

**METROPOLITAN GOVERNMENT OF NASHVILLE  
AND DAVIDSON COUNTY EMPLOYEES**

**DEFERRED COMPENSATION PLAN**

**December 2019**

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## ARTICLE 1: ESTABLISHMENT AND PURPOSE OF PLAN

(a) The Metropolitan Government of Nashville and Davidson County, Tennessee, and the Metropolitan Employee Benefit Board hereby amend and restate the Metropolitan Government of Nashville and Davidson County Employees Deferred Compensation Plan (the “Plan”) effective December 3, 2019. The Plan shall be maintained for the exclusive benefit of covered employees and is intended to comply with the eligible deferred compensation plan requirements under section 457 of the Internal Revenue Code of 1986, as amended, and regulations thereunder, and other applicable law. Assets and income of the Plan shall be held in trust for the exclusive benefit of the Plan’s Participants and the Beneficiaries.

(b) The purpose of this plan is to enable employees who become covered under the Plan to enhance their retirement security by permitting them to enter into agreements with the Employer to defer a portion of their pay and receive benefits at retirement, separation from service, death, or in the event of financial hardship due to unforeseeable emergencies.

(c) Nothing contained in the Plan shall be deemed to constitute an employment agreement between the Participant and the Employer and nothing contained herein shall be deemed to give a Participant any right to be retained in the employ of the Employer. Nothing in the Plan shall be construed to codify the terms of any employment agreement between a Participant and the Employer, the Plan being intended as a supplement thereto.

## ARTICLE 2: DEFINITIONS

Whenever used in this Plan, the following terms shall have the meanings as set forth in this Article 2 unless a different meaning is clearly required by context:

***Account:*** The individual bookkeeping account maintained for each Participant that represents his total proportionate interest in the Trust Fund. A Participant is fully vested in his Account at all times.

***Administrator:*** The person or entity appointed by the Board to administer the Plan in accordance with Article 8.

***Beneficiary:*** The person, persons, or legal entity entitled to receive benefits under this Plan which become payable in the event of the Participant’s death.

***Board:*** The Employee Benefit Board of the Metropolitan Government of Nashville and Davidson County.

***Code:*** The Internal Revenue Code of 1986, as amended, and includes any regulation thereunder.

***Compensation:*** All salary and other compensation paid to an Employee for personal services rendered by an Employee, which is currently includible in the Employee's gross income for the taxable year for federal income tax purposes (W-2 earnings); such term does not include any amount excludible from gross income under this Plan or any other plan described in section 457(b) of the Code, any amount excludible from gross income under section 403(b) or 402 (g) of the Code, or any other amount excludible from gross income for federal income tax purposes under section 125 or section 414(h) of the Code.

***Deferral:*** The annual amount that a Participant elects to defer pursuant to a properly executed Deferral Agreement.

***Deferral Agreement:*** The agreement between a Participant and the Employer to defer receipt of pay not yet earned. The agreement shall state the annual Deferral amount to be withheld from a Participant's pay.

***Employee:*** Any employee, officer, or elected or appointed official of the Employer that is eligible to participate in the Metropolitan Employee Benefit System or any former plan administered by the Metropolitan Employee Benefit Board. An Employee shall also be considered an "Eligible Individual".

***Employer:*** The Metropolitan Government of Nashville and Davidson County, Tennessee.

***Investment Option:*** One of the investment vehicles in which amounts contributed to a Participant's Account may be invested at the Participant's discretion. There is no limit on the type of investment that the Board may designate as an option.

***Normal Retirement Age:*** Age 70½ or other earlier age elected by the Participant in writing. In no event shall a Participant's Normal Retirement Age be earlier than the age at which the Participant has the right to retire and receive an immediate pension without reduction for early retirement.

***Participant:*** An Employee or former Employee who has been enrolled in this Plan and who retains his Account under the Plan.

