 years of eligibility service; or

(ii) the 1st day of the month coincident with or next following the date on which the participant has attained age 62.

(2) For the Sheriff of Harford County, "normal retirement date" means:

(i) prior to January 1, 2003, the earlier of:

a. the 1st day of the month coincident with or next following the date on which the Sheriff has completed 25 years of eligibility service; or

b. the 1st day of the month coincident with or next following the date on which the Sheriff has attained age 62.

(ii) On and after January 1, 2003, the earlier of:

a. the 1st day of the month coincident with or next following the date on which the Sheriff has completed 20 years of eligibility service; or

b. the 1st day of the month coincident with or next following the date on which the Sheriff has attained age 62.

(w) **Participant**

"Participant" means any covered individual who is currently benefiting under the Plan, and, where appropriate according to the context of the Plan, any former covered individual who is or may become (or whose beneficiaries may become) eligible to receive a benefit under the Plan.

(x) **Per-pay compensation**

"Per-pay compensation" means, for a particular paycheck, the participant's base salary or wages, as reflected in such paycheck from the County, determined without regard to:

(1) overtime, bonuses, shift differential and other extra remuneration;

(2) amounts in excess of the per-pay equivalent of the applicable dollar limit under Section 401(a)(17) of the Internal Revenue Code and regulations promulgated thereunder as of the 1st day of the Plan year (as further described in Section 1.7(i)(1)(ii) hereof) ;

(3) contributions, credits or benefits under this Plan or under any other retirement, deferred compensation, fringe benefit or employee welfare benefit Plan; or

(4) direct reimbursement for expenses;

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

(y) **Plan**

"Plan" means the Harford County Sheriff's Office Pension Plan, as set forth herein, and as amended from time to time.

(z) **Plan Administrator**

"Plan Administrator" means the Trustees serving from time to time under the trust established with respect to the Plan.

(aa) **Plan year**

"Plan year" means the 12 month period ending on the last day of the month of June.

(ab) **Reemployment commencement date**

"Reemployment commencement date" means the date on which a covered individual first performs an hour of service after a period during which no hours of service were performed by reason of the occurrence of the covered individual's termination date or otherwise.

(ac) **Remuneration**

(1) "Remuneration" means a participant's wages as defined in Section 3401(a) of the Internal Revenue Code and all other payments of compensation to the participant from the County for which the County is required to furnish the participant a written statement under Sections 6041(d) and 6051(a)(3) of the Internal Revenue Code.

(2) Remuneration shall be determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

(3) Remuneration does not include:

(i) participant contributions picked up by the County pursuant to Section 4.4(a)(1);

(ii) for plan years commencing prior to July 1, 1998, elective deferrals to an eligible deferred compensation Plan under Section 457(b) of the Internal Revenue Code;

(iii) for plan years commencing prior to July 1, 1998, salary reduction contributions to a cafeteria Plan under Section 125 of the Internal Revenue Code; or

(iv) for plan years commencing prior to July 1, 1998, salary reduction contributions to a pre-tax transportation plan under Section 132(f) of the Internal Revenue Code.

(ad) **Sheriff's Office**

"Sheriff's Office" means the Office of Sheriff of Harford County, Maryland.

(ae) **Special pick-up contributions benefit**

(1) For those participants who irrevocably elected to transfer to the plan from the Maryland State Retirement Systems effective as of July 1, 1997, the "special pick-up contributions benefit" shall be the sum of the following amounts (net of any previous distributions):

(i) the contributions made prior to July 1, 1997, by the participant through salary reduction contributions, picked up by the State of Maryland and contributed to the Employees' Retirement System of the State of Maryland pursuant to Section 414(h) of the Internal Revenue Code, which were classified as "returnable contributions" and which would have provided an additional benefit to the participant pursuant to Article 73b, Section 2-204 of the Annotated Code of Maryland (1992) or a statutory provision of comparable effect if the participant had not transferred from the Employees' Retirement System of the State of Maryland, plus earnings previously credited on such contributions, all of which are transferred to the Plan; plus

(ii) simple interest of 4.5% per annum on the amount of contributions described in (i) hereof transferred to the Plan, computed on the participant's termination date.

(2) No other participant shall have a special pick-up contributions benefit.

(af) **Termination date**

"Termination date" means the date of the first to occur of:

(1) a termination of employment by reason of resignation, discharge, mutual agreement, total and permanent disability, retirement or death;

(2) the date on which a leave of absence expires without a return to active employment; or

(3) the date on which the individual ceases to be a covered individual.

(ag) **Trust**

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

(ah) **Trustees**

"Trustees" means, collectively, the trustee or trustees named in the trust and such successor and/or additional trustees as may be named pursuant to the terms of the trust.

(ai) **Unpaid leave of absence**

"Unpaid leave of absence" means an absence from active service, approved in advance by the Sheriffs Office, which does not constitute a termination of employment, and during which the covered individual completes no hours of service and is not paid.

(aj) **Year of creditable service**

(1) Subject to Section 3.4(a) and except as provided in Sections 3.1, 3.2, 3.4 and 5.1(b), a covered individual shall be credited with one-twelfth (1/12) of a year of creditable service for each calendar month during which he or she is a covered individual for the entire month.

(2) A covered individual shall not be credited with years of creditable service (or one-twelfth (1/12) increments thereof) for any calendar month during any portion of which he or she is not a covered individual.

(ak) **Year of eligibility service**

"Year of eligibility service" means, subject to Section 3.3(a) and except as provided in Sections 3.1, 3.2, and 3.5, any Plan year during which a covered individual completes at least 700 hours of service as a covered individual.

ARTICLE 2: PARTICIPATION

2.1 PARTICIPATION REQUIREMENTS

Except as otherwise provided below, a covered individual's participation in this Plan, and the agreement to make contributions hereunder, as described in Section 4.4(a)(1), is mandatory as a condition of employment with the Sheriff's Office:

(a) **Voluntary Participation**

Every individual, including the current Sheriff of Harford County, who is a covered individual as of June 30, 1997 may elect to participate in the Plan effective July 1, 1997 and to continue participation until the individual's termination date. Such election shall be filed in person or by mail in the office of the Director of the County's Department of

Human Resources no earlier than May 1, 1997 and must be received in all events no later than the close of business on May 15, 1997. Such election shall be made on a written application supplied by the County and shall contain an agreement to make, as a condition of the individual's continued employment with the Sheriff's Office, participant contributions as provided in Section 4.4(a)(1) and shall be revocable at any time before the close of business on May 15, 1997, at which time the election shall thereafter be irrevocable. If an otherwise eligible covered individual fails to return the completed application to the Plan Administrator by the close of business on May 15, 1997, he or she shall cease to be a covered individual as of June 30, 1997.

(b) **Mandatory Participation**

Every other individual who becomes a covered individual on or after July 1, 1997 shall become a participant on the date he or she first performs an hour of service as a covered individual. No individual shall become a participant, however, if he or she is not a covered individual on the date the individual's participation is to begin.

(c) **Election by Sheriff Not to Participate**

Notwithstanding subsection (b) above, an individual who holds the office of Sheriff of Harford County at any time after July 1, 1997 may elect not to participate in the Plan as of the date he or she first performs an hour of service as the County's Sheriff. Such election shall be irrevocable and shall be made no later than the date the individual performs his or her first hour of service as the County's Sheriff.

2.2 REEMPLOYMENT

If a covered individual who reaches a termination date is subsequently reemployed as a covered individual, the covered individual's status with respect to the Plan shall be governed by the following:

(a) **Eligibility**

If the reemployed covered individual was not a participant prior to his or her termination date, or his or her reemployment commencement date occurs prior to July 1, 1997, he or she shall become a participant in accordance with the provisions of Section 2.1. If the covered individual was a participant prior to such termination date, or his or her reemployment commencement date occurs after June 30, 1997, the individual's participation shall commence immediately upon the resumption of his or her status as a covered individual.

(b) **Vesting and Benefit Accrual**

Subject to subsection (d) below and Section 3.1, if the reemployed covered individual was a participant prior to his or her termination, his or her prior years of eligibility service and years of creditable service shall be aggregated with years of eligibility service and years of creditable service credited after his or her reemployment commencement date for purposes of determining the individual's eligibility to receive, the vested percentage of, and amount of, his or her accrued benefit (with respect to the

periods before the individual's termination date and after his or her reemployment commencement date).

(c) **Benefit Payments**

If, at the time of his reemployment commencement date, the participant is receiving benefits under the Plan, such benefits (other than those previously funded through individual or non-pooled group insurance annuity arrangements) shall cease until such time as they may be paid in conjunction with the benefits accrued with respect to the participant's subsequent employment. In any event, any benefits payable with respect to subsequent employment shall be reduced or offset if and as necessary to avoid duplication of any benefits payable or paid with respect to the participant's prior employment. Notwithstanding the foregoing, a participant who is receiving a normal retirement or deferred retirement benefit under Section 5.1 or Section 5.3 may accept employment by the Sheriff's Office on a permanent, temporary or contractual basis without any reduction or interruption in that benefit, if the participant is not serving as Sheriff of Harford County. In any case where a participant resumes employment by the Sheriff's Office and continues to receive his or her full retirement benefit, the participant shall not earn additional creditable service or eligibility service during the period of such reemployment, shall not have any compensation earned during his or her period of reemployment used to determine his or her average compensation and shall not be required or permitted to make pick-up contributions under Section 4.4.

