



COLORADO  
**PERA**<sup>®</sup>



# **PERA'S 401(K) AND DEFINED CONTRIBUTION PLAN AND TRUST DOCUMENT**

Effective September 11, 2020



# PERA'S 401(K) AND DEFINED CONTRIBUTION PLAN AND TRUST DOCUMENT

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## ARTICLE 1—DEFINITIONS

- 1.01** “**Account**” means the contributions to the Plan on behalf of an Employee and the earnings thereon, decreased by any withdrawals, any distributions, any losses, and the Participant’s allocable portion of the costs and expenses of administering the Plan. The term includes, but is not limited to, a Participant’s Tax-Deferred Contribution Account, After-Tax Account, Rollover Account, Roth Contribution Account, and Transfer Account.
- 1.02** “**After-Tax Account**” means the account into which the after-tax contributions made by a Participant pursuant to Section 3.03 have been credited and the earnings thereon, decreased by any withdrawals, any distributions, any losses, and the allocable portion of the costs and expenses of administering the Plan.
- 1.03** “**Association**” or “**PERA**” means the Public Employees’ Retirement Association, as established under the provisions of Article 51 of Title 24, Colorado Revised Statutes.
- 1.04** “**Beneficiary**” means any person, persons, or entity designated in writing or electronically by a Participant to receive the Account balance in the event of the Participant’s death, or if none, the person, persons, or entity determined in accordance with the terms of the Plan.
- 1.05** “**Board**” means the board of trustees of PERA as established under the provisions of Article 51 of Title 24, Colorado Revised Statutes.
- 1.06** “**Code**” means the Internal Revenue Code of 1986, as amended (and corresponding provisions of any subsequent federal tax laws) and the regulations thereunder.
- 1.07** “**Compensation**” for the purpose of calculating the limitations under Section 415 of the Code; the term “compensation” has the meaning provided in Section 415(c)(3) of the Code and shall include payments for unused accrued bona fide sick, vacation, or other leave following severance from employment to the extent permitted under Section 1.415 (c)-2 of the Treasury regulations. Notwithstanding anything herein to the contrary, effective for Plan Years beginning after December 31, 1995, the annual compensation for the purpose of calculating Plan contributions is determined by the Employer, and shall be subject to the maximum limits imposed under Section 401(a)(17) of the Code; provided that for persons who become Participants before

January 1, 1996, the annual compensation limit of Section 401(a)(17) of the Code shall not apply to the extent that the application of the limit would reduce the amount of Compensation that is allowed to be taken into account below the amount that would be allowed to be taken into account under the Plan as in effect on July 1, 1993.

- 1.08** **“Effective Date”** means January 1, 1985, with the most recent amendment and restatement adopted September 11, 2020.
- 1.09** **“Elective Deferral”** means Tax-Deferred Contributions, or if Roth Contributions are authorized by the Employer in accordance with procedures established by the Association, both Roth Contributions and Tax-Deferred Contributions.
- 1.10** An **“Eligible Retirement Plan”** shall include an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract), a qualified trust, an annuity plan described in Section 403(a) of the Code, another qualified employer plan that accepts rollovers, an annuity contract described in Section 403(b) of the Code, an eligible plan under Section 457(b) of the 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 and which agrees to separately account for amounts transferred into such plan from this Plan, and, effective January 1, 2008, a Roth IRA as described in Section 408A(b) of the Code, subject to any limitations described in Section 408A(c) of the Code. The 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, as defined in Section 414(p) of the Code.
- 1.11** **“Employee”** means a person who is an active Member or, effective July 1, 2001, a Retiree of the Association under the provisions of Article 51 of Title 24, Colorado Revised Statutes, or effective for all periods prior to July 1, 2009, is employed by an Employer and made Tax-Deferred Contributions, or effective July 1, 2009, is employed by an Employer.
- 1.12** **“Employer”** includes any employer affiliated with PERA under the provisions of Article 51 of Title 24, Colorado Revised Statutes.
- 1.13** **“Enrollment Date”** means the Effective Date and any Valuation Date thereafter.

- 1.14** “**Investment Fund**” means the investment options offered by the Plan in accordance with Article 4.
- 1.15** “**Participant**” means any person who is a participant of the Plan as provided in Article 2.
- 1.16** “**Plan**” means PERA’s 401(k) and Defined Contribution Plan and Trust, which also is known as PERA’s Voluntary Investment Program, as authorized by Article 51 of Title 24, Colorado Revised Statutes. The Plan, which is a profit-sharing plan, originated on January 1, 1985, and has continued since then, as amended and restated from time to time.
- 1.17** “**Plan Administrator**” shall be the Executive Director of PERA.
- 1.18** “**Plan Year**” means the 12-month period beginning on any January 1.
- 1.19** “**Retiree**” means a person receiving a retirement benefit from the Association pursuant to Title 24, Article 51, Parts 6 or 7, Colorado Revised Statutes and defined under Section 24-51-101(39), C.R.S.
- 1.20** “**Rollover Account**” means the account into which shall be credited the rollover contributions permitted by the Code and made to the Plan by a Participant at any time and the earnings thereon, decreased by any withdrawals, any distributions, any losses, and the allocable portion of the costs and expenses of administering the Plan.
- 1.21** “**Roth Contribution**” means an amount contributed by a Participant to the Plan that is designated irrevocably by the Participant in a deferral agreement as a Roth Contribution that is being made in lieu of all or a portion of the Tax-Deferred Contributions the Participant is otherwise eligible to make under the Plan, and is treated by the Employer as includible in the Participant’s income at the time the Participant would have received that amount in cash if the Participant had not entered into a deferral agreement.
- 1.22** “**Roth Contribution Account**” means the separate account into which Roth Contributions made by a Participant pursuant to Section 3.01 of the Plan have been credited along with in-Plan Roth Rollovers and Roth Rollovers credited pursuant to Section 3.04, and the earnings thereon, decreased by any withdrawals, any distributions, any losses, and the allocable portion of the costs and expenses of administering the Plan.

- 1.23** **“Roth Rollover Account”** means the subaccount within the Rollover Account to which shall be credited rollover contributions that consist of Roth monies and in-Plan Roth Rollovers credited pursuant to Section 3.04, and the earnings thereon, decreased by any withdrawals, any distributions, any losses, and the allocable portion of the costs and expenses of administering the Plan.
- 1.24** **“Service Provider”** means the company with whom the Board has contracted to perform services as specified in the Administrative Services Agreement or other comparable document.
- 1.25** **“Tax-Deferred Contribution”** means all amounts contributed by an Employee on a pre-tax basis pursuant to Section 3.01 of the Plan.
- 1.26** **“Tax-Deferred Contribution Account”** means the account into which the Tax-Deferred Contributions made by a Participant pursuant to Section 3.01 and the Employer contributions made pursuant to Section 3.05, and the amounts transferred pursuant to Section 24-51-1402(5)(a), C.R.S., have been credited and the earnings thereon, decreased by any withdrawals, any distributions, any losses, and the allocable portion of the costs and expenses of administering the Plan.
- 1.27** **“Termination of Employment”** means the date the person terminates employment with all Employers, retires, or dies.
- 1.28** **“Transfer Account”** means the account into which the vested portion of the DC Plan Participant’s DC Plan Account is transferred pursuant to Section 15.03(D) or 15.06(C) and the earnings thereon, decreased by any withdrawals, any distributions, any losses, and the allocable portion of the costs and expenses of administering the Plan.
- 1.29** **“Trust”** means the separate trust fund created by the laws of the State of Colorado to hold all of the Plan’s assets. The Trust originated on January 1, 1985, and has continued since then. Effective April 1, 1994, the provisions of this Trust are as set forth and incorporated in this document entitled “PERA’s 401(k) and Defined Contribution Plan and Trust.” Effective July 1, 2009, pursuant to Section 24-51-208(1)(i), C.R.S., a separate trust is being created to hold the funds of the DC Plan established in Article 15—DC Plan Component of this Plan.
- 1.30** **“Valuation Date”** means each business day on which the New York Stock Exchange is open.