***Participant Account:*** The following accounts established for the Participant and maintained by the Administrator for each Participant, including any earnings and losses attributable thereon:

- (1) Elective Deferral Account
- (2) 457(b) Rollover Account
- (3) Non-457(b) Rollover Account
- (4) Transferred Account

***Plan:*** The Metropolitan Government of Nashville and Davidson County Employees Deferred Compensation Plan as set forth herein and as it may be amended from time to time.

***Plan Service Provider:*** The vendor hired to provide recordkeeping, trust, education, performance reporting and other services at the direction of the Administrator.

***Plan Year:*** The calendar year.

***Severance from Employment:*** The severance of a Participant's employment with the Employer for any reason, including retirement, death, military leave, or any other reason within the meaning of severance from employment as used in section 457(d)(1)(ii) of the Code.

***Transferred Amount:*** Amounts transferred to a Participant's account in accordance with Article 3, paragraph (f).

***Trust Agreement:*** An agreement entered into by the Board and one or more Trustees to govern the Trust Fund. The Trust Agreement shall be established pursuant to a written agreement that constitutes a valid trust under the laws of the State of Tennessee.

***Trust Fund:*** The sum of the contributions made to the Plan and held by the Trustee or Trustees in a trust, increased by any profits or income thereon and decreased by any losses or expenses incurred in the administration of the Trust Fund and any payment made therefrom.

**Trustee:** The entity, or individual, or committee that is responsible for holding and managing the Trust Fund.

**Unforeseeable Emergency:** A severe financial hardship to the Participant resulting from sudden and unexpected illness or accident of the Participant or of a dependent of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The need to send a Participant's child to college or the desire to purchase a home shall not be an Unforeseeable Emergency. Payment may not be made in the event that such hardship is or may be relieved:

- (1) Through reimbursement or compensation by insurance or otherwise,
- (2) By liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or
- (2) By cessation of Deferrals under the Plan.

**WRERA:** The Worker, Retiree, and Employer Recovery Act of 2008, as amended, and includes any regulation thereunder.

### **ARTICLE 3: PARTICIPATION IN THE PLAN**

#### ***(a) Eligibility***

Each Employee may become a Participant in this Plan following commencement of employment as an eligible Employee. Participation shall commence when enrollment becomes effective pursuant to paragraph (b).

#### ***(b) Enrollment***

Employees may enroll in the Plan by completing a Deferral Agreement and submitting it to the Employer under rules and procedures established by the Board. The Employer shall be responsible for submitting the Deferral Agreement to the Administrator and ensuring that contributions are forwarded to the Trustee selected by the Board. Such Deferral Agreement is effective only if entered into with the Employer before the first day of the month in which the Compensation is paid or becomes available.

- (1) A Participant may make Deferrals payable in the calendar month during which the Eligible Individual first becomes a Participant if the Deferral Agreement providing for such Deferrals is entered into before the first day of the month in which the Compensation is paid or becomes available.

(2) Notwithstanding subsection (b), a new Employee who is also an Eligible Individual may become a Participant and make Deferrals payable in the calendar month during which he first becomes an Employee if a Deferral Agreement providing for the Deferrals is entered into on or before the first day on which he performs services for the Employer.

(3) A Participant may, by amendment of a Deferral Agreement or by any manner as the Administrator may prescribe, do any of the following:

- i. change the specification of the investment for any contributions to a Participant Account under an Investment Product; or
- ii. change prospectively the amount of Deferrals.

An amendment to the Deferral Agreement will be effective as early as administratively practicable, but not earlier than the first day of the following calendar month in which the Compensation is paid or made available.

***(c) Modifications to Amount Deferred***

A Participant may change Deferrals with respect to pay not yet earned by submitting a new properly executed Deferral Agreement to the Employer pursuant to rules and procedures established by the Board. The Board may establish additional or alternative procedures for Participants to modify the Deferral amount.

***(d) Revocation of Deferral***

Any Participant may revoke his election to have pay deferred by notifying the Employer in writing. This revocation shall take effect as soon as administratively practicable, but no earlier than the first pay period following the date that the Employer receives written notice of such revocation. Deferrals shall be revoked automatically for any month in which there are insufficient monies to make the entire Deferral agreed upon, and automatically reinstated in the next pay period that Compensation is sufficient to make the agreed upon Deferral.