(d) **Cash-out**

(1) If, after the participant's termination date:

(i) the participant receives a cash-out of his or her employee contributions benefit, and

(ii) the participant resumes his or her employment as a covered individual,

then, notwithstanding the crediting of additional years of eligibility service and years of creditable service, the years of eligibility service and years of creditable service with respect to which the distribution was received shall be disregarded in subsequent determinations of the amount of the participant's eligibility to receive, the vested percentage of, and the amount of his or her accrued benefit.

(2) However, if the participant:

(i) resumes his or her employment as a covered individual, and

(ii) within 90 days of his or her reemployment-commencement date, repays to the trust the full amount of the cash-out, plus interest from date of distribution to date of repayment at the rate of 4.5% per annum, compounded annually,

his or her accrued benefit will be determined taking into account the participant's years of eligibility service and years of creditable service before as well as after the termination date (subject to the provisions of this Section 2.2).

2.3 ENROLLMENT

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

2.4 CHANGE OF EMPLOYMENT CATEGORY

If a participant ceases to be a covered individual, but continues in the employ of the Sheriff's Office as an employee, he shall be deemed to have reached a termination date at the time he or she ceases to be a covered individual.

ARTICLE 3: CREDIT FOR SERVICE

3.1 BREAKS IN SERVICE

Notwithstanding anything to the contrary, years of eligibility service and years of creditable service completed prior to 1 or more breaks in service shall be disregarded if:

(a) the participant's vested percentage in the portion of his or her accrued benefit that does not include the employee contributions benefit was 0% at the time the participant incurred the breaks in service; and

(b) the number of consecutive breaks in service exceeds the number of the participant's years of eligibility service completed prior to the consecutive breaks in service (excluding any eligibility service lost because of a prior break in service).

3.2 SPECIAL SERVICE RULES

(a) **Unpaid Leave of Absence**

(1) Except as otherwise provided in paragraph (2) below and in Section 3.5(b), hours of service (for purposes of determining years of eligibility service) and one-twelfth (1/12) increments of years of creditable service shall not be credited during an unpaid leave of absence.

(2) However, to the extent permitted under the Internal Revenue Code, a covered individual who, on account of an unpaid leave of absence, earns less than the service the participant would have earned had he or she remained in active service, may elect to receive credit for years of eligibility service and one-twelfth (1/12) increments of years of creditable service (to a maximum of 2 years) to the extent of his or her unpaid leave of absence.

(3) If a participant does so elect, the participant shall be required to pay over to the Plan in one lump sum payment, within six (6) months after his or her return from an unpaid leave of absence, and before his or her termination date, an amount equal to the participant contributions he or she would have been required to make pursuant to Section 4.4(a)(1) had the participant remained in active service during the unpaid leave of absence (based on what the participant's per-pay compensation would have been in his or her last paycheck prior to the unpaid leave of absence had the participant worked his or her regularly-scheduled hours).

(4) A covered individual who is on an unpaid leave of absence for reasons other than military service (or the covered individual's beneficiary) remains eligible for disability benefits as provided by Section 5.4 or for death benefits as provided by Section 5.8.

(b) **Temporary Furlough**

(1) A covered individual who is on a temporary furlough declared by the Sheriff's Office shall, upon making the payment described in paragraph (2), receive credit for hours of service (for purposes of determining years of eligibility service) and one-twelfth (1/12) increments of years of creditable service during the temporary furlough.

(2) However, to the extent permitted under the Internal Revenue Code, a participant on temporary furlough may elect to pay over to the Plan in one lump sum payment, within 90 days after his or her return from temporary furlough, an amount equal to the participant contributions he or she would have been required to make pursuant to Section 4.4(a)(1) had the participant remained in active service during the temporary furlough (based on what the participant's per-pay compensation would have been in his or her last paycheck prior to the temporary furlough had the participant worked his or her regularly-scheduled hours).

3.3 FRACTIONAL CREDIT FOR SERVICE

To the extent not precluded by the operation of Section 3.1, an individual shall receive partial or full credit for service, as follows:

(a) **Year of Eligibility Service**

(1) For purposes of determining the extent to which a participant is vested in his or her accrued benefit and for purposes of determining whether he or she is eligible for retirement, the participant shall receive credit on the basis of his or her whole years of eligibility service.

(2) Notwithstanding paragraph (1) above, for Plan years which contain the participant's employment commencement date and the participant's termination date, he or she shall receive credit for a fractional year of eligibility service (not to exceed one year) equal to the hours of service he or she completed in that Plan year as a covered individual compared to 700 hours of service.

(b) **Year of Creditable Service**

For purposes of determining the extent to which a participant shall accrue benefits, the participant shall receive credit on the basis of the number of his or her years and months of creditable service.

3.4 SPECIAL RULES FOR SERVICE CREDIT

(a) **Credit for Service Under Maryland State Retirement Systems**

Any covered individual who elects to participate in this Plan pursuant to Section 2.1(a) shall receive full credit for years of eligibility service and years of creditable service for service recognized under the Maryland State Retirement Systems. Such service credit under this Plan shall be contingent upon the complete forfeiture of benefits and service credits under the Maryland State Retirement Systems and the transfer to this Plan of any participant contributions, whether picked up or not, in the individual's account under the Maryland State Retirement Systems.

(b) **Credit for Military Service**

Any covered individual who provides the Plan Administrator with sufficient evidence of the covered individual's military service shall receive full service credit for such military service as follows:

(1) **Unpaid Leave of Absence on Account of Military Service**

Notwithstanding Section 3.2, if a participant incurs an unpaid leave of absence on account of military service, the participant shall receive credit for years of eligibility service and years of creditable service for the period of such unpaid leave of absence to the extent required by the Uniformed Services Employment and Reemployment Rights Act of 1994 or any other law (but without any requirement for such a participant to make participant contributions upon his or her reemployment for the period of his or her military service).

(2) **Military Service Before Employment Commencement Date**

If a participant's military service precedes the participant's employment commencement date, the participant shall receive credit for years of creditable service (but not for years of eligibility service) to the extent of his or her pre-employment military service to a maximum of four years provided that the participant earns at least 25 years of creditable service.

(3) **Reasons For Not Receiving Service Credit for Military Service**

Except to the extent otherwise required by law, a participant may not receive service credit for military service:

(i) if the military service has been previously recognized by the Maryland State Retirement Systems;

(ii) if the participant is entitled to receive a benefit (except for disability benefits, Social Security benefits, benefits under the National Railroad Retirement Act or benefits with respect to national guard or military reserve service) from another requirement system on account of the military service; or

(iii) if the service was rendered for the Peace Corps or Volunteers in Service to America.

(4) **Maximum of 4 Years**

If a participant receives credit for years of eligibility service and years of creditable service under both paragraphs (1) and (2) above, the total service credited shall not exceed four years, unless a greater amount is required by federal or state law.

3.5 TRANSFERS BETWEEN COVERED AND NON-COVERED EMPLOYMENT

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

(1) In the case of an individual who transfers after June 30, 1997 from a position of employment by the Sheriff's Office that is covered under the Maryland State Retirement Systems to a position as a covered individual under this Plan, the individual's retirement benefits with respect to his or her service as a covered individual (and any other service recognized under this Plan) shall be determined solely under the provisions of this Plan based only on years of eligibility service and creditable service earned while a covered individual under this Plan.

(2) Notwithstanding paragraph (1) above, he or she shall receive credit for years of eligibility service for service recognized under the Maryland State Retirement Systems (but only for purposes of determining the vested percentage of the individual's accrued benefit under this Plan).

(3) In determining such a participant's average compensation under this Plan, only compensation paid while a covered individual shall be taken into account.

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

(1) In the case of an individual who transfers from a position as a covered individual under this Plan to a position of employment by the Sheriff's Office that is covered under the Maryland State Retirement Systems, the individual's retirement benefits with respect to his or her service as a covered individual (and any other service recognized under this Plan) shall be determined under the provisions of this Plan as of the date he or she no longer qualifies as a covered individual.

(2) In determining such a participant's average compensation under this Plan, only compensation paid while a covered individual shall be taken into account.

(3) Notwithstanding paragraph (1) above, years of eligibility service credited under the Maryland State Retirement Systems for employment by the Sheriff's Office shall be recognized under this Plan (but only for purposes of determining the vested percentage of the individual's accrued benefit under this Plan).

ARTICLE 4: CONTRIBUTIONS

4.1 PAYMENT OF CONTRIBUTIONS

The funding of the Plan and payment of benefits hereunder shall be provided for through the medium of the trust. The trust shall accept transfers of funds from the Maryland State Retirement Systems, consistent with the elections made by participants pursuant to Section 3.4(a) of the Plan and including the total reserves resulting from the contributions to the Maryland State Retirement Systems with respect to the covered individual. The County, from time to time, shall make contributions to the trust in amounts determined, in accordance with generally accepted actuarial principles, to be sufficient to support the contributions and transfers made pursuant to Section 4.4 and the contributions and transfers made pursuant to Section 4.5, and to fund the benefits provided by the Plan.