## ARTICLE 2—ELIGIBILITY AND PARTICIPATION

### 2.01 Eligibility

A person shall be eligible to become a Participant on the first Enrollment Date on or after the date the person becomes an Employee. This shall also apply to employees of Employers that have affiliated with PERA since May 6, 1986. Effective July 1, 2001, a Retiree will become an Employee when rehired by an Employer. Effective July 1, 2009, a person whose assets are transferred to the Plan pursuant to Section 24-51-1402(5)(a), C.R.S., shall become a Participant in the Plan.

### 2.02 Participation in the Plan

An eligible Employee shall become a Participant on an Enrollment Date that is as soon as administratively practicable after the Plan has received Employee Elective Deferrals, Employer contributions, or a permitted rollover for the Employee. The Employee shall provide the Service Provider an investment election, a beneficiary designation, rollover information (if applicable), and all other information required by the Service Provider. Participation is void if no funds are received from either contributions or a rollover or an ACA-Covered Employee opts out of the Automatic Contribution Arrangement. Participation ends when a Participant no longer has any balance in a Participant Account.

### 2.03 Beneficiary Designation

#### (A) General Provisions

Designation of a Beneficiary shall be made in the manner prescribed by the Plan Administrator. Such designation shall take effect upon receipt by the Service Provider. Designation of a Beneficiary may be changed by the Participant at any time prior to death. If no such designation is in effect at the time of the death of the Participant, or if no person, persons, or entity so designated shall survive the Participant to the date benefits commence, the Beneficiary shall be deemed to be the estate of the Participant.

If the Participant's designated Beneficiary dies after distributions commence to such Beneficiary but before distribution of the entire balance of the Participant's Account, the remainder of the Account shall be distributed to the Beneficiary's designated Beneficiary, or if no person, persons, or entity so designated shall survive the Beneficiary, the Beneficiary shall be deemed to be the estate of the Beneficiary.

- (B) Beneficiary Designation for Participants Whose Assets are Transferred to the Plan Pursuant to Section 24-51-1402(5)(a), C.R.S. and/or Section 15.05(F)(ii) of the DC Plan. Effective July 1, 2009, a Participant whose assets are transferred to the Plan pursuant to Section 24-51-1402(5)(a), C.R.S., and/or Section 15.05(F)(ii) of the DC Plan shall have the following Beneficiary designation:
- (i) If the Participant has an existing Account balance with the Plan as of July 1, 2009, the Beneficiary for all assets in the Account, including those assets transferred pursuant to Section 24-51-1402(5)(a), C.R.S. and/or Section 15.05(F)(ii) of the DC Plan, shall be the Beneficiary designation in effect for the Plan, regardless of whether there was a different Beneficiary designated for the assets transferred pursuant to Section 24-51-1402(5)(a), C.R.S. and/or Section 15.05(F)(ii) of the DC Plan. If no such designation for the Plan is in effect at the time of the death of the Participant, or if no person, persons, or entity so designated shall survive the Participant, the Beneficiary shall be deemed to be the estate of the Participant.
  - (ii) If the Participant does not have an existing Account balance with the Plan as of July 1, 2009, but has an Account balance after July 1, 2009, as a result of the transfer of assets pursuant to Section 24-51-1402(5)(a), C.R.S. and/or Section 15.05(F)(ii) of the DC Plan, the Beneficiary of the Account shall be the beneficiary, if any, designated with the service provider that held the assets prior to their transfer on July 1, 2009, as reported to PERA. However, if assets are transferred to the Plan pursuant to both Section 24-51-1402(5)(a), C.R.S., and Section 15.05(F)(ii) of the DC Plan, and there are different Beneficiary designations in effect for such assets, the Beneficiary designations for such assets shall be null and void and the Participant must designate a new Beneficiary. All Beneficiary designations can be changed in accordance with Section 2.03(A) of this Plan. If no Beneficiary designation for the Plan is in effect at the time of the death of the Participant, or if no person, persons, or entity so designated shall survive the Participant, the Beneficiary shall be deemed to be the estate of the Participant.

## ARTICLE 3—CONTRIBUTIONS

### 3.01 Elective Deferrals

#### (A) Contribution Amounts

Subject to the limitations imposed by the Code and this Plan, each Participant may elect to make Elective Deferrals by providing the Participant's Employer a deferral agreement including the amount to be contributed as a Tax-Deferred Contribution and, if applicable, a Roth Contribution, and all other required information. An election must be made to contribute either (i) a percentage of Compensation or (ii) a specified dollar amount. All Elective Deferrals shall be made solely by payroll deduction and shall be paid by the Employer to the Plan. Each Participant may elect to increase the percentage reduction in Compensation or the specified dollar amount by providing the Participant's Employer a new deferral agreement and all other required information. Each Participant may elect to decrease the percentage reduction in Compensation or the specified dollar amount by providing the Participant's Employer written notice and all other required information. Any change in the percentage or specified dollar amount may be made any time.

Any election or change shall be effective as soon as administratively practicable after receipt by the Participant's Employer of all required information.

The percentage designated by a Participant to be contributed to the Plan shall automatically apply to increases and decreases in the Employee's Compensation.

Elective Deferrals shall be the only contributions permitted directly or indirectly from Participants (except for rollovers permitted pursuant to Section 3.04). For federal income tax purposes, Elective Deferrals to the Plan from a Participant shall be deemed Employer contributions to the Plan and are intended to qualify as elective contributions under Section 401(k) of the Code. A Participant's election to enroll in the Plan shall constitute an election to have the Participant's Compensation reduced by the amount of all such Elective Deferrals.

(B) Payment by Employer

The amounts designated by a Participant as a reduction in Compensation shall be paid to the Plan by the Employer as Elective Deferrals, along with all reports required by the Service Provider, no later than the date established by the rule of the Board. If either the payment or the reports or both are late, interest shall be assessed and paid as specified in PERA Rule 14.30A.

(C) Nonforfeitability

Elective Deferrals shall be fully vested and nonforfeitable at all times.

(D) Allocation

Subject to the limitations imposed by the Code and this Plan, Elective Deferrals made on behalf of a Participant for a Plan Year shall be allocated to the Participant's Account and invested in accordance with the directions furnished by the Participant from time to time.