***(e) Transmittal of Contributions***

Notwithstanding any contrary provision of the Plan, in accordance with section 457(g) of the Code, all Deferrals, all property and rights purchased with such Deferrals and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and Beneficiaries under the Plan. All amounts of Compensation deferred under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Accounts of Participants.

***(f) Acceptance of Transfers***

A Participant who participated in any eligible deferred compensation plan described in section 457(b) of the Code, sponsored by a governmental employer, may transfer his account in such a plan to his Account in this Plan.

***(g) Transfers from Other Plans under Code Section 457(b)***

The Plan will accept transfers of amounts previously deferred under another plan under Code Section 457(b) maintained by another employer as defined in Code Section 457(e)(1)(A).

***(h) Minimum Deferral***

Each Employee who becomes a Participant must agree to a minimum Deferral of \$10 per pay period.

***(i) Roll-Over Contribution From Other Eligible Plans***

(1) Subject to rules adopted by the Board, a Participant may make and the Plan will accept a direct rollover or regular rollover of an Eligible Rollover Distribution as defined in paragraph (g) of Article 8 of this Plan, excluding after-tax Participant contributions, from an eligible plan as permitted by §408(d)(3) of the Code.

(2) Upon receipt of a Rollover Contribution, the Administrator shall credit the amount of any Rollover Contribution to the contributing Participant's Account in the Plan and shall invest such amount in accordance with the provisions of this Plan.

(3) For purposes of determining whether any amount tendered by a Participant for rollover is a qualified distribution, the Participant shall establish to the satisfaction of the Administrator that the amount tendered as a rollover amount represents a qualified distribution of the Participant from an eligible plan maintained by the former employer(s) of the Participant. The Administrator shall have the authority to determine whether or not a contribution proposed by a Participant constitutes a "rollover contribution" eligible for rollover treatment in accordance with this subsection (i) and Code Section 402. In making such determination, the Administrator may require reasonable proof of demonstration by the Participant of the eligibility of the proposed contribution for rollover treatment. The Administrator may rely conclusively upon the opinion of legal counsel for the Plan in making any such determination.

(4) Notwithstanding the distribution rules of Article 6 of this Plan, a Participant may at any time elect to receive a distribution of all or any portion of the Rollover amounts under this paragraph (i).

**ARTICLE 4: LIMITATIONS ON DEFERRAL**

***(a) General Limitation***

Subject to rules adopted by the Board, the maximum Deferral amount for any Participant in any taxable year shall not exceed the lesser of:

(1) The applicable dollar amount (as determined in accordance with sections 457(b)(2)(A), 457(e)(15) and 415(d) of the Code) of \$15,000 and indexed in \$500 increments per year after 2006; or

(2) 100% of the Participant's includable Compensation for the taxable year. The applicable dollar limit for Deferrals established under subparagraph (1) of this paragraph (a) is



increased for eligible Participants who have attained the age of 50 or older before the close of the calendar year by the additional amounts permitted under Section 414(v) of the Code.

***(b) Catch-up Limitation***

For each of the last three taxable years ending:

(1) Before the year in which the Participant attains the Normal Retirement Age, the Participant's maximum Deferral amount shall be established under subparagraph (1) of paragraph (a) of Article 4, or twice the applicable dollar limit, or in the three consecutive years prior to the year in which the participant reaches Normal Retirement Age.

(2) After a Participant's attainment of age 50, and during a year other than the year when the catch-up limit described in paragraph (b)(1) applied, of \$1,000 in 2002, increasing \$1,000 each year to \$5,000 in 2006, adjusted for cost of living thereafter. The determination of prior underutilized Deferrals (for purposes of determining the amount available under the Normal Retirement Age Catch-up) is determined differently for years prior to 2002.