4.2 DISPOSITION OF FORFEITURES

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

4.3 ACTUARIAL EXAMINATION

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

4.4 PICK-UP CONTRIBUTIONS

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

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

(1) Effective as of July 1, 1997, and in accordance with rules established by the County, each participant who is classified as a covered individual shall make contributions to the Plan equal to seven percent (7.0%) of the participant's per-pay compensation.

(2) The participant's contributions referred to in paragraph (1) of this Section 4.4(a) shall be separately accounted for, but shall be made a part of the participant's

employee contributions benefit, which shall be part of the accrued benefit of the respective participant.

(3) The participant contributions referred to in paragraph (l) of this Section 4.4(a) shall be:

(i) picked up by the County, as described in Section 414(h)(2) of the Internal Revenue Code;

(ii) deducted from the pay of the contributing participants as salary reduction contributions; and

(iii) paid by the County to the trustees with reasonable promptness after the total of such contributions during any month has been determined, and in any event by the end of the succeeding month.

(4) The contributions made pursuant to paragraph (1) of this Section 4.4(a) shall be made a part of the participant's employee contributions benefit, that is, a part of his or her accrued benefit.

(b) **Suspension of Contributions**

(1) A participant's salary reduction contributions shall be automatically and permanently suspended when the participant has completed 30 years of creditable service.

(2) A participant's salary reduction contributions shall be automatically suspended for any payroll period during which the participant is not a covered individual or during which he or she is on an unpaid leave of absence.

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

(1) A participant who has reached his or her termination date after having become 100% vested in his or her entire accrued benefit may elect, at any time, to receive a cash-out of the participant's employee contributions benefit and a distribution of his or her special pick-up contributions benefit or bifurcated plan contributions benefit, if he or she is entitled to the benefit, by filing a written notice of such election with the Plan Administrator.

(2) A participant who has reached his or her termination date before becoming 100% vested in his or her entire accrued benefit automatically will have a cash-out of the participant's employee contributions benefit and a distribution of his or her special pick-up contributions benefit or bifurcated plan contributions benefit, if he or she is entitled to the benefit, paid to him or her as soon as administratively feasible following the termination date.

(3) In either case, such cash-out shall constitute full payment of all benefits due to such participant under the Plan.

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

In the event of a cash-out to a participant pursuant to subsection (c) above, then, subject to restoration provided in Section 2.2(d), the entire remaining portion of his or her accrued benefit shall be forfeited by the participant.

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

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

(f) **Payment of Benefits**

Subject to the right of withdrawal described above, the benefits attributable to the participant's contributions shall be payable at the same time, in the same manner, and, in the event of the participant's death, to the same beneficiary or beneficiaries, as is the remainder of the participant's accrued benefit.

(g) **Plan Termination**

In the event of a termination of the Plan, distribution to each participant of his or her special pick-up contributions benefit or bifurcated plan contributions benefit, if he or she is entitled to the benefit, and the portion of his or her accrued benefit attributable to the participant's contributions picked up by the County shall, notwithstanding any other provision of Section 9.5, be treated as a priority distribution ahead of any other distribution to participants based upon the remainder of the trust, other than those attributable to contributions made pursuant to Section 4.5.

4.5 PARTICIPANT CONTRIBUTIONS

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

(a) **Characterization**

The contributions made pursuant to this Section 4.5 shall be distinct from those made pursuant to Section 4.4 as to the character of such contributions. Whereas contributions made pursuant to Section 4.4 shall be classified as County contributions picked up from the pay of participants, contributions described in this Section 4.5 shall be contributions either made directly by the participant or, in some cases, transferred from the Maryland State Retirement Systems.

(b) **Limitations**

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

(1) A participant who elects to restore credit for service and benefits, as described in Section 2.2(d), shall pay over to the Plan the amount of any cash-out previously made to the participant, with interest thereon.

(2) A participant who is on an unpaid leave of absence, and who elects to purchase service credit in accordance with Section 3.2(a), shall pay over to the Plan the amount required in Section 3.2(a).

(3) A participant who is on a temporary furlough, as described in Section 3.2(b), shall pay over to the Plan the amount required in Section 3.2(b).

(4) In the case of a covered individual who elects to become a participant in this Plan as of July 1, 1997, the trustees shall accept a direct transfer of after-tax participant contributions made by such participant, together with interest thereon, from the Maryland State Retirement Systems.

(c) **Procedures**

All participant contributions or transfers made pursuant to this Section 4.5 shall be paid to the trust.

(d) **Separate Accounting**

Participant contributions, whether made directly or transferred from another retirement Plan, as aforesaid, shall be accounted for separately but shall be made a part of the participant's employee contributions benefit, which shall be a part of the accrued benefit of the respective participant.

(e) **Withdrawals of Participant Contributions**

(1) A participant who has reached his or her termination date after having become 100% vested in his or her entire benefit may elect, at any time, to receive a cash-out of his or her employee contributions benefit by filing a written notice of such election with the Plan Administrator.

(2) A participant who has reached his or her termination date before becoming 100% vested in is or her entire accrued benefit automatically will have a cash-out of the participant's employee contributions benefit paid to him other as soon as administratively feasible following the termination date.

(3) In either case, such cash-out shall constitute full payment of all benefits due to such participant under the Plan.

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

In the event of a cash-out to a participant pursuant to subsection (e) above, then, subject to restoration provided in Section 2.2(d), the entire remaining portion of his or her accrued benefit shall be forfeited by the participant.

(g) **Vesting of Participant Contributions**

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

(h) **Payment of Benefits**

Subject to the right of withdrawal described above, the benefits purchased from the participant's contributions shall be payable at the same time, in the same manner, and, in the event of the participant's death, to the same beneficiary or beneficiaries, as is the remainder of the participant's accrued benefit.

(i) **Plan Termination**

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

ARTICLE 5: BENEFIT ALLOWANCES

5.1 NORMAL RETIREMENT

A participant who retires on his or her normal retirement date shall be entitled to receive a lump sum distribution of his or her special pick-up contributions benefit or bifurcated plan contributions benefit, if he or she is entitled to the benefit, and a monthly retirement income, beginning with the 1st day of the month coincident with or next following his or her normal retirement date and continuing for the remainder of the participant's life.

(a) **Amount of Monthly Retirement Income**

Subject to subsection (b) of this Section 5.1 and Section 2.2(d), and subject to the limitations set forth in Section 5.3, the amount of the monthly retirement income of a participant shall be equal to:

(1) Where the participant's termination date occurs before July 1, 1998, 1% of the participant's average compensation, multiplied by the number of the years of creditable service credited to the participant up to a maximum of 25 years, plus 0.5% of the participant's average compensation multiplied by the number of years of creditable service credited to the participant (up to a maximum of 5 years) in excess of 25 years.

(2) Where the participant's termination date occurs after June 30, 1998 and before July 1, 1999, 1.24% of the participant's average compensation, multiplied by the number of the years of creditable service credited to the participant up to a maximum of 25 years, plus 0.5% of the participant's average compensation multiplied by the number of years of creditable service credited to the participant (up to a maximum of 5 years) in excess of 25 years.

(3) Where the participant's termination date occurs after June 30, 1999 and before July 1, 2000, 1.48% of the participant's average compensation, multiplied by the number of the years of creditable service credited to the participant up to a maximum of 25 years, plus 0.5% of the participant's average compensation multiplied by the number of years of creditable service credited to the participant (up to a maximum of 5 years) in excess of 25 years.

(4) Where the participant's termination date occurs after June 30, 2000 and before July 1, 2001, 1.72% of the participant's average compensation, multiplied by the number of the years of creditable service credited to the participant up to a maximum of 25 years, plus 0.5% of the participant's average compensation multiplied by the number of years of creditable service credited to the participant (up to a maximum of 5 years) in excess of 25 years.

(5) Where the participant's termination date occurs after June 30, 2001, 2% of the participant's average compensation, multiplied by the number of the years of creditable service credited to the participant up to a maximum of 25 years, plus 1% of the participant's average compensation multiplied by the number of years of creditable service credited to the participant (up to a maximum of 5 years) in excess of 25 years.

(6) In the case of the Sheriff of Harford County, the applicable percentage (determined under (1), (2), (3), (4) or (5) above) of the Sheriff's average compensation, multiplied by the number of the years of creditable service credited to the Sheriff up to a maximum of 25 years, plus the applicable percentage (determined under (1), (2), (3), (4) or (5) above) of the Sheriff's average compensation multiplied by the number of years of creditable service credited to the Sheriff (up to a maximum of 5 years) in excess of 25 years.

(7) Solely for purposes of determining the percentage to be applied to average compensation and years of creditable service, the term "termination date" in this Section 5.1(a) shall mean the day following the participant's last day of active employment.

(b) **Unused Sick Leave**

(1) Solely for purposes of determining the amount of the participant's retirement benefit payable pursuant to Sections 5.1, 5.3 or 5.4, in the case of a participant who retires on or after his or her normal retirement date, the participant shall receive additional years of creditable service for no more than one-half of the unused sick leave accrued as of his or her termination date. This additional credit for unused accrued sick leave shall not be available in the case of any participant whose employment by the Sheriff's Office terminated before his or her normal retirement date.

(2) Such unused sick leave shall be credited at the rate of one-twelfth (1/12) of a year of creditable service for each 20 days of the unused sick leave available for such credit.