(E) Catch-Up Contributions

All Participants who are eligible to make Elective Deferrals and who will have attained age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Catch-up contributions shall apply after December 31, 2001. Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Sections 402(g) and 415 of the Code.

(F) Automatic Enrollment of Employees

Notwithstanding anything in the Plan to the contrary, an Employer may elect to participate in an Automatic Contribution Arrangement through an agreement between the Employer and PERA. An "Automatic Contribution Arrangement" is an arrangement under which, in the absence of an affirmative election by an Employee covered by the arrangement (an "ACA-Covered Employee"), a certain percentage of Compensation (the "ACA Applicable Amount") will be withheld from ACA-Covered Employee's pay and contributed to the Plan as an Elective Deferral. Any Elective Deferrals made pursuant to the Automatic Contribution Arrangement are otherwise treated in the same manner as Elective Deferrals under Section 3.01(A) and may be increased, decreased, or ceased as permitted by the Plan and

the Automatic Contribution Arrangement agreement. For purposes of Section 2.02, an ACA-Covered Employee shall become a Participant on the date the Automatic Contributions begin as determined by the Automatic Contribution Arrangement agreement between the ACA-Covered Employee's Employer and PERA.

An ACA-Covered Employee may opt out of the Automatic Contribution Arrangement at any time. The ACA-Covered Employee's failure to opt out constitutes authorization by that ACA-Covered Employee for his or her Employer to contribute the ACA Applicable Amount by payroll deduction. An ACA-Covered Employee is eligible to request distribution during the first 90 days after the first deferral is made. All of the ACA Applicable Amounts deferred during that period will be distributed, and adjusted for earnings, losses, and fees through the date of distribution. A distribution request will be treated as an affirmative election to stop Elective Deferrals from being made on behalf of the ACA-Covered Employee. Any matching contributions made on the amounts distributed shall be forfeited in accordance with the terms of the Automatic Contribution Arrangement agreement adopted between the Employer and PERA.

Elective Deferrals made pursuant to an Automatic Contribution Arrangement will be reduced or stopped to meet the limitations under Sections 401(a)(17), 402(g), and 415 of the Code.

The above notwithstanding, an Automatic Contribution Arrangement shall not be effective with respect to an Employer unless the Automatic Contribution Agreement is set forth in a written agreement between the Employer and PERA that: (1) identifies ACA-Covered Employees; (2) sets forth the ACA-Applicable Amount; and (3) is accepted by PERA.

### **3.02 Suspension and Termination of Contributions**

- (A) A Participant may suspend contributions to the Plan by providing the Participant's Employer written notice and all other required information. Any suspension shall be effective as soon as administratively practicable after receipt by the Participant's Employer of the notice and all other required information. A Participant who has suspended contributions to the Plan may elect to have contributions to the Plan from the Participant's Compensation resumed by complying with the requirements of Section 3.01(A).

- (B) Upon a Participant's Termination of Employment, contributions to the Plan on behalf of that Participant shall cease, except as provided in Section 1.07. Only Employees of an Employer may contribute to the Plan.

### **3.03 After-Tax Contributions**

Prior to January 1, 1987, a Participant who elected to reduce Compensation to make Tax-Deferred Contributions could also have elected to make after-tax contributions of not less than 1% and not more than 5% of Compensation, in multiples of 1%. On and after January 1, 1987, no further after-tax contributions may be made. This prohibition of after-tax contributions shall not apply to the repayment of a defaulted loan plus accrued interest pursuant to Section 8.03(L).

### **3.04 Rollover Contributions**

With the consent of the Plan Administrator, the Plan may accept a direct rollover or a Participant rollover of contributions as described below.

#### *Direct Rollovers:*

- (a) A qualified plan described in Sections 401(a) or 403(a) of the Code, including after-tax employee contributions.
- (b) An annuity contract described in Section 403(b) of the Code, excluding after-tax employee contributions.
- (c) An eligible plan under Section 457(b) of the 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.

#### *Participant Rollover Contributions from Other Plans:*

- (a) A qualified plan described in Section 401(a) or 403(a) of the Code.
- (b) An annuity contract described in Section 403(b) of the Code.
- (c) An eligible plan under Section 457(b) of the 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.

*Participant Rollover Contributions from IRAs:*

The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includable in gross income.

*Participant Rollover After Termination of Employment:*

A Participant may elect to make a rollover into this Plan after a Termination of Employment, including, with the consent of the Plan, a trustee-to-trustee transfer of all, or part of, any eligible rollover distribution included in a refund from PERA's Defined Benefit Plan pursuant to Section 24-51-405, Colorado Revised Statutes.

*Participant Roth Rollover:*

The Plan will accept a rollover contribution to a Roth Rollover Account by such Participants only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Section 402A(e)(1) of the Code and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code.

*Participant In-Plan Roth Rollover:*

As of the date permitted by the Association, Participants and other eligible individuals pursuant to the Code may elect to transfer or roll over, as applicable, Tax-Deferred Contributions and any Employer Contribution made pursuant to Section 3.05 into the Roth Contribution Account in accordance with the applicable requirements of the Code and regulations thereunder. Additionally, Participants may elect to roll over non-Roth Rollover Contributions made pursuant to this Section 3.04 into the Roth Rollover Account. Notwithstanding anything in this paragraph, a Participant may elect an in-Plan Roth Rollover no more than two times per Plan Year.

*Retiree and Inactive Member Rollover:*

Notwithstanding Section 2.01, a former Employee who is not a Participant pursuant to Section 2.02 shall nonetheless be treated as a Participant for purposes of making rollover contributions into the Plan, provided the former Employee is either a DC Plan Participant, as defined in Section 15.02(D), a Retiree, or an inactive member as defined in Section 24-51-101(26), C.R.S. Such rollover contributions shall be governed by all applicable terms of the Plan.

*Repayment of Coronavirus-Related Distributions treated as Rollover:*

A Participant or former Participant who has taken a Coronavirus-Related Distribution (“CRD”) from this Plan as either an in-service distribution pursuant to Section 7.10 or following termination of employment may repay all or part of the CRD to the Plan during the three-year period beginning the day after the date on which the CRD was paid to the Participant. Such repayment shall be made in accordance with Section 2202 of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) and any amendments thereto, and any IRS guidance issued thereunder, and shall be treated as a rollover.

**3.05 Regular Employer and Employer Matching Contributions**

(A) Regular Employer Contributions

The Administrator may, in the Administrator’s discretion, accept discretionary contributions by an Employer, from the respective Employer’s funds, for the benefit of some or all of the Employer’s eligible Employees. These contributions shall be allocated among the Employer’s eligible Employees in accordance with a predetermined allocation submitted by the Employer, provided that the Administrator must approve such allocation.

In no event shall the Administrator permit Employer contributions to the extent that doing so would exceed a limitation of the Code or be contrary to a requirement of the Code.