(3) In determining a Participant's underutilized amount, the Plan will take into consideration:

(i) Prior to 2002, if a Participant made Deferrals to the Plan and deferrals to any other plan under Code Section 457(b), salary reduction contributions made to plans under Code Section 401(k), plans under Code Section 403(b), simplified employee pension (SARSEP) plans under Code Section 402(h)(1), simple retirement accounts under Code Section 408(p), and amounts deferred under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), such deferrals to the other plans will be taken into account in determining a Participant's underutilized amount under Code Section 457(b)(2). In addition, Includible Compensation will be limited to the limitation in effect in the calendar year in which the deferrals were made. If such deferrals cumulatively exceed the then-applicable dollar amount in Code Section 457(b)(2) in the year that such amounts were deferred, then there will be no underutilized amount for that year.

(ii) To the extent that the Employer did not maintain a plan under Code Section 457(b), no underutilized limitation is available to a Participant for that prior year.

(iii) After 2001, only deferrals to plans under Code Section 457(b) will be taken into account for purposes of determining the underutilized amount.

(iv) Age 50 Plus Catch-Up Contributions will not be taken into account for purposes of determining a Participant's underutilized amount.

(4) Coordination with special section 457 catch-up. In accordance with sections 414(v)(6)(C) and 457(e)(18), the age 50 catch-up described in this paragraph (b)(2) does not apply for

any taxable year for which a higher limitation applies under the special section 457 catch-up under paragraph (b)(3) of this section. Thus, for purposes of this paragraph (b)(4) and paragraph (b)(3) of this section, the special section 457 catch-up under paragraph (b)(3) of this section applies for any taxable year if and only if the plan ceiling taking into account paragraph (b)(1) of this section and the special section 457 catch-up described in paragraph (b)(3) of this section (and disregarding the age 50 catch-up described in this paragraph (b)(2)) is larger than the plan ceiling taking into account paragraph (b)(1) of this section and the age 50 catch-up described in this paragraph (b)(2) (and disregarding the special section 457 catch-up described in paragraph (b)(3) of this section). Thus, if a plan so provides, a participant who is eligible for the age 50 catch-up for a year and for whom the year is also one of the participant's last three taxable years ending before the participant attains normal retirement age is eligible for the larger of -

- (i) The [plan](#) ceiling under [paragraph \(b\)\(1\)](#) of this section and the age 50 [catch-up](#) described in this paragraph (b)(2) (and disregarding the special section 457 [catch-up](#) described in [paragraph \(b\)\(3\)](#) of this section) or
- (ii) The plan ceiling under paragraph (b)(1) of this section and the special section 457 catch-up described in paragraph (b)(3) of this section (and disregarding the age 50 catch-up described in this paragraph (b)(2)).

If a Participant is eligible for both the catch-up described in paragraph (b)(1) and (b)(2) in the same year, the Participant may use the catch up that allows for the largest deferral amount. The catch-up limitation is available to a Participant during one three-year period only. If the Participant uses the catch-up limitation and then postpones retirement or returns to work after retirement, the catch-up limitation shall not be available again.

**(c) USERRA**

The provisions of this Article 4 shall be administered in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”).

## **ARTICLE 5: ACCOUNTS OF PARTICIPANTS**

**(a) Accounts**

The Administrator shall establish and maintain Accounts on behalf of each Participant. Such Participant Accounts shall be valued each business day that the New York Stock Exchange is open for business. Each Participant’s Account balance shall reflect his aggregate Deferral Amounts, Transfer Amounts, and Rollover Amounts and any earning (or losses) attributable to such amounts, and shall be reduced by administrative, investment, and other fees attributable to his Account that are necessary for the administration of the Participant’s Account.

**(b) Investments**

A Participant may request that his Account (and his Deferrals) be allocated among the Investment Options available to the Participant. The initial allocation request shall be made at the time of enrollment. Once made, an investment allocation request shall remain in effect until changed by the Participant. A Participant may change his investment allocation by submitting a request to the

Administrator in such manner as is approved by the Board. Such changes shall become effective as soon as administratively feasible after the Administrator receives such request. If the Participant fails to make an investment allocation request upon the discontinuation of an investment vehicle, the Participant's Account shall be invested in the replacement investment vehicle following appropriate notice to the Participant.