(3) All years of creditable service provided with respect to unused sick leave under this Section 5.1(b) shall be taken into account under Section 5.1(a)(5), even if such years of creditable service cause a participant's years of creditable service in excess of 25 to exceed 5 years. The additional monthly retirement income hereunder of a participant whose years of creditable service in excess of 25 exceed 5 years shall be equal to the number of years in excess of this, multiplied by 1% of the participant's average compensation.

5.2 EARLY RETIREMENT PROHIBITED

Under no circumstances shall a participant's retirement benefits commence before his or her normal retirement, date, except as otherwise provided in Sections 5.4 and 5.5(c).

5.3 DEFERRED RETIREMENT

In the event a participant remains a covered individual after his or her normal retirement date, then, subject to the limitations set forth in Section 5.6 and subject to Section 6.3, the participant shall be entitled to receive, commencing on the 1st day of the month coincident with or otherwise next following his or her termination date, the benefit to which the participant would have been entitled pursuant to Section 5.1 if he or she had retired at the normal retirement date, but adjusted:

(a) by including any additional years of creditable service which have accrued since his or her normal retirement date; and

(b) notwithstanding any provision in the definition of average compensation to the contrary, by taking into account any increases in average compensation which may be generated by increases in compensation earned since his or her normal retirement date.

A participant shall also be entitled to receive a lump sum distribution of his or her special pick-up contributions benefit or bifurcated plan contributions benefit, if he or she is entitled to the benefit, on the first day of the month coincident with or otherwise next following his or her termination date.

5.4 DISABILITY BENEFITS

The Plan shall pay disability benefits determined in accordance with the following provisions:

(a) **Ordinary Disability**

Subject to subsections (c) and (d) of this Section 5.4, if a participant who has completed at least 5 years of eligibility service reaches a termination date by reason of total and permanent disability (as defined in subsection (d)(6) of this Section 5.4) not in the line of duty, the participant shall be entitled to receive a lump sum distribution of his or her special pick-up contributions benefit or bifurcated plan contributions benefit, if he or she is entitled to the benefit, and a monthly disability benefit equal to:

(1) If the participant's termination date due to disability occurs on or after his or her normal retirement date, a monthly amount determined under Section 5.1, based on the participant's average compensation and years of creditable service at the participant's termination date.

(2) If the participant's termination date due to disability occurs before his or her normal retirement date, a monthly amount determined under Section 5.1, based on the years of creditable service and the average compensation that would be credited to the participant at his or her normal retirement date, assuming the participant continued in employment as a covered individual, without a change in his or her compensation, up until his or her normal retirement date.

(b) **Line of Duty Disability**

Subject to subsections (c) and (d) of this Section 5.4, if a participant (regardless of his or her length of service) reaches a termination date by reason of total and permanent disability (as defined in subsection (d)(6) of this Section 5.4), that arose out of or in the course of the actual performance of duty for the Sheriff's Office at a definite time and place without willful negligence by the participant, the participant shall be entitled to receive a lump sum distribution of his or her special pick-up contributions benefit or bifurcated plan contributions benefit, if he or she is entitled to the benefit, and a monthly benefit equal to the lesser of (1) a monthly annuity equal to the participant's average compensation at his or her termination date, or (2) the monthly annuity that is actuarially equivalent to the sum of the participant's employee contribution benefit and a life annuity with monthly payments equal to two-thirds (2/3) of the participant's average compensation at his or her termination date. Notwithstanding the preceding sentence, if the participant has reached his or her normal retirement date on or before termination due to disability, the monthly benefit determined under this paragraph (b) shall in no event be less than the participant's benefit determined under Section 5.1, based on his or her average compensation and years of creditable service at his or her termination date.

(c) **Adjustments to Compensation**

(1) For purposes of calculating average compensation under subsections (a) and (b) above, compensation includes adjustments to the base annual salary for employees in the same position classification as the participant at the time his or her disability is incurred.

(2) Such adjustments shall include only those adjustments to the base annual salary from the date the disability is incurred through the date the participant's disability benefits commence.

(d) **General Provisions Relating to Disability**

(1) **Application for and Commencement of Disability Benefits**

Any application for disability benefits shall be filed with the Plan Administrator no later than two years after the date the disability commenced, provided that the Plan Administrator may accept an application within 36 months after that 2-year

application period expires if the participant proves to the satisfaction of the Plan Administrator that failure to submit an application during that 2-year period was attributable solely to physical or mental incapacity during the filing period. The Plan Administrator may not accept an application for line of duty disability filed by a participant or former participant more than 5 years after the date of the claimed accident unless the participant or former participant proves to the satisfaction of the Plan Administrator that failure to submit an application within the required 5 years was attributable solely to physical or mental conditions that resulted directly from the event or act of duty that caused the disability. Disability benefits shall commence on the 1st day of the month coincident with or next following the determination of disability by the County.

(2) **Multiple Disability Allowances Prohibited**

A participant entitled to a line of duty disability benefit under Section 5.4(b) may not receive a benefit for ordinary disability under Section 5.4(a).

(3) **Effect of Workers' Compensation Benefits**

The Plan Administrator shall reduce a disability benefit by any related workers' compensation benefits paid or payable after the benefit commencement date if the workers' compensation benefits:

(i) are paid or payable while a disability benefit is paid or payable under this Section 5.4; and

(ii) are for an accidental personal injury or occupational disease arising out of and in the course of the participant's employment by the County. A participant's disability benefit may not be reduced to be less than the sum of the participant's annuity and the amount authorized to be deducted for health insurance premiums.

The reduction to the retirement benefit under this paragraph is retroactive.

(4) **Set Off for Gainful Employment**

The Plan Administrator shall reduce the disability benefit of a participant on ordinary disability if the Plan Administrator determines that the participant is or has been engaged in a gainful occupation paying more than the earnings limit for any period for which he or she was receiving a disability benefit under this Plan. For purposes of this subsection 5.4(d)(4), the term "earnings limit" means the sum of the participant's average annual compensation plus $5,000 less the participant's maximum disability retirement allowance. The amount of the reduction under this paragraph shall be equal to:

(i) if the participant has been receiving an ordinary disability retirement benefit for less than 10 years, $1 for every $2 that his or her current compensation exceeds the earnings limit.

(ii) if the participant has been receiving an ordinary disability retirement benefit for at least 10 years, $1 for every $5 that the participant's current compensation exceeds the earnings limit.

(iii) if the participant's gainful occupation is as a result of a temporary or contractual position rather than as a result of a permanent full-time or part-time position, the amount of the reduction under this paragraph shall cease when the participant reaches his or her normal retirement date.

(5) **Forms of Benefit**

(i) The benefits payable pursuant to this Section 5.4 shall be payable in the normal form provided by Section 5.1, unless an optional form of payment has been elected pursuant to Section 6.2.

(ii) Notwithstanding the preceding sentence, a participant receiving ordinary disability benefits pursuant to subsection 5.4(a) (i.e., for a disability that is not in the line of duty) may not elect to receive:

a. The joint and survivor option (with a 100% survivor benefit) described in Section 6.2(a);

b. The pop-up option (with a 100% survivor benefit) described in Section 6.2(b); or

c. The guaranteed return of accrued benefit option described in Section 6.2(c).

(6) **Definition**

(i) A participant shall be considered to have incurred a "total and permanent disability" if he or she is mentally or physically incapacitated for the further performance of the normal duties of the participant's position and that incapacity is likely to be permanent.

(ii) Such total and permanent disability must be evidenced by a certificate of a physician selected or approved by the Plan Administrator.

(7) **Review of Continuing Disability**

(i) Until a participant who has reached a termination date by reason of disability attains his or her normal retirement date, the continuation of his or her right to receive disability benefits shall be subject to periodic review in accordance with rules established by the Plan Administrator to determine the participant's disability status.

(ii) The review shall include the requirement that the participant submit to an annual physical examination with a physician selected or approved by

the Plan Administrator and that the participant furnish the Plan Administrator with yearly medical and earnings information on request of the Plan Administrator.

(iii) If the participant is under normal retirement age and refuses a medical examination or refuses to provide the Plan Administrator yearly medical and/or earnings information that the Plan Administrator has requested, then the Plan Administrator may suspend payment of the disability benefits until the participant submits to such medical examination or provides the requested medical and/or earnings information, as the case may be. If such participant's refusal to submit to a medical examination continues for 1 year, the Plan Administrator may revoke the participant's rights in the disability benefits.

(8) **Recovery from Disability**

(i) Except as provided in paragraph (ii) of this subsection, if the Plan Administrator finds after a medical examination that a disability retiree who is under age 62 is no longer mentally or physically incapacitated for the further performance of the normal duties of the position of the participant at the time of disability retirement, the Plan Administrator may, after giving notice and an opportunity for a hearing, suspend the retiree's allowance.

(ii) The Plan Administrator may not suspend a retiree's disability benefits under this Section unless:

a. a retiree is employed in a position similar to the position held before retirement or a position with compensation that is at least equal to the retiree's average final compensation at disability retirement; or

b. the Plan Administrator determines, after giving notice and an opportunity for a hearing, that a retiree has refused to accept from the Sheriff's Office at disability retirement an offer of reemployment in a position comparable to the position held before retirement or a position with compensation that is at least equal to the retiree's average final compensation at retirement.