(B) Employer Matching Contributions

The Administrator may, in the Administrator’s discretion, accept MatchMaker contributions as authorized at Section 24-51-408.5, Colorado Revised Statutes and discretionary matching contributions from an Employer, from the respective Employer’s funds, to be allocated among some or all of the Employer’s eligible Employees. These contributions shall be allocated among the Employer’s eligible Employees in accordance with a predetermined allocation submitted by the Employer, provided that the Administrator must approve such allocation. In no event shall the Administrator permit Employer contributions to the extent that doing so would exceed a limitation of the Code or be contrary to a requirement of the Code.

(C) Limitations

Notwithstanding any other provisions herein, contributions under Section 3.05, together with Elective Deferrals, shall be subject at all times to all limitations imposed by the Code. The Administrator shall

be authorized to limit and return Elective Deferrals and Employer contributions to comply with limitations and requirements of the Code.

(D) Payment by Employer

Contributions pursuant to Section 3.05 shall be paid to the Plan by the Employer, along with all reports required by the Service Provider, no later than the date established by the rule of the Board. The reports shall show Employer contributions under Section 3.05 separately from all other contributions. If either the payment or the reports or both are late, interest shall be assessed and paid as specified in PERA Rule 14.30A.

(E) Nonforfeitability

All such contributions shall be fully vested and nonforfeitable at all times. Notwithstanding the previous sentence, any matching contributions made on Automatic Contribution Arrangement amounts that are distributed pursuant to the ACA-Covered Employees election within the 90-day period described in Section 3.01(F) shall be forfeited pursuant to the terms of the Automatic Contribution Arrangement agreement.

(F) Allocation

Subject to the limitations imposed by the Code and this Plan, such contributions shall be allocated to the Participant's Account and invested in accordance with the directions furnished by the Participant from time to time.

### **3.06 Limitations**

(A) In General

Notwithstanding any other provisions herein, all contributions shall be subject at all times to all requirements and limitations imposed by the Code. All provisions of this Plan shall be interpreted as requiring compliance with all applicable requirements and limitations imposed by the Code.

(B) Limitation on Contributions

(i) Section 402(g) limit. No Participant shall be permitted to have elective deferrals made under this Plan, or any other qualified plan maintained by the Employer during any taxable year, in excess of the dollar limitation contained in Section 402(g) of the Code in effect for such taxable year, except to the extent permitted under Section 3.01(E) and Section 414(v) of the

Code, if applicable. Contributions greater than the 402(g) limit will automatically be considered as catch-up contributions if the Participant qualifies to make such contributions.

- (ii) Maximum annual addition. Except to the extent permitted under Section 3.01(E) and Section 414(v) of the Code, if applicable, the annual addition that may be contributed or allocated to a Participant's Account under the Plan for any limitation year shall not exceed the lesser of:
  - (1) \$52,000, as adjusted for increases in the cost-of-living under Section 415(d) of the Code, or
  - (2) 100 percent of the Participant's Compensation, within the meaning of Section 415(c)(3) of the Code, for the limitation year.

The term "annual addition" means the sum for any year of Elective Deferrals, employer contributions made pursuant to Section 3.05, and forfeitures. The annual addition is determined without regard to any rollovers made pursuant to Section 3.04.

The compensation limit referred to in (2) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

- (iii) If the Participant participates in other plans or programs (including, but not limited to, a Section 403(b) program), the amount which can be contributed to this Plan shall be subject to all additional applicable limitations imposed by the Code.

### **3.07 Return of Excess Contributions, Excess Deferrals, Other Adjustments, and Further Limitations**

- (A) If the Commissioner of Internal Revenue determines that the Plan is not qualified under Section 401(a) of the Code, or refuses, in writing, to issue a determination as to whether the Plan is so qualified, the Employer's contributions made on or after the date on which that determination or refusal is applicable shall be returned to the Employer without interest.

- (B) The Employer may recover without interest the amount of Employer contributions made to the Plan on account of a mistake of fact, reduced by any investment loss attributable to those contributions, if recovery is requested and made within one year of the date of contribution.
- (C) Effective with respect to Plan Years beginning on or after July 1, 2007, to the extent that any limitation described in Section 3.06(B) is exceeded with respect to a Participant for a Plan Year, the excess amount allocated on behalf of such Participant (and any attributable earnings) shall be corrected in accordance with the Correction of Excess Allocations rules of Section 6.06(2) of the Employee Plans Compliance Resolution System, Rev. Proc. 2019-19, and as updated and superseded by future IRS guidance.
- (D) Except to the extent permitted under Section 3.01(E) and Section 414(v) of the Code, if applicable, in the event that the limitation under Section 402(g) of the Code is exceeded by a Participant in a calendar year, the Participant shall notify the Plan and the Employer of such excess deferral amount, as defined for purposes of Section 402(g) of the Code, no later than March 1 of the following calendar year. Notwithstanding any other provision herein, such excess deferral amount, with gains and losses thereon to the end of the calendar year, shall be distributed to each affected Participant by the Employer in cash no later than April 15 of the next calendar year.
- (E) In the event that Elective Deferrals made under this Article are returned to the Participant, the elections to reduce Compensation which were made by Participants on whose behalf those contributions were made shall be void to the extent such contributions are returned, retroactively to the beginning of the period for which those contributions were made. In the event that Elective Deferrals are returned to the Participant, the Plan will distribute Tax-Deferred Contributions first.

### **3.08 Qualified Military Service**

Notwithstanding any provision of this Plan to the contrary, contributions, loans, and any other benefits with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. Effective January 1, 2007, if a Participant dies while performing qualified military service (as defined in Section 414(u) of the Code), the Participant's Beneficiaries will be entitled to any additional benefits (other than benefit

accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of Death. If a Participant described in Code Section 3401(h)(2)(A) elects to receive a distribution upon a Severance From Employment during any period the Participant is performing service in the uniformed services pursuant to HEART, the Participant shall not be eligible to make any elective deferrals or employee contributions to the Plan or any other plan for a period of six (6) months following the date of such distribution. Effective October 1, 2011, Employers may treat differential wage payments, as described in Section 414(u)(12)(D), as Compensation for purposes of Plan contributions. Effective October 1, 2011, Employers may make contributions pursuant to Section 3.05 in accordance with Section 414(u)(9) of the Code.

## **ARTICLE 4—INVESTMENT OF CONTRIBUTIONS**

### **4.01 Investment Funds**

- (A) The assets of the Plan shall be invested in one or more of the different types of investments selected by the Board or the Board's designee. Among the specific Investment Funds designated, the Board shall provide sufficient variety among the investment categories so that Participants may choose from a range of investment opportunities having different expected risks and different expected returns within a reasonably limited number of choices.
- (B) The Board shall evaluate and monitor the investment performance of the Investment Funds and any investment managers periodically.
- (C) The Board may keep such amounts of cash or cash equivalents as it, in its sole discretion, shall deem necessary or advisable as part of such funds to maintain sufficient liquidity to meet the obligations of the Plan or for other reasons.
- (D) Dividends, interest, and other distributions on the assets held in each Investment Fund shall be reinvested in the same fund, and the Investment Funds shall otherwise be dealt with separately.

### **4.02 Investment of Participants' Accounts**

A Participant shall make an initial investment election in accordance with procedures established by the Service Provider covering the Participant's entire Account in accordance with one of the following options:

- (A) 100% in one of the available Investment Funds or
- (B) A percentage of the Account designated by the Participant for each of two or more of the available Investment Funds.