## **ARTICLE 6: DISTRIBUTION OF ACCOUNTS**

### ***(a) Eligibility for Payment***

Distribution to a Participant of his Account shall be made no earlier than:

- (1) Severance from Employment,
- (2) The calendar year in which the Participant attains age 70½, or
- (3) The date the Administrator approves a distribution to the Participant on account of an Unforeseeable Emergency.

### ***(b) Distribution Due to Unforeseeable Emergency***

A Participant may request a distribution due to Unforeseeable Emergency by submitting a written request to the Administrator accompanied by evidence to demonstrate that his situation qualifies as an Unforeseeable Emergency. The Administrator shall have the authority to require such evidence as it deems necessary to determine whether a distribution is warranted. If an application for a distribution due to an Unforeseeable Emergency is approved, the distribution is limited to an amount sufficient to meet the Unforeseeable Emergency. The allowed distribution shall be paid in a single sum to the Participant as soon as possible after approval of such distribution. The Plan will treat a Participant's primary designated beneficiary the same as the Participant's spouse or dependent for purposes of determining whether the Participant has incurred an unforeseeable emergency or hardship.

### ***(c) Commencement of Distributions***

(1) General Rule. The distribution of a Participant's Account may commence upon Severance from Employment of the Participant upon proper application in a manner approved by the Board. Distribution of a Participant's Account under the Plan shall be made in a single sum as soon as administratively feasible after the Participant's Severance from Employment occurs, unless the Participant makes a written election to defer this payment to a specified later date, and the election is made at least 30 days before the date benefits commence. A Participant may elect that the distribution of benefits be made on any determinable future date as long as distributions commence no later than the close of the calendar year in which the Participant attains age 70 1/2, or retires, if later. A Participant may elect periodic distributions provided that any such distributions payable over more than one year are made in substantially non-increasing amounts and paid not less than annually as provided in Code section 457(d)(2).

(2) Effective January 1, 2000, if a Participant has elected a deferred commencement date, the Participant may make an additional election to defer the payment of his Account, provided that the election is filed before the payment is made and the later commencement date meets the

required distribution commencement date provisions of sections 401(a)(9) and 457(d)(2) of the Code. A Participant may not make more than one such election to defer payment.

(3) Notwithstanding paragraphs (c)(1), effective February 1, 2005, if the value of a Participant's Account is \$1,000 or less, then his benefit under the Plan shall be distributed to him in a single sum as soon as administratively feasible following his Severance from Employment.

(4) Effective January 7, 2003, a Participant shall be entitled to receive, and the Administrator shall be permitted to make, a distribution from the Plan of the balance of the Participant's Account prior to the Participant's attainment of age seventy and one-half (70 1/2), Severance from Employment or death and without the Participant being required to produce evidence of the occurrence of an Unforeseeable Emergency if

- i. the amount of the distribution does not exceed five thousand dollars (\$5,000),
- ii. the Participant has not, during the two (2) year period ending on the date of the distribution under this subsection (4), made any contributions to the Participant's Account maintained under the Plan and
- iii. the Participant has not received a prior distribution under this subsection (4).

(5) An eligible retired public safety officer may receive tax free annual distributions up to \$3,000 from the Plan for the payment of qualified health insurance premiums (accident, health insurance or long-term care) for the eligible retired public safety officer (or his or her spouse and dependents). Amounts distributed under this provision must be paid directly to the insurer.

***(d) Plan-to-Plan Transfers***

Notwithstanding any other provisions of the Plan, all of any part of the Account of a former Employee who is a Participant in the Plan, instead of being distributed in accordance with paragraph (c), shall be transferred to another eligible deferred compensation plan in which the former Employee has become a Participant, if:

- (1) The plan receiving such amounts provides for acceptance of such transfers; and
- (2) The Participant gives written direction to the Administrator to make such transfer.

This Plan also shall accept the transfer of amounts previously deferred by a Participant under another eligible deferred compensation plan described in section 457 of the Code.