(iii) A retiree whose allowance is suspended under this subsection may, receive a termination benefit, as provided under Section 5.5, if the retiree had at least 5 years of eligibility service at retirement.

(9) **Death of Disabled Participant**

In the event of the death of a disabled participant, no benefits with respect to the participant shall be payable (unless the participant elected a form of payment with survivor benefits pursuant to Sections 5.4(d)(5)(i) and 6.2).

(10) **Participant on Leave of Absence**

A participant on a leave of absence for reasons other than military service shall be entitled to receive disability benefits pursuant to this Section 5.4.

(11) **Reemployment of Disability Retiree**

A participant who is receiving disability benefit payments and who is rehired by the Sheriff's Office may not receive creditable service or eligibility service nor shall the participant make participant contributions during the period of reemployment during which disability benefit payments were received.

5.5 OTHER TERMINATIONS OF EMPLOYMENT

(a) **Amount of Termination Benefit**

If a participant reaches a termination date for any reason other than death, retirement or disability, the participant shall be entitled to a monthly termination benefit equal to a vested percentage (determined as set forth below) of the benefit computed pursuant to Section 5.1 (based upon the participant's actual years of creditable service and average compensation at his or her termination date).

(b) **Commencement of Termination Benefits**

Benefits payable pursuant to this Section 5.5 shall commence on the 1st day of the month coincident with or next following the participant's 62nd birthday. In addition, a participant shall also be entitled to receive a lump sum distribution of his or her special pick-up contributions benefit or bifurcated plan contributions benefit, if he or she is entitled to the benefit, within an administratively reasonable period following his or her termination date.

(c) **Cash-out Option**

Notwithstanding the preceding provisions of this Section 5.5,

(1) a participant who reaches a termination date after having become 100% vested in his or her other entire accrued benefit may elect to receive a cash-out of his or her employee contributions benefit, as provided in Section 6.2(f), in which case such cash-out may be made at any time following the termination date, at the election of the participant; and

(2) a participant who reaches a termination date before becoming 100% vested in his or her entire accrued benefit shall receive a cash-out of his or her employee contributions benefit as provided in Section 6.2(f), in which case such cash-out automatically shall be made as soon as administratively feasible following the termination date.

(d) **Form of Benefits**

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

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

(1) Subject to Section 2.2, the vested percentage of the accrued benefit to which the participant is entitled shall be equal to the greater of:

(i) 100% of the participant's employee contributions benefit; or

(ii) a percentage of the participant's accrued benefit, determined on the basis of the number of his or her years of eligibility service and in accordance with the following schedule:

Years of Eligibility Service	Percentage Vested
Less than 5	0%
5 or more	100%

(2) Notwithstanding the preceding paragraph, a participant's vested percentage in his or her accrued benefit shall be 100% upon attainment of his or her normal retirement date while a covered individual.

(3) To the extent a participant is entitled to receive a special pick-up contributions benefit or bifurcated plan contributions benefit, he or she shall at all times be 100% vested in the special pick-up contributions benefit or bifurcated plan contributions benefit.

5.6 MAXIMUM LIMITATION ON BENEFITS

Notwithstanding any Plan provisions to the contrary:

(a) **Maximum Benefit**

To the extent necessary to prevent disqualification under Section 415 of the Internal Revenue Code, and subject to the remainder of this Section 5.6, the maximum monthly benefit to which any participant may be entitled at any time pursuant to Sections 5.1 - 5.5, as adjusted from time to time pursuant to Section 5.10 (hereafter referred to as the "maximum benefit") shall not exceed the defined benefit dollar limit (adjusted as provided in Section 5.6(b)), which limit shall be determined in accordance with the following:

(1) For participants with at least one hour of service on or after the first day of the first limitation year ending after December 31, 2001, the defined benefit dollar limit shall be $13,333, as adjusted under Section 415(d) of the Code.

(2) For participants who do not have at least one hour of service on or after the first day of the first limitation year ending after December 31, 2001, the defined benefit dollar limit shall be $7,500, as adjusted under Section 415(d) of the Code.

(3) The defined benefit dollar limit as set forth above is the monthly amount payable in the form of a straight life annuity, beginning no earlier than age 62 (except as provided in Section 5.6(b)(1)(ii)) and no later than age 65.

(4) The defined benefit dollar limit shall be adjusted, effective January 1 of each year, under Section 415(d) of the Code in such manner as the Secretary shall prescribe. A limit as adjusted under Section 415(d) shall apply to limitation years ending with or within the calendar year for which the adjustment applies.

In addition to the foregoing, to the extent necessary to prevent disqualification under Section 415 of the Internal Revenue Code, and subject to the remainder of this Section 5.6, the maximum annual additions for any limitation year, including any contribution a participant may make to the Plan pursuant to Sections 4.4 and 4.5, shall be equal to the lesser of:

(1) $40,000 or

(2) 100% of the participant's remuneration for the applicable month.

The rate of benefit accrual shall be frozen or reduced accordingly.

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

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

(1) If the benefit is payable in any form other than a single life annuity or a qualified joint and survivor annuity (as defined for purposes of Section 415 of the Internal Revenue Code), the maximum benefit shall be reduced so that it is the actuarial equivalent of the single life annuity.

(i) If the benefit of a participant begins prior to age 62, the defined benefit dollar limit applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limit applicable to the participant at age 62 (adjusted under Section 5.6(c), if required). The defined benefit dollar limit applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limit computed using the interest rate and mortality table specified in Section 1.7(b) of the plan, and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limit computed using a 5 percent interest rate and the applicable mortality table designated by the Secretary of the Treasury from time to time pursuant to Section 417(e)(3) of the Internal Revenue Code. Any

decrease in the defined benefit dollar limit determined in accordance with this Section 5.6(b)(1)(i) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

(ii) The adjustment described in Section 5.6(b)(1)(i) above shall not apply to participants who have been credited with at least 15 years of creditable service:

a. as a full-time employee of the Sheriff's Office in a position providing police protection;

b. in military service; or

c. in a combination of a. and b.

(2) If the benefit of a participant begins after the participant attains age 65, the defined benefit dollar limit applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limit applicable to the participant at age 65 (adjusted under Section 5.6(c), if required). The actuarial equivalent of the defined benefit dollar limit applicable at an age after age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limit computed using the interest rate and mortality table specified in Section 1.7(b) of the plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limit computed using a 5 percent interest rate assumption and the applicable mortality table as designated by the Secretary of the Treasury from time to time pursuant to Section 417(e)(3) of the Internal Revenue Code. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

(c) **Reducing Dollar Limit**

If a participant has fewer than 10 years of participation in the plan, the defined benefit dollar limit shall be multiplied by a fraction, (1) the numerator of which is the number of years (or part thereof) of participation in the plan, and (2) the denominator of which is 10. For purposes of the foregoing, a year of participation shall include those periods for which a participant elected to transfer service pursuant to Section 3.5.

(d) **Limitation Year**

Limitation year shall be defined as the Plan year, except as otherwise provided by adoption of legislation by the County.

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

In addition to the foregoing, the maximum benefit shall be reduced, and the rate of benefit accrual shall be frozen or reduced accordingly, to the extent necessary to prevent

disqualification of the Plan under Section 415 of the Internal Revenue Code, with respect to any participant who is also a participant in:

(1) any other tax-qualified pension plan maintained by the County, including a defined benefit plan in which an individual medical benefit account (as described in Section 415(l) of the Internal Revenue Code) has been established for the participant;

(2) any welfare plan maintained by the County in which a separate account (as described in Section 419A(d) of the Internal Revenue Code) has been established to provide post-retirement medical benefits for the participant; and/or

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

(f) **Annual Additions**

Annual Additions shall be defined as the sum of the following items credited to the participant under this Plan and under any other tax-qualified defined contribution plans sponsored by the County for any limitation year: County contributions that are separately allocated to the participant's credit in any defined contribution plan; forfeitures; participant contributions; and amounts credited after March 31, 1984 to the participant's individual medical account (within the meaning of Section 415(l) of the Internal Revenue Code).

(g) **Incorporation of Section 415 Limits**

To the extent a participant's benefit is subject to provisions of Section 415 of the Internal Revenue Code which have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.

5.7 POST-TERMINATION CHANGES

Any change in benefits provided for by amendment to the Plan shall not apply to any participant whose termination date with the Sheriff's Office occurred prior to the effective date of such amendment, except as otherwise specifically provided for in the Plan or in such amendment.

5.8 DEATH BENEFITS

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

(a) **General Benefit**

In the event of the death of a participant prior to his or her benefit commencement date, the participant's beneficiary shall be entitled to receive as a single lump sum the benefit described in paragraph (1) plus that described in paragraph (2), where:

(1) is an amount equal to the participant's employee contributions benefit and, if he or she was entitled to the benefit, his or her special pick-up contributions benefit or bifurcated plan contributions benefit; and

(2) is an amount equal to the participant's annualized compensation determined as of the date of death; provided, however, that the benefit provided by this paragraph (2) shall be payable only if the participant had died before his or her termination date and either after completing 1 year of eligibility service or while in the line of duty (as defined in subsection (c) of this Section 5.8).