An election shall be effective as soon as administratively practicable after receipt by the Plan. If a Participant fails to provide the Service Provider with an initial investment election and the Participant has a Participant Account, the Participant's selection for investment shall be the default selection designated by the Association until the Participant designates otherwise.

#### **4.03 Change of Election**

A Participant (or Beneficiary in the case of a Participant's death) may change the investment election by requesting to do so in accordance with one of the options described in Section 4.02. The change shall be effective as soon as administratively practicable after receipt of a valid request by the Service Provider. The changed investment election shall be effective only with respect to subsequent contributions (unless the Participant expressly specifies that the change also is to result in a transfer of the Participant's Account between Investment Funds pursuant to Section 4.04). A change in election as described in this Section may be made daily.

#### **4.04 Transfers Between Funds**

A Participant (or Beneficiary in the case of a Participant's death) may elect to transfer all or any fraction of the Participant's Account between Investment Funds by requesting to do so in accordance with one of the options described in Section 4.02. The transfer shall be effective as soon as administratively practicable after receipt of a valid request by the Service Provider and shall be based upon the first Valuation Date on or after receipt of the request by the Service Provider. An election to transfer between funds as described in this Section may be made daily.

The Plan Administrator may on occasion be required to transfer money from a self-directed brokerage account, if available to the Participants, to necessitate certain payments, including, but not limited to, fulfilling the requirement of a valid Domestic Relations Order pursuant to Rule 15 ("DRO"), paying the Participant's Plan expenses, or recapturing forfeitures of the DC Plan. Any trading fees will be paid out of the Participant's account balance unless otherwise directed pursuant to a DRO.

The Board in its sole and absolute discretion may adopt reasonable transfer restrictions for any or all Investment Funds. Any such restrictions shall apply consistently to all Participants.

#### **4.05 Responsibility for Investments**

Each Participant (or Beneficiary in the case of a Participant's death) is solely responsible for selecting such person's own investment option or options. The Board, the Plan, the Trust, the Trustee, the Plan fiduciaries, the Service Provider, the custodian, and the employees of all of the foregoing, as well as each Employer and its employees, are not empowered to advise anyone as to the manner in which an Account shall be invested, except as may be expressly provided for by contract with a third party provider. The fact that an Investment Fund is available for investment under the Plan shall not be construed as a recommendation for investment in that Investment Fund. Notwithstanding the foregoing, the Board may offer managed account services to the Participants through a third party investment manager, who shall act as a fiduciary to each such Participant who utilizes the managed account services.

#### **4.06 Automatic Rebalancing**

Participants may authorize the Service Provider to automatically rebalance their Account every 90 days until the authorization is revoked or invalidated by a Participant investment election change. Fund balances will be re-aligned according to each Participant's current investment election percentages.

#### **4.07 Succession for Changes in Investment Funds**

If the Board changes the available Investment Funds and the Participant (or Beneficiary in the case of a Participant's death) does not provide new directions to the Plan in accordance with Sections 4.03 and 4.04, with respect to Investment Funds that continue to be available, the investments therein shall continue without change based upon the most recent directions received by the Service Provider. If the Board eliminates an Investment Fund and the Participant (or Beneficiary in the case of a Participant's death) fails to provide new directions to the Service Provider in accordance with Sections 4.03 and 4.04, the Board shall do one of the following: designate the Investment Fund or Funds that will be the successor for the eliminated Investment Fund or, in the absence of an express designation, the Investment Fund that is the same type of investment as described in Section 4.01 shall become the successor for the eliminated Investment Fund, or transfer the funds to the default selection designated by the Association.

## ARTICLE 5—VALUATION OF ACCOUNTS

### 5.01 Valuation of the Investment Funds

The Investment Funds shall be valued each Valuation Date. There shall be allocated to the Accounts of each Participant (or Beneficiary in the case of a Participant's death) the proportionate share of the increase or decrease in the fair market value of the Participant's (or Beneficiary in the case of a Participant's death) Accounts in each of the funds, based on the beginning balance of such Accounts for such day. The Service Provider for the Plan may determine the increase or decrease in the fair market value of the Participant's (or Beneficiary in the case of a Participant's death) Account in each of the funds on a cash, share or unit accounting basis. Whenever an event requires a determination of the value of the Participant's (or Beneficiary in the case of a Participant's death) Accounts, the value shall be computed as of a Valuation Date immediately preceding the date of the event.

### 5.02 Expense Allocation and Account Balance

Administrative expenses of the Plan that are not specific to a particular Investment Fund shall be allocated to each Account equitably in a manner determined by the Association. Any administrative fee charged to a specific Participant's Account such as a loan fee pursuant to Section 8.03 shall be allocated solely to such Participant's Account and shall be allocated pro rata over such Participant's Investment Funds prior to the loan. Notwithstanding the foregoing, administrative fees shall not be deducted from the participant directed investment brokerage arrangement and shall be allocated pro rata to the remaining Investment Funds.

### 5.03 Records

Records shall be maintained separately for each Participant's Account showing the portion of such Account invested in each Investment Fund; contributions and rollovers thereto; withdrawals, distributions, and loans therefrom; the amount of income, expenses, gains, and losses attributable thereto; and such other records as are appropriate.

## ARTICLE 6—VESTED PORTION OF ACCOUNTS

Except as otherwise provided by Section 3.05(E), a Participant shall at all times be 100% vested in, and have a nonforfeitable right to, the Participant's entire Account.

## ARTICLE 7—IN-SERVICE WITHDRAWALS

### 7.01 **Withdrawal of After-Tax Account**

If a Participant, prior to Termination of Employment, has an After-Tax Account, the Participant may elect to withdraw all of the Participant's after-tax contributions without penalty or tax liability. Such a Participant also may elect to withdraw all of the Participant's earnings on the after-tax contributions at the same or at a different time as the withdrawal of the after-tax contributions, but a withdrawal of the earnings will be subject to tax and penalty except to the extent that the Participant complies with all of the requirements for a trustee-to-trustee transfer to PERA's Defined Benefit Plan or a non-taxable rollover to an Eligible Retirement Plan. The after-tax employee contributions may be transferred to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or effective January 1, 2007, in a direct rollover pursuant to Section 9.05(A) to any qualified trust or to an annuity contract described in Section 403(b) of the Code, that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

### 7.02 **Withdrawal of Rollover Account**

If a Participant, prior to Termination of Employment, has a Rollover Account and the Participant has withdrawn all of the Participant's After-Tax Account, that Participant may elect to withdraw all or part of the Participant's Rollover Account. The distribution will be subject to tax except to the extent that the Participant complies with all of the requirements for a trustee-to-trustee transfer to PERA's Defined Benefit Plan, a non-taxable rollover to an Eligible Retirement Plan, or a rollover or qualified distribution from a Roth Account. The distribution will be without penalty only if the person terminates employment after attainment of age 55 or satisfies certain other requirements of the Code.