***(e) Transfers to Other Plans under Code Section 457(b) Upon Severance from Employment***

(1) Upon a Participant's Severance from Employment, a Participant may elect to have all or a portion of the Participant Account transferred to the plan under Code Section 457(b) of an employer defined in Code Section 457(e)(1)(A). Such amounts will be transferred at the Participant's election, provided:

i. The plan under Code Section 457(b) to which the Participant's benefit is being transferred provides for the acceptance of such amounts;

ii. The Participant or Beneficiary has a benefit equal to the amount immediately after the transfer at least equal to the amount under the Plan immediately before the transfer; and

iii. In the case of a transfer made on behalf of a Participant, such individual has had a Severance from Employment with the Employer and is performing services for the employer maintaining the receiving plan.

(2) Upon the transfer of amounts under Article 6, the Plan's liability to pay benefits to the Participant or Beneficiary under the Plan will be discharged to the extent of the amount so transferred on behalf of the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section or effectuate the transfer pursuant to Section 1.457-10(b) of the Income Tax Regulations.

***(f) Distributions***

All distributions under this Article 6 shall be made in accordance with the requirements of Code section 457(d)(2) and WRERA.

(1) Notwithstanding the foregoing, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

(2) In addition, notwithstanding Section 4.8, 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions as defined in Code Section 402(c)(4).

**ARTICLE 7: DEATH BENEFITS**

***(a) Death Benefit***

As soon as administratively feasible following the death of a Participant, the Participant's Beneficiary shall receive a single-sum distribution of the Participant's entire Account balance.

***(b) Beneficiary Designation***

A Participant shall have the right to designate a Beneficiary, and amend or revoke such designation at any time, in writing. Such designation, amendment or revocation shall be effective upon receipt by the Administrator.

***(c) Protection of Person Who Serve in a Uniformed Service***

In the case of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)), the Beneficiaries are entitled to any additional benefits (other than Deferrals relating to the period of qualified military service) provided under the Plan had the Participant resumed employment and then had a Severance from Employment on account of death.

***(d) Failure to Designate a Beneficiary***

If no designated Beneficiary survives the Participant, and benefits are payable following the Participant's death, the Administrator shall direct that payment of benefits be made to the person or persons in the first of the following classes of successive preference Beneficiaries:

- (1) Any class of contingent Beneficiaries designated by the Participant; and
- (2) The Participant's estate.

***(e) Payment***

All death benefits paid in accordance with this Article 7 shall be made in accordance with the requirements of Code section 457(d)(2).

**ARTICLE 8: PLAN ADMINISTRATION**

***(a) Plan Administration***

The Board shall retain ultimate authority and responsibility for the administration and interpretation of the Plan but it shall be administered on a day to day basis by the party selected as and designated "Administrator" by the Board. Upon the resignation or removal of an Administrator, the Board shall thereafter promptly appoint a successor Administrator.

The Administrator shall have the full power and authority, subject to approval by the Board, to adopt forms, rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of the Plan. The Administrator shall, in accordance with such rules and regulations, be authorized and empowered to act to:

- (1) Answer all questions about any provision of the Plan.
- (2) Determine whether requirements such as age, termination of employment or Unforeseeable Emergencies as may be required for the receipt of any distribution under the Plan are satisfied.
- (3) Request that the Board take such action as may be required from time to time, including amendments to the Plan to protect any favorable tax status of the Plan, as applicable to a Participant, any Beneficiary and the Employer.

(4) Process changes in amounts of the Participant's Deferrals, and Participant investment allocation requests.

Neither the Administrator nor the Employer nor the Board has any authority or duty under the Plan to question or advise any Employee or Participant under the Plan concerning his enrollment in the Plan, his selection of any Investment Options, or his request for a distribution or withdrawal under the Plan.

***(b) Amendment of Plan***

The Board shall have the right to amend the Plan, at any time and from time to time, in whole or in part.