(b) **Surviving Spouse Annuity Benefit**

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

(i) the participant is married on the date of death;

(ii) the participant's death occurs before his or her termination date,

(iii) the participant has not designated another primary beneficiary of the death benefit described in Section 5.8(a);

(iv) the participant would have been eligible to receive normal retirement benefits pursuant to Section 5.1 had the participant retired on the day before his or her death or the participant was at least age 55 with at least 15 years of eligibility service; and

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

(2) For purposes of this subsection (b), a survivor annuity is a monthly income commencing in the month next following the participant's death, and continuing for the remainder of the spouse's life, in an amount equal to the benefit the spouse would have received under an immediate joint and survivor annuity pursuant to Section 6.2(a) (with a 100% survivor benefit) had the participant retired on the day before death, but computed without actuarial reduction for early retirement.

(c) **Line of Duty Definition**

For purposes of this Section 5.8, the term "line of duty" means death from an injury that occurred in the actual performance of duty for the County at a definite time and place without willful negligence by the participant.

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

If a participant dies after his or her benefit commencement date, the benefits, if any, to which the participant's beneficiary shall be entitled shall depend upon the form in which

the participant's benefits were payable at the time of his or her death, under the applicable form of benefit described in Section 6.2.

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

The beneficiary of a participant who dies while a covered individual and on paid or unpaid leave of absence for reasons other than military service shall be entitled to receive death benefits pursuant to this Section 5.8.

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

If a participant reaches a termination date for any reason other than death, retirement or disability and dies before the benefit commencement date for his or her benefit under Section 5.5(a) or 5.5(c), then his or her designated beneficiary shall be entitled to receive as a single lump sum an amount equal to the employee contributions benefit and, any special pick-up contributions benefit or bifurcated plan contributions benefit to which the participant was entitled (to the extent not previously withdrawn).

5.9 LIMITATIONS ON DEATH BENEFITS

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

(a) **Lump Sum Benefit**

All benefits payable under Section 5.8(a) or (f) shall be distributed in full not later than the last day of the calendar year containing the 5th anniversary of the death of the participant.

(b) **Surviving Spouse Annuity Benefit**

If the participant's beneficiary is the participant's surviving spouse, then, unless the participant's spouse elects to receive the lump sum benefit under Section 5.8(a), benefits payable under Section 5.8(b) to or for the benefit of the spouse, and which begin not later than the later of the last day of the calendar year containing the 1st anniversary of the participant's death, or the last day of the calendar year in which the participant would have reached age 70-1/2, may be distributed over the life of the spouse or a period certain not extending beyond the life expectancy of the spouse, under a method of distribution which meets the requirements of Section 6.3(a). The life expectancy shall be based upon the spouse's attained age as of the spouse's birthday in the calendar year in which falls:

(1) the date on which non-annuity benefits are required to commence pursuant to this subsection (b); or

(2) if earlier, the date on which annuity benefits actually commence.

(c) **Surviving Spouse Dies Prior to Commencement of Benefits**

If benefits are payable in accordance with subsection (b) above, and the surviving spouse dies after the participant but prior to:

(1) the date on which non-annuity benefits are required to commence pursuant to subsection (b) above; or

(2) the date on which annuity distributions meeting the requirements of subsection (b) above actually commence,

then, in either case, the aforesaid 5 year limit, and the alternate limit set forth in subsection (a) of this Section 5.9, are to be applied as if the Spouse were the participant, so that such limits shall be measured from the death of the spouse.

(d) **When Annuity Benefits Commence Before Participant's Death**

If annuity benefits meeting the requirements of Section 6.3(a) had commenced prior to the participant's death, then the death benefits payable pursuant to Sections 6.2 and 5.8(d) may be distributed without regard to the aforesaid 5 year limit, but must be distributed at least as rapidly as they would have been under the pre-death method of distribution.

5.10 COST OF LIVING ADJUSTMENTS

(a) Subject to the provisions of Section 5.10(b) and Section 5.6, the benefit payable under Sections 5.1, 5.3, 5.4, 5.5 or 5.8(b) (including a benefit payable under any of the optional forms permitted under Section 6.2, other than subsection (f)) shall be adjusted as of July 1 of each year by multiplying the benefit, as determined immediately prior to the adjustment (i.e., taking into account prior cost-of-living adjustments pursuant to this Section 5.10), by a fraction,

(1) whose numerator is the CPI (as hereinafter defined) for the month of December of the current fiscal year; and

(2) whose denominator is the CPI for the month of December of the preceding fiscal year.

If the resulting fraction is one or less than one, no adjustment shall be made for such fiscal year.

(b) Notwithstanding anything herein to the contrary,

(1) This Section 5.10 shall be effective as of July 1, 2002. No cost-of-living adjustment shall be made with respect to any benefits paid prior to July 1, 2002.

(2) The first adjustment made under Section 5.10(a) shall be the July 1 occurring on or after the first anniversary of the date on which the benefit commenced. For this purpose, benefits payable to a surviving spouse or other beneficiary

following the commencement of benefits to the participant shall be deemed to have commenced on the date on which the benefit commenced to the participant.

(3) Subject to the provisions of Section 5.10(b)(1) and (2), the cost-of-living adjustment made under Section 5.10(a) on and after July 1, 2002 shall apply to a participant (or a surviving spouse or other beneficiary) whose benefits commenced prior to July 1, 2002.

(4) The amount of the cost-of-living adjustment for any fiscal year shall in no event exceed three percent (3%).

(c) For purposes of this Section 5.10, the term "CPI" means the Consumer Price Index - All Urban Consumers (CPI-U), U.S. City Average, All Items, (1982-84=100), published and revised by the Bureau of Labor Statistics, U.S. Department of Labor, or the successor to such index.

ARTICLE 6: PAYMENT OF BENEFITS

6.1 METHOD OF PAYMENT

(a) All benefit distributions shall be in cash (or in annuity contracts as provided herein).

(b) The County shall determine, in its discretion, whether the distribution shall be funded through periodic payments made directly from the trust, or through the purchase of annuity contracts, or whether a combination of such methods of distribution shall be used, and the County shall give to the trustees such directions and information as may be necessary for the trustees to carry out the decision of the County.

(c) If the County shall determine that the whole or any part of the distribution is to be funded through purchase of an annuity contract for a participant, the County shall select such form of contract (including a variable annuity) to be so purchased and shall direct the trustees to pay the premium of such contract to the issuing company.

(d) The County shall direct that all right, title and interest in such contract shall remain in the trustees under the terms of the Plan and the participant shall have no right, title or interest therein except to receive the payments therefrom as provided therein, and to change the beneficiary from time to time.

(e) Notwithstanding the foregoing, to the extent a participant is entitled to receive a special pick-up contributions benefit or bifurcated plan contributions benefit, distribution of the benefit shall be in the form of cash or in one lump sum distribution.

6.2 OPTIONAL FORMS OF BENEFIT

A participant, subject to the conditions hereinafter set forth and in Section 5.4(d)(5), may elect to receive, in lieu of the monthly life annuity form of retirement income described in Section 5.1, the monthly life annuity form of disability benefit described in Section 5.4(a) or (b), or the monthly life annuity form of deferred retirement benefit described in Section 5.3, a benefit, which is its actuarial equivalent, payable in any of the following forms:

(a) **Joint and Survivor Option**

(1) The joint and survivor option is a monthly income payable during the participant's lifetime and continuing after his or her death at either 50% or 100% (as elected by the participant) of the rate to the participant's beneficiary as of the participant's benefit commencement date for the remainder of such beneficiary's life.

(2) If, before the participant's benefit commencement date, the participant's beneficiary dies, the election shall thereupon become void.

(3) If, after the participant's benefit commencement date, the participant's beneficiary dies before the participant dies, the election shall remain effective and the participant shall continue to receive the reduced retirement income payable to the participant in accordance with the option.

(b) **Pop-up Option**

(1) The pop-up option is a monthly income payable during the participant's lifetime and continuing after the participant's death at either 50% or 100% (as elected by the participant) of the rate to the participant's beneficiary as of the participant's benefit commencement date for the remainder of such beneficiary's life.

(2) If, before the participant's benefit commencement date, the participant's beneficiary dies, the election shall thereupon become void.

(3) If, after the participant's benefit commencement date, the participant's beneficiary dies before the participant dies, the election shall likewise become void, and the participant shall receive, commencing on the 1st day of the month following the beneficiary's death, the monthly benefit which the participant would have received had his or her benefits originally been payable in the normal form of payment described in Section 5.1; such benefit shall thereafter be payable as a life only option.

(c) **Guaranteed Return of Accrued Benefit Option**

The guaranteed return of accrued benefit option is a monthly income payable during the participant's lifetime, and if upon the death of the participant he or she has not received total monthly payments equal to the actuarial equivalent present value of the participant's accrued benefit (taking into account potential adjustments pursuant to Section 5.10), the difference between the actuarial equivalent present value and the total monthly payments shall be paid in a single lump sum payment to the participant's beneficiary as soon as administratively feasible following the participant's death.

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

The guaranteed return of employee contributions benefit option is a monthly income payable during the participant's lifetime, and if upon the death of the participant he or

she has not received total monthly payments equal to the participant's employee contributions benefit, the difference between the employee contributions benefit and the total monthly payments shall be paid in a single lump sum payment to the participant's beneficiary as soon as administratively feasible following the participant's death.