### 7.03 **Withdrawal After Age 59½**

Prior to Termination of Employment, a Participant who has withdrawn the total amount available for withdrawal under both Sections 7.01 and 7.02, if any, and who shall have attained age 59½ as of the effective date of any withdrawal, may withdraw (but is not required to withdraw)

all or part of the remaining balance in the Participant's Account. At the election of the Participant and subject to procedures by the Association, the withdrawal may be (a) by lump sum payment of the entire remaining Account, (b) by partial withdrawal of an amount designated by the Participant, (c) by monthly payments in an amount designated by the Participant until the entire remaining Account is distributed, or (d) a combination of these methods. The withdrawal will be without penalty, but will be subject to tax except to the extent that the Participant complies with all of the requirements for a trustee-to-trustee transfer to PERA's Defined Benefit Plan, a non-taxable rollover to an Eligible Retirement Plan, or a rollover or qualified distribution from a Roth Account.

#### **7.04 Hardship Withdrawal**

(A) A Participant (i) who has obtained the maximum amount available for loan under Article 8, (ii) who has withdrawn all amounts available for withdrawal under Sections 7.01 and 7.02, if any, (iii) who has not obtained a hardship withdrawal in the preceding six months, (iv) who has not attained age 59½ as of the effective date of the withdrawal, and (v) for whom Termination of Employment has not occurred as of the effective date of the withdrawal, may make a hardship withdrawal from all or part of the remaining balance in the Participant's Account, provided the withdrawal is made on account of an immediate and heavy financial need of the Participant and is necessary to satisfy such financial need. The Participant must provide satisfactory verification to the Service Provider that the Participant has an immediate and heavy financial need (as described in (C) of this Section), that the withdrawal is necessary to satisfy such need, that such need cannot be satisfied from other sources which are reasonably available to the Participant, and that the withdrawal amount is not in excess of the amount necessary to meet such need. The withdrawal will be subject to tax. It also will be subject to penalty unless it is attributable to medical expenses and satisfies certain additional requirements of Section 72(t) of the Code for an exception from penalty. Any amount distributed on account of hardship shall not be an eligible rollover distribution pursuant to Section 9.05(A) of the Plan and the Participant may not elect to have any portion of such a distribution paid directly to an Eligible Retirement Plan.

- (B) The amount of such withdrawal shall not exceed the amount necessary to satisfy that financial need. In all events, the maximum amount of the withdrawal from the Account shall not exceed the amount available for hardship withdrawals determined pursuant to Section 401(k) of the Code. The hardship withdrawal shall not exceed the value of the available portion of the Account as of the Valuation Date immediately preceding the date of withdrawal.
- (C) The withdrawal will be deemed to be for an immediate and heavy financial need of the Participant only if it is for one of the following:
- (i) Expenses for medical care that would be deductible under Section 213(d) of the Code (determined without regard to whether the expenses exceed 7.5% of adjusted gross income) previously incurred by the Participant, the Participant's spouse, or any dependents of the Participant or necessary for these persons to obtain such medical care; or
  - (ii) Purchase of a principal residence for the Participant (excluding mortgage payments); or
  - (iii) Payment of tuition, related educational fees, and room and board expenses for the next 12 months of post-secondary education for the Participant or the Participant's spouse, children, or dependents (as defined in Section 152 of the Code, without regard to Section 152(b)(1), (b)(2) and (d)(1)(B));
  - (iv) Payment necessary to prevent eviction of the Participant from the Participant's principal residence or foreclosure of the mortgage on that residence; or
  - (v) Funeral expenses of a Participant's parent, spouse, child or any eligible dependent (as defined in Section 152 of the Code, without regard to Section 152(d)(1)(B)); or
  - (vi) Expenses for repair of damage to the Participant's principal residence that would qualify as deductible casualty expenses under Section 165 of the Code, determined without regard to the limitations in Sections 165(h)(2) and (5) of the Code (whether the loss exceeds 10% of adjusted gross income or is a Federally declared disaster).

Effective October 1, 2011, for purposes of this subsection (C), if a distribution event would constitute a hardship if it occurred with respect to the Participant's spouse or dependent, such event shall constitute a hardship if it occurs with respect to a Beneficiary, a Beneficiary's spouse, or a Beneficiary's dependent.

- (D) A withdrawal shall be deemed to be necessary to satisfy an immediate and heavy financial need of a Participant if all of the following requirements are satisfied:
  - (i) The withdrawal is not in excess of the amount of the immediate and heavy financial need of the Participant as described in Section 7.04(C), plus any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the withdrawal; and
  - (ii) The Participant has obtained all withdrawals and distributions, other than hardship withdrawals, and all nontaxable (at the time of the loan) loans currently available under all plans maintained by the Employer.

## **7.05 Purchase of Service Credit in PERA's Defined Benefit Plan**

Prior to Termination of Employment, a Participant may purchase service credit in PERA's Defined Benefit Plan in accordance with the requirements of Article 51 of Title 24, Colorado Revised Statutes, by a trustee-to-trustee transfer to PERA's Defined Benefit Plan or a non-taxable rollover to such plan of all or part of the taxable portion of the Participant's Account. A Participant may elect this transfer twice per calendar year. Until and unless the Association determines otherwise due to guidance from the IRS, a Participant may not elect to purchase service using any Roth amount, including but not limited to Roth Contributions, Roth Rollovers, or any amount rolled into the Roth Rollover Account using an in-Plan Roth Rollover.

## **7.06 Procedures and Restrictions**

- (A) For a withdrawal, the Service Provider must receive from the Participant notice requesting withdrawal and all required information. Unless the withdrawal is for a hardship withdrawal, that notice may request, but is not required to request, withdrawal in whole or in part as a trustee-to-trustee transfer to PERA's Defined Benefit Plan or a direct rollover to an Eligible Retirement Plan subject to the restrictions of Sections 7.01 and 7.05 and Section 401(a)(31) of the Code.

- (B) All withdrawals shall be paid in cash as soon as administratively practicable after the Service Provider receives notice and all required information.
- (C) For a purchase under Section 7.05, the Service Provider must receive from the Participant notice requesting the purchase by a trustee-to-trustee transfer of all or part of a Participant's Account eligible for such purchase or a direct rollover pursuant to Section 401(a)(31) of the Code of all or part of the tax-deferred portion of the Participant's Account and all required information as determined by the Plan Administrator.
- (D) If applicable, a Participant may designate the extent to which the amount of the withdrawal is composed of Tax-Deferred monies or Roth monies. In the absence of such designation, the Plan will allocate the withdrawal in proportion to the value of the Tax-Deferred monies and Roth monies in the Plan. The amount of the withdrawal or purchase shall be allocated between the Investment Funds in proportion to the value of the Participant's Account in each Investment Fund.

**7.07 Payment Required by Law**

Under certain limited circumstances specified in Section 13.05, prior to Termination of Employment, payment by the Plan may be required. The payment will be made as soon as administratively practicable after the Plan receives all required information and requirements for payment are satisfied. The payment shall be allocated between the Investment Funds in proportion to the value of the Participant's Account in each Investment Fund and shall be allocated between each tax-deferred and after-tax component of such Account in proportion to the value of each component.