***(c) Implementation***

To implement the Plan, the Board shall enter into a Trust Agreement, so that Plan funds shall be segregated from the Employer's own assets and held in trust by the Trustee for the exclusive benefit of Participants and their Beneficiaries. Any or all benefits that may accrue to any Participant or Beneficiary under this Plan shall be subject to the terms and conditions of said Trust Agreement. Except as provided in paragraph (d), it shall be impossible under any circumstances at any time for any part of the corpus or income of the Trust Fund to be used for, or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

***(d) Plan Expenses***

All expenses of Plan administration, including (by way of illustration and not limitation) those incurred by the Board and the fees of the Trustee may shall be paid from the Trust Fund.

***(e) Claims for Benefits***

If the Administrator denies a claim for a benefit under this Plan, such claim shall be reviewed by the Board (or by its designee) in accordance with the procedures adopted by the Board.

***(f) Investment Options***

The Board shall select the Investment Options available to Participants under the Plan and shall review at least annually the quality and performance of such Investment Options. The Board shall have the authority to modify the Investment Options and if the Participant fails to make an investment allocation request upon the discontinuation of an investment vehicle, the Participant's Account shall be invested in the replacement investment vehicle following appropriate notice to the Participant.

***(g) Direct Rollovers***

A Distributee may elect, in a manner consistent with section 457(e)(16) of the Code and at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, except that a Distributee may not elect a Direct Rollover of a distribution or series of distributions of less than \$200 in a single calendar year. For purposes of applying this paragraph(g), the following definitions shall apply:

(1) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance of a participant's account 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 his designated beneficiary, or for a specified period of ten (10) years or more;

ii. Any distribution to the extent such distribution is required under Code Section 401(a)(9);

iii. or Required minimum distributions after age 70 ½ (of after death).

iv. Any corrective distribution of excess contributions and any corrective distribution of excess aggregate contributions and income allowable to such corrective distributions.

v. Any unforeseeable emergency distribution under Article 6, paragraph (b).

A non-spousal Beneficiary may elect a direct rollover of eligible death benefits to a traditional and Roth IRA.

(2) Eligible Retirement Plan. An Eligible Retirement Plan as described in Section 402(c)(8)(B) is an individual retirement account described in Code Section 408(a), an annuity plan described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a governmental entity described in Code Section 457(e)(1)(A), an annuity contract described in Code Section 403(b) that accepts the Distributee's Eligible Rollover Distribution.

(3) Distributee. A Distributee includes a Participant or former Participant. In addition, the Participant's or former Participant's spouse, former spouse, or non-spouse are Distributees 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.

(5) A non-spousal Beneficiary may elect to roll over death benefits amounts in accordance with Code Section 402(c)(11) provided that:

i. such amounts are rolled over to an inherited IRA via a direct trustee-to-trustee transfer;

ii. such election is made by December 31 of the year following the year of the Participant's death; and



iii. the rolled over amounts are eligible rollover distributions as defined in Code Section 402(c)(4).

iv. Notwithstanding any provision of the Plan to the contrary, a Participant, a surviving spouse who is the designated Beneficiary of the Participant or a spouse or former spouse who is the alternate payee will be permitted to elect to have any eligible rollover distribution as defined in Code Section 402(c)(4) paid directly to an eligible retirement plan as defined in as defined in Code Section 402(c)(8)(B) or to a Roth IRA established under Code Section 408A specified by the Participant. The Participant will, in the time and manner prescribed by the Administrator, specify the amount to be rolled over and the eligible retirement plan to receive such rollover. Any portion of a distribution which is not rolled over will be distributed directly to the Participant.

***(h) Transfers to Purchase Defined Benefit Plan Service Credit***

Subject to rules established by the Board and as permitted by Section 457(e)(17) of the Code, a Participant may elect to have all or any portion of the Participant's Account paid via a direct Trustee-to-Trustee transfer to a defined benefit governmental plan (as defined in section 414(d) of the Code) for the purchase of permissive service credit (as defined in section 415(n) of the Code) or for repayments under section 415(k)(3) of the Code.

**ARTICLE 9: TRUST FUND**

Notwithstanding any contrary provision of the Plan, in accordance with section 457(g) of the Internal Revenue Code, all amounts of Compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of Participants and beneficiaries under the Plan. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the laws of Tennessee.