(e) **Special Option**

At the sole discretion of the Plan Administrator upon a written request to the Plan Administrator, a participant may elect a form of benefit, with respect to benefits payable during his or her lifetime and/or with respect to benefits payable to his or her spouse or another beneficiary after the participant's death, other than those forms of benefits described in subsections (a) (d) above.

(f) **Lump Sum Option**

A participant may elect at any time after his or her termination date and before the benefit commencement date for the participant's retirement benefits to receive a lump sum cash payment of the participant's employee contributions benefit in lieu of all other benefits under the Plan and, upon payment of that lump sum cash payment, then, subject to restoration provided in Section 2.2(d), the entire remaining portion of his or her accrued benefit shall be forfeited by the participant.

6.3 GENERAL PROVISIONS APPLICABLE TO OPTIONS

(a) **Minimum Distribution Requirements**

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

(1) (i) Except as otherwise provided below, distribution shall begin not later than the later of April 1st of the calendar year (hereinafter referred to as the "commencement year") in which the participant retires or attains age 70½.

(ii) Distribution shall be made:

a. over the life of the participant or the lives of the participant and his or her beneficiary; and/or

b. over a period certain not extending beyond the life expectancy of the participant or the joint life and last survivor expectancy of the participant and his or her beneficiary,

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

(2) A required distribution shall be deemed to have been made during the commencement year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the commencement year.

(3) Benefits paid prior to the commencement year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein.

(4) Nothing contained in this subsection (a) shall prevent distribution of annuity benefits providing for non-increasing (except as otherwise permitted in proposed treasury regulation 1.401(a)(9)-1) payments beginning not later than the commencement year (except as provided in paragraph (3) above) and payable at least annually over a period permitted by this subsection (a) (for which purpose, if benefit commencement under the annuity precedes the commencement year, each relevant life expectancy shall be based on the individual's attained age as of his or her birthday occurring in the calendar year in which benefit commencement occurs).

(b) **Election Procedures**

An election of any optional form of benefit described in Section 6.2 shall be made by a participant in writing, on a form supplied by or to the Plan Administrator. Upon the participant's benefit commencement date, such election (including the designation of a beneficiary) shall be irrevocable.

(c) **Effect of Death**

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

6.4 ELIGIBLE ROLLOVER DISTRIBUTIONS

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

(a) **Definitions**

(1) **Eligible rollover distribution:**

Effective for distributions made after December 31, 2001, an "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

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

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

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) **Eligible retirement plan:**

(i) Effective for distributions made after December 31, 2001, an "eligible retirement plan" is:

a. An individual retirement account described in Section 408(a) of the Internal Revenue Code;

b. An individual retirement annuity described in Section 408(b) of the Internal Revenue Code;

c. A qualified trust described in Section 401(a) of the Internal Revenue Code or an annuity plan described in Section 403(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution;

d. An annuity contract described in Section 403(b) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution; and

e. An eligible plan described in Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, that accepts the distributee's eligible rollover distribution and agrees to account separately for amounts transferred into such plan from this plan.

(ii) The foregoing definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a domestic relations order.

(3) **Distributee:**

A "distributee" includes a participant or former participant. In addition, the participant's or former participant's surviving spouse is a distributee with regard to the interest of the spouse or former spouse.

(4) **Direct rollover:**

A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

ARTICLE 7: BENEFICIARIES

7.1 DESIGNATION OF BENEFICIARIES

(a) **Participant Designates Beneficiary**

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

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

Each designation shall revoke all prior designations by the same participant, shall be in a form prescribed by the Plan Administrator, and shall be effective only when filed in writing with the Plan Administrator prior to the participant's benefit commencement date.

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

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

(1) the participant's spouse, if then living; otherwise to

(2) the participant's then living descendants, if any, per stirpes; otherwise to

(3) the participant's then living parent or parents, equally; otherwise to

(4) the participant's estate.

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

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

(1) distribute the payment to the participant's estate,

(2) retain such payment, without liability for interest, until the rights thereto are determined, or

(3) deposit the payment into any court of competent jurisdiction.

7.2 LOCATION OF PARTICIPANTS AND BENEFICIARIES

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

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

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

If the Plan Administrator notifies any participant or beneficiary that he or she is entitled to an amount under the Plan and the participant or beneficiary fails to claim such amount or make his or her location known to the Plan Administrator within 3 years thereafter, then, except as otherwise required by law, if the location of 1 or more of the next of kin of the participant, including the participant's surviving spouse, is known to the Plan Administrator, it may direct distribution of such amount to any one or more or all of such next of kin, and in such proportions as the Plan Administrator determines.

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

If the location of none of the foregoing persons can be determined, the Plan Administrator shall have the right to direct that the amount payable shall be deemed to be a forfeiture and treated in accordance with Section 4.2, except that the dollar amount of the forfeiture, unadjusted for gains or losses in the interim, shall be reinstated if a claim for the benefit is made by the participant or beneficiary to whom it was payable. If any benefit payable to an unlocated participant or beneficiary is subject to escheat pursuant

to applicable state law, the Plan Administrator shall not be liable to any person for any payment made in accordance with such law.

ARTICLE 8: PLAN ADMINISTRATION

8.1 INVESTMENT OF FUNDS

(a) All contributions under the Plan shall be paid to the trustees and deposited in the trust.

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

8.2 PROHIBITION AGAINST DIVERSION OF FUNDS

It shall be impossible by operation of the Plan or trust, by 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, except as otherwise set forth in Section 9.5(c)(5) hereof and in the trust with respect to the conditions under which trust assets may be returned to the County.

8.3 PROHIBITION AGAINST ASSIGNMENT OF BENEFITS

(a) Except as provided below, no benefit payable at any time under this Plan may be anticipated, assigned (either at law or in equity), alienated or be subject to attachment, garnishment, execution, levy or other legal and equitable process.

(b) However, the prohibitions of the preceding sentence shall not apply to, and the trustees shall fully recognize the creation, assignment or recognition of a right to any benefit payable with respect to a participant pursuant to a "qualified domestic relations order."

(c) For the purposes hereof, a qualified domestic relations order shall mean a judgment, decree or order made pursuant to a state domestic relations law which relates to the provision of child support, alimony payments or marital property rights and

(1) which clearly specifies:

(i) the names and last known mailing addresses of the participant and each payee;

(ii) the amount or percentage of the participant's benefits to be paid by this Plan to each payee (or the manner in which such amount or percentage is to be determined);

(iii) the number of payments or period to which such order relates: and

(2) which does not:

(i) require this Plan to provide any type or form of benefit, or any option, not otherwise provided under this Plan;

(ii) require this Plan to provide increased benefits (determined on the basis of actuarial value); or

(iii) require the payment of the same benefits to any payee which are payable to another payee pursuant to a prior qualified domestic relations order.

8.4 ADMINISTRATIVE AUTHORITY

(a) Sole Responsibility and Control

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

(b) Powers, Duties and Responsibilities

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

(1) resolve and determine all disputes or questions arising under the Plan, including the power to determine the rights of employees, participants and beneficiaries, and their respective benefits, and to remedy any ambiguities, inconsistencies or omissions;

(2) adopt such rules of procedure and regulations as in its opinion may be necessary for tile proper and efficient administration of the Plan and as are consistent with the Plan;

(3) implement the Plan in accordance with its terms and such rules and regulations;

(4) direct the trustees with respect to the eligibility of any employee as a participant and the crediting and distribution of the trust, which are to be made only upon the basis of instructions from the County pursuant to the terms of the Plan; and

(5) establish and carry out a funding policy and method consistent with the objectives of the Plan, pursuant to which the County shall determine the Plan's liquidity and financial needs and communicate them to the trustees (or other fiduciaries who are charged with determining investment policy).

8.5 PLAN ADMINISTRATION

The Plan shall be operated and administered on behalf of the County by a Plan Administrator, which shall be a committee consisting of the trustees under the trust agreement associated with the Plan. The Plan Administrator shall be governed by the following:

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

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

(1) to make and enforce rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;

(2) to make and enforce procedures to be followed by employees in filing applications for benefits and for furnishing the evidence necessary to establish the employees' right to benefits;

(3) to make and enforce determinations concerning the rights of employees applying for or receiving benefits;

(4) to make and enforce procedures which afford a mechanism for adjusting complaints of an employee dissatisfied with determinations of the Plan Administrator;

(5) to make and enforce procedures for determining the service credit of employees which affords employees an opportunity to object, in writing, and to establish service credit in advance of retirement;

(6) to make and enforce procedures for authorizing disbursements from the fund created under the Plan and to authorize disbursements of the fund in accordance with the Plan documents;

(7) to make and enforce procedures and standards and make determinations concerning total and permanent disability in accordance with the Plan documents;

(8) to compute the amount of benefits that shall be payable to any person in accordance with the Plan documents;

(9) to interpret the Plan;

(10) to otherwise decide questions concerning the eligibility of any employee to participate in the Plan or to receive benefits from the Plan;

(11) to employ or engage actuaries to: make actuarial evaluation of the liabilities under the Plan, to recommend the mortality and other tables and interest rates to be used from time to time in actuarial and other computations for any purpose of the Plan, to recommend the amounts of contributions to be made by the County

and to perform such other services as the Plan Administrator shall deem necessary or desirable in connection with the administration of the Plan;

(12) to employ or engage accountants as it shall deem necessary or desirable in connection with the administration of the Plan;

(13) to employ or engage legal counsel as it shall deem necessary or desirable in connection with the administration of the Plan;

(14) to employ or engage any other experts as it shall deem necessary or desirable in connection with the administration of the Plan;

(15) to determine the mortality and other tables and interest rates to be used from time to time in actuarial or other computations for any purpose of the Plan;

(16) to recommend to the County the amounts of contributions to be made by the County, from time to time, under the provisions of the Plan; and

(17) to act for the County before all persons in any matter directly pertaining to the Plan.