**7.08 Qualified Reservist Distribution**

Effective October 1, 2011, a Participant, who is a member of a reserve component ordered or called to active duty after September 11, 2001 for a period in excess of 179 days or for an indefinite period, shall be entitled to a distribution of the portion of the Participant's Account attributable to Elective Deferrals during the period beginning on the date of such order or call and ending at the close of the active duty period. A Participant who receives such a distribution shall be entitled to repay the distribution to an individual retirement plan in accordance with Section 72(t)(2)(G)(ii) of the Code.

### **7.09 Withdrawal for Birth of Child or Adoption**

Effective January 1, 2020, a Participant may take up to \$5,000 as a qualified birth or adoption distribution, as defined by Code Section 72(t)(2)(H)(iii)(I), from the Participant's Account prior to Termination of Employment. Such distribution must satisfy all requirements of Code Section 72(t)(2)(H) and applicable guidance from the IRS, as well as any procedures required by the Plan Administrator and Service Provider. A Participant who takes a distribution under this Section 7.09 may repay the distribution to the Participant's account in accordance with all IRS requirements and procedures established by the Plan Administrator and Service Provider.

### **7.10 Coronavirus-Related Distribution (CRD)**

Effective from January 1, 2020, to December 30, 2020, a Participant who meets the criteria of a qualified individual, as such term is defined in Section 2202 of the CARES Act and any amendments thereto, including any later-issued guidance from the IRS, may take up to \$100,000 as a CRD from the Participant's Account prior to Termination of Employment. The Plan Administrator and Service Provider may rely on the Participant's certification that the Participant meets the eligibility requirements of a qualified individual. Any CRD paid pursuant to this Section will be made in accordance with all applicable IRS guidance as it exists at the time of payment from, and any repayment to, the Plan.

## **ARTICLE 8—LOANS TO PARTICIPANTS**

### **8.01 Loan Eligibility and Procedures**

A Participant (but not a Beneficiary) may apply to the Plan for a loan. Each loan shall be subject to approval by the Service Provider. A loan shall be subject to the provisions of this Plan and such uniform and nondiscriminatory procedures for loans as may be established for the Plan by the Administrator.

### **8.02 Maximum Amount of the Loan**

- (A) The amount of a loan to a Participant from the Participant's Account shall not exceed the least of:
- (i) \$50,000 reduced by the highest outstanding balance of loans from the Plan and any other qualified employer plan during the one-year period ending on the day before the date on which such loan was made, or

- (ii) the greater of
    - (1) \$10,000 or
    - (2) one-half the balance in the Participant's Account, or
  - (iii) the Participant's Account Balance as further reduced in accordance with the administrative procedure as approved by the Plan Administrator.
  - (iv) Notwithstanding subsections 8.02(A)(i), (ii), and (iii), a qualified individual (as such term is defined in Section 2202 of the CARES Act, and any amendments thereto) taking a loan from March 27, 2020, to September 22, 2020, may receive a loan of up to the lesser of (1) \$100,000 (minus outstanding loans), or (2) the balance in the Participant's Account.
- (B) If the Participant's Employer has more than one plan which permits loans, then loans from this Plan and all other qualified plans maintained by the Employer must be aggregated, and the limit on the amount of the loan must then be determined in accordance with Section 72(p) of the Code.
- (C) Notwithstanding the foregoing, the assets that are held in a participant directed investment brokerage arrangement shall not be available for loan, but will be included when calculating the amount that can be withdrawn for a loan.

### **8.03 Terms and Limitations for the Loan**

- (A) The proceeds of the loan shall be disbursed only to the Participant and shall be disbursed as soon as administratively practicable after all requirements have been satisfied and the loan has been approved by the Service Provider.
- (B) The Plan may charge a Participant a loan application, processing or other fee for the loan. Such fee may be deducted from the loan proceeds, charged as an administrative fee against the Participant's Account, or paid separately by the Participant to the Plan.
- (C) The interest rate charged on a loan shall be the prime rate plus 1% (as determined in accordance with uniform and nondiscriminatory procedures of the Plan) or such other rate as the Board establishes from time to time. The interest rate charged on a loan shall be the interest rate in effect at the time the Participant applies for the loan. Once the rate for a loan has been determined, it shall not be changed while that loan is outstanding.

- (D) The period for repayment of a loan shall not exceed five years unless the loan is to be used to acquire a principal residence for the Participant within a reasonable time after the loan is made. If the loan is to acquire such a principal residence, the period for repayment of the loan shall not exceed fifteen years. If a qualified individual's loan under this Article 8 is outstanding on or after March 27, 2020, and any repayment on the loan is due from March 27, 2020, to December 31, 2020, that due date may be delayed under the Plan for up to one year at the Participant's election and in accordance with IRS guidance. In such case, any subsequent repayments will be adjusted to reflect the revised due date of the loan and interest accruing during the suspension period. "Qualified individual" for this purpose has the same meaning as such term is defined in Section 2202 of the CARES Act and any amendments thereto, including any later-issued guidance from the IRS.
- (E) Repayment of the loan, including both principal and interest, shall be by equal monthly payments. Those payments shall be sufficient to amortize the loan over the repayment period.
- (F) The minimum amount of a loan shall be \$1,000, plus any fees.
- (G) The minimum monthly payment owed for a loan shall be \$100.
- (H) A Participant shall have no more than two loans outstanding at any given time. Notwithstanding the foregoing, this subsection (H) shall not be violated if a Participant has two loans in the Plan as of July 1, 2009, and also has a loan as of July 1, 2009, based on the assets transferred to the Plan pursuant to Section 24-51-1402(5)(a), C.R.S.
- (I) A loan may be paid in full at any time without penalty. Effective October 1, 2011, partial prepayments may be made at any time without penalty. Partial payments to reduce the principal balance of the loan must be so designated as principal reduction and are permitted only if all required loan payments are current. Partial payments for principal reduction will not alter the due date of any subsequent payments, but will shorten the life of the loan and pay it off earlier.
- (J) Notwithstanding any other provisions herein, the loan outstanding shall be a first lien against the Participant's Account and the amount

of principal and interest due and unpaid thereon shall be deducted from the Account in determining the remaining balance available for any distribution or withdrawal under Articles 7 or 9.

- (K) If a Participant fails to make any three consecutive monthly payments in full, the loan shall be in default and the Participant shall be deemed for tax reporting purposes to have received a distribution from the Plan. If a default occurs, the Plan may execute upon its security interest in the Participant's Account to satisfy the debt or take such steps as are deemed necessary for repayment of the loan; provided, however, that the Plan shall not levy against any portion of the Loan Fund attributable to amounts held in the Participant's Account until such time as a distribution under Article 9 could otherwise be made under the Plan.
- (L) A Participant may not request another loan following a loan default occurring on or after January 1, 2002. A Participant who has an outstanding loan default in the assets that are transferred to the Plan pursuant to Section 24-51-1402(5)(a), C.R.S., shall not be permitted to request another loan. Notwithstanding the foregoing, effective March 1, 2003, if a Participant pays to the Plan the outstanding balance of all defaulted loans plus interest accrued to the time of repayment, such Participant shall be eligible to request a loan pursuant to the provisions of this Article 8. Payments to the Plan attributable to a defaulted loan plus accrued interest shall be accounted for separately.
- (M) Notwithstanding any other provisions herein, a loan made to a Participant under this Plan shall be due and payable in full upon the death of the Participant.
- (N) Notwithstanding any other provision herein, a loan that has been issued to a Participant prior to July 1, 2009, and is transferred to the Plan as part of the assets transferred pursuant to Section 24-51-1402(5)(a), C.R.S., shall be administered by the Association or the Service Provider under the existing terms of the loan, including those terms that conflict with this Section 8.03.
- (O) Loans issued under the Plan on or after July 1, 2009, shall be subject to the limitations set forth in this Section 8.03.