All amounts of Compensation deferred under the Plan shall be transferred to a trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the accounts of Participants. To comply with this requirement, all amounts of Compensation deferred under the Plan shall be transferred to a trust established under the Plan not later than 15 business days after the end of the month in which the Compensation would otherwise have been paid to the employee.

**ARTICLE 10: DOMESTIC RELATIONS ORDERS**

***(a) General***

Benefits may be paid to an alternate payee as provided for in a Qualified Domestic Relations Order, as defined in Internal Revenue Code Section 414(p), and in accordance with Internal Revenue Code section 401(a)(13), which is applicable to governmental plans. The order must create or recognize the existence of an alternate payee's right to receive all or a portion of the benefits payable under the plan

with respect to a Participant. The Plan shall comply with the orders of a court of competent jurisdiction for the division of a Participant's account provided such order contains the following provisions:

- (1) The order must state that it constitutes a judgment, decree, or order that relates to the provision of support, alimony or marital property rights to a spouse or former spouse of a Participant and is made pursuant to state domestic relations law.
- (2) The order must clearly and unambiguously refer to the Metropolitan Government of Nashville and Davidson County Employees Deferred Compensation Plan.
- (3) The order must contain the name of the Participant's employer.
- (4) The order must contain the name, mailing address, social security number, and date of birth of both the Participant and the alternate payee.
- (5) The order must state the amount or percentage, or the manner in which the amount or percentage is to be determined, of the Participant's account to be paid to the alternate payee or segregated from the Participant's account. The amount or percentage to be paid or segregated must be calculable according to the Administrator's currently available records.
- (6) Any segregated account of an alternate payee shall bear all fees and expenses as though the alternate payee were a Participant.
- (7) Benefits payable to an alternate payee pursuant to a Qualified Domestic Relations Order are immediately available to be distributed to the alternate payee upon the effective date of the order.
- (8) The order must state that it does not require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.
- (9) The order must state it does not require the Plan to provide increased deferred Compensation.
- (10) Any provision that would have the effect of requiring any distribution to an alternate payee of deferred Compensation required to be paid to another person under any court order is void.
- (11) The order shall have no effect concerning any party's tax treatment of any amounts deferred or distributed under the Plan and shall not direct any person's tax reporting or withholding.

***(b) Administrator***

The Administrator shall have the authority, subject to approval by the Board, to establish policies and procedures for the administration of domestic relations orders.

***(c) Fees***

Any fees incurred by the Plan for the administration of domestic relations orders shall be charged equally against the accounts of the Participant and alternative payee.

**ARTICLE 11: MISCELLANEOUS**

***(a) Limitation of Rights: Employment relationship***

Neither the establishment of this Plan nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving a Participant or any other person any legal or equitable right against the Employer except as provided in the Plan. In no event shall the terms of employment of any Employee be modified or in any way be affected by the Plan.

***(b) Limitation of Rights: Benefits***

Benefits under this Plan may not be assigned, sold, transferred, or encumbered, and any attempt to do so shall be void. A Participant's or Beneficiary's Account shall not be subject to debts or liabilities of any kind and shall not be subject to attachment, garnishment or other legal process.

***(c) Representations***

The Board does not represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his participation. Furthermore, the Board does not represent or guarantee successful investment of Deferrals and shall not be required to restore any loss which may result from such investment.

***(d) Severability***

If a court of competent jurisdiction holds any provision of this Plan to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

***(e) Jurisdiction***

The provisions of this Plan shall be construed in accordance with section 457 of the Code, all other applicable federal law, and to the extent such other statutes do not apply, the laws of the State of Tennessee.

**METROPOLITAN GOVERNMENT  
OF NASHVILLE AND DAVIDSON  
COUNTY, TENNESSEE**

Signature on file with Treasurer's Office

**By:** Tom Eddlemon

**Title:** Treasurer & Plan Administrator

**Date Approved by the Employee Benefit Board:**

December 3, 2019