(b) **Limits on Power**

The Plan Administrator shall have no power to:

(1) amend or terminate the Plan;

(2) determine County contributions;

(3) affect the employer-employee relationship between the Sheriff's Office and any employee; or

(4) retain and/or discharge any one or more of the trustees, all of which powers are reserved to the County unless expressly granted to the Plan Administrator.

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

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

(d) **Specialized Advice or Assistance**

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

(i) The Plan Administrator may appoint, any persons or firms, or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the administration and operation of the Plan.

(ii) The Plan Administrator shall be entitled to rely conclusively upon, and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such firms or persons.

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

(i) The Plan Administrator shall have the power and authority to delegate from time to time by written instrument all or any part of its duties, powers or responsibilities under the Plan, both ministerial and discretionary, as it deems appropriate, to the Director of the County's Department of Human Resources to assist the Plan Administrator (the "Coordinator"), and in the same manner to revoke any such delegation of duties, powers or responsibilities.

(ii) Any action of the Coordinator in the exercise of such delegated duties, powers or responsibilities shall have the same force and effect for all purposes hereunder as if such action had been taken by the Plan Administrator.

(iii) Further, the Plan Administrator may authorize the Coordinator to execute any certificate or document on behalf of the Plan Administrator, in which event any person notified by the Plan Administrator of such authorization shall be entitled to accept and conclusively rely upon any such certificate or document executed by such person as representing action by the Plan Administrator until such third person shall have been notified of the revocation of such authority.

(iv) The Plan Administrator shall not be liable for any act or omission of any person to whom the Plan Administrator's duties, powers or responsibilities have been delegated, nor shall the Coordinator have any liabilities with respect to any duties, powers or responsibilities not delegated to him or her.

(e) **Liability**

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

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

(2) for any act or failure to act, or any mistake or judgment made, in his/her official capacity with respect to the Plan, unless resulting from his/her gross negligence or willful misconduct; or

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

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

(f) **Liability Insurance**

(1) The Plan may purchase, from Plan assets, as an expense of the Plan, liability insurance for the Plan and/or for its fiduciaries to cover liability or losses occurring by reason of an act or omission of a fiduciary, providing such insurance contract permits recourse by the insurer against the fiduciary in the case of breach of fiduciary obligation by such fiduciary.

(2) Any fiduciary may purchase, from and for his/her own account, insurance to protect himself or herself in the event of a breach of fiduciary duty and the County may also purchase insurance to cover the potential liability of one or more persons who serve in a fiduciary capacity with regard to the Plan.

(g) **Fiduciary's Benefits**

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

(1) receiving any benefit to which the fiduciary may be entitled as a participant or beneficiary; or

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly incurred in the performance of his/her duties under the Plan (except that no person so serving who receives compensation as an employee shall receive compensation from the Plan, except for reimbursement of expenses properly incurred); or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of the County or any related entity.

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

(h) **Organization; Voting**

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

(2) The Plan Administrator shall act as a body, and the individual members shall have no powers and duties as such, except as provided herein.

(3) The Plan Administrator shall act by vote of a majority of its members at the time in office (other than those disqualified from voting pursuant to Section 8.5(g)), either at a meeting or in writing without a meeting.

(i) **Decisions Final**

Except as set forth in Section 8.11, the determination of the Plan Administrator on any matter pertaining to the Plan within the powers and discretion granted to it shall be final and conclusive on the County, the trustees, all participants and beneficiaries and all those persons dealing in any way or capacity with the Plan.

8.6 MUTUAL EXCLUSION OF RESPONSIBILITY

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

8.7 UNIFORMITY OF DISCRETIONARY ACTS

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

8.8 FIDUCIARY STANDARDS

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

(a) solely in the interest of the participants and beneficiaries and for the exclusive purposes of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering and operating the Plan;

(b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

(c) in accordance with the documents and instruments governing the Plan.

8.9 LITIGATION

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

8.10 PAYMENT OF ADMINISTRATION EXPENSES

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

8.11 REVIEW PROCEDURE

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

ARTICLE 9: AMENDMENT AND TERMINATION

9.1 RIGHT TO AMEND

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

9.2 RIGHT TO TERMINATE

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

9.3 AUTOMATIC TERMINATION OF CONTRIBUTIONS

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

9.4 ALLOCATION AND DISTRIBUTION

(a) **Causation**

(1) This Section shall become operative upon any of the following events:

(i) a complete termination of the County's liability to make further contributions to the trust;

(ii) a complete discontinuance of contributions by the County to the trust; or

(iii) a complete termination of the Plan.

(2) The provisions of this Section also shall become operative in the event of a partial termination of the Plan, but only with respect to that portion of the Plan attributable to the participants to whom the termination is applicable.

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

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

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

(1) Upon the effective date of any such event, then, notwithstanding any other provisions of the Plan, subject to Section 9.5:

(i) no persons who were not theretofore participants shall be eligible to become participants;

(ii) no further benefits shall accrue; and

(iii) the accrued benefits of all participants not theretofore vested, and not theretofore forfeited, shall immediately become fully vested.

(2) The accrued benefits of all participants and beneficiaries shall be determined and distributed to them, as soon as is practicable after such termination or discontinuance, in accordance with Article 6.

(3) The assets in the trust shall be allocated for the purposes set forth below and in the order set forth below, to the extent the assets are sufficient therefor. The allocations may be implemented by distribution of trust assets, or by the purchase and distribution by the trustees of insurance company annuity contracts, or by a combination of these methods.

9.5 PRIORITIES FOR ALLOCATION OF TRUST ASSETS

Upon termination of the trust, the trustees shall liquidate all assets remaining in the trust. After deduction of estimated expenses in liquidating and distributing the trust, and any reasonable compensation for the trustees agreed upon with the County, the balance of the trust assets shall

be allocated so as to provide the accrued benefits otherwise payable under the Plan pursuant to the following order of priorities:

(a) **Participants in First Priorities**

To provide accrued benefits for each participant who:

(1) had begun to receive benefits at least 3 years prior to the effective date of the termination of the Plan;

(2) would have begun to receive retirement or disability benefits at least 3 years prior to the effective date of the termination of the Plan but for the fact that commencement of benefits was deferred; or

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

(b) **Other Participants**

To provide accrued benefits for all other participants, in the following order of preference:

(1) for each participant who would have qualified under the priority described in subsection (a) above but for the fact that the entitling event occurred or would have occurred within 3 years of the effective date of the termination of the Plan; and

(2) for all other participants in the priority described in this subsection (b).

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

(1) Trust assets shall be utilized under a particular priority only after all accrued benefits set forth in all preceding priorities shall have been fully provided for.

(2) For purposes of the allocation of funds within each priority, as set forth in this Section 9.5, funds will be credited to each participant to provide the accrued benefits to which he or she is so entitled, but only to the extent that such accrued benefits have not been provided under a preceding priority.

(3) Any reductions in accrued benefits within a particular priority (or within any particular preference set forth within a priority) as set forth above, due to insufficient trust assets, shall be allocated pro-rata among the participants within that priority (or preference) on the basis of then present values of the respective accrued benefits described in that priority (or preference) for each such participant.

(4) Any reference to accrued benefits payable to participants shall also be deemed to include accrued benefits payable to beneficiaries of deceased participants.

(5) If any balance of trust assets remains after all of the allocations described above, and after all liabilities with respect to participants and retired participants and their beneficiaries, if any, are satisfied, then the balance shall be returned to the County, and the trust shall terminate. Upon making such distribution, the trustees shall be discharged from all obligations under the trust and no participant shall have any further right or claim therein.

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

Notwithstanding any provision to the contrary in Section 9.4 and this Section 9.5, if a participant dies during the interim between the effective date of termination of the Plan and the distribution of trust assets, and if the participant's benefit commencement date had not yet occurred as of the effective date of termination, the amount distributable to the participant or to the participant's beneficiary, and the timing thereof, shall be determined pursuant to Section 5.8.

9.6 ALTERNATIVE TO IMMEDIATE DISTRIBUTION OF THE TRUST

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

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

(b) **Separate Account**

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

9.7 MODIFICATION OF ALLOCATION PROVISIONS

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

9.8 PLAN COMBINATIONS AND TRANSFERS

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

ARTICLE 10: MISCELLANEOUS PROVISIONS

10.1 LIMITATIONS ON LIABILITY OF COUNTY

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

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

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

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

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

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

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

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

10.2 CONSTRUCTION

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

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

(b) **Severability**

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

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

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