- (P) If a Participant separates from service (or takes a leave of absence) from his or her Employer because of service in the military and does not receive a distribution of his/her Account Balance, upon request of the Participant, the Plan will suspend loan repayments until after the conclusion of the period of military service. In accordance with the federal Soldiers' & Sailors' Relief Act, interest will accrue during the period of suspended payments at the original loan rate or at the rate of six percent (6%), whichever is less. In accordance with Code Section 72(p) and the Regulations thereunder, upon request of the Participant, the Plan will suspend payments for up to twelve (12) months for non-military leaves of absence if the Participant is on a bona fide leave of absence (a leave that would qualify for job protection under the federal Family and Medical Leave Act) and the leave is either without pay or the Participant's after-tax pay is less than the installment payment amount under the terms of the loan. When payments resume, installment payments may not be less than the amount required under the terms of the original loan.

#### **8.04 Allocations**

- (A) The amount of the loan is to be transferred proportionately from the Participant's Account among Roth and Tax-Deferred monies and among each Investment Fund to a special "Loan Fund" for the Participant under the Plan. The Loan Fund shall be invested solely in the loan made to the Participant and the amount transferred to the Loan Fund.
- (B) Payments of principal on the loan will reduce the amount held in the Participant's Loan Fund. Those payments, together with the attendant interest payments, will be credited to the Participant's Accounts invested in the Investment Funds in accordance with the Participant's then effective investment election, but will not be credited to any Investment Funds that are in a participant directed investment brokerage arrangement.

## **ARTICLE 9—DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT**

#### **9.01 Eligibility**

The entire remaining balance of the Participant's Account shall become available for distribution as soon as administratively practicable following the date of the Participant's Termination of Employment, but the distribution will not be made earlier than the date all of the Participant contributions are credited.

## **9.02 Distribution of After-Tax Account**

If a Participant has an After-Tax Account upon Termination of Employment, the Participant may elect to receive a distribution of all of the Participant's after-tax contributions at any time without penalty or tax liability. Such a Participant also may elect to receive a distribution of all of the Participant's earnings on the after-tax contributions, but a distribution of the earnings will be subject to tax and penalty, except to the extent that the Participant complies with all of the requirements for a non-taxable rollover. In the absence of such a rollover, there is an exception from the penalty, but not the tax, provided the Participant terminates employment after attainment of age 55 or satisfies certain other requirements of the Code.

## **9.03 Distribution Options Upon Termination of Employment**

If, upon Termination of Employment, a Participant has received the total amount available under Section 9.02, if any, the Participant may receive (but is not required to receive) a distribution of all or part of the remaining balance of the Participant's Account. At the election of the Participant and subject to procedures by the Association, the distribution may be (a) by lump sum payment of the entire remaining Account, (b) by partial distribution of an amount designated by the Participant, (c) by monthly payments in an amount designated by the Participant until the entire remaining Account is distributed, or (d) a combination of these methods. The distribution will be subject to tax except to the extent that the Participant complies with all of the requirements for a non-taxable rollover or a qualified distribution from a Roth Account. The distribution will be without penalty only if the person terminates employment after attainment of age 55 or satisfies certain other requirements of the Code. Notwithstanding any other provisions herein, payment to a Participant shall commence no later than the Participant's Required Beginning Date (as defined in Article 10), and the amount distributed shall be at least equal to the minimum distribution required under Section 401(a)(9) of the Code.

## **9.04 Distribution in the Event of the Participant's Death**

(A) Effective January 1, 2003, distributions due to death will be paid in a lump sum under provisions in Article 10. Effective for deaths occurring on or after October 1, 2011, distributions due to death will be paid in a form specified in Section 9.03 in an amount at least sufficient to satisfy Section 401(a)(9) of the Code under provisions in Article 10.

- (B) The Plan may require and rely upon such proof of death and such evidence of the right of any Beneficiary or other person to receive the value of the Accounts of a deceased Participant as the Plan may deem proper and its determination of death and of the right of that Beneficiary or other person to receive payment shall be conclusive.

#### **9.05 Procedures and Restrictions**

- (A) For a distribution, the Service Provider must receive from the Participant (or Beneficiary in the case of death) notice requesting distribution and all required information. That notice from a Participant (or by a Beneficiary) may request, but is not required to request, distribution in whole or in part as a direct rollover to the extent permitted by Section 401(a)(31) of the Code. When the Code and Plan require a distribution and a notice has not been received, the Service Provider will make the distribution to the Participant (or Beneficiary in the case of the Participant's death) to remain in compliance.
- (B) All distributions shall be paid in cash (in accordance with the payment option selected) as soon as administratively practicable after the later of the date on which the Service Provider receives notice and all required information or the date on which all requirements for the distribution (including, but not limited to, the requirement in Section 9.01) are satisfied.
- (C) A Participant may designate the extent to which the amount of the distribution is composed of Tax-Deferred monies or Roth monies. In the absence of such designation, the Plan will allocate the withdrawal in proportion to the value of the Tax-Deferred monies and Roth monies in the Plan. The amount of a distribution shall be allocated between the Investment Funds in proportion to the value of the Participant's Account in each Investment Fund.
- (D) Effective January 1, 2007, with respect to any portion of a distribution attributable to a deceased Participant, a nonspouse designated Beneficiary (as defined in Section 401(a)(9)(E) of the Code) may authorize, pursuant to procedures established by the Administrator, a direct trustee-to-trustee transfer of the eligible portion of the distribution to an individual retirement account or annuity described in Section 408(a) or (b) of the Code ("IRA") that is established on behalf of the designated Beneficiary and that will be

treated as an inherited IRA in accordance with Section 402(c)(11) of the Code. Effective January 1, 2010, with respect to any portion of a distribution attributable to a deceased Participant, a nonspouse Beneficiary (as defined in Section 401(a)(9)(E) of the Code) may authorize, pursuant to procedures established by the Administrator, a rollover of the eligible portion of the distribution to an individual retirement account or annuity described in Section 408(a) or (b) of the Code ("IRA") that is established on behalf of the designated Beneficiary and that will be treated as an inherited IRA in accordance with Section 402(c)(11) of the Code.

- (E) Notwithstanding anything herein to the contrary, a direct rollover of a distribution from a Roth Contribution Account or a Roth Rollover Account will only be made to another Roth elective deferral account under an applicable retirement plan described in Section 402A(e)(1) of the Code or to a Roth IRA described in Section 408A of the Code, and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code.

#### **9.06 Payment Required by Law**

Under certain limited circumstances specified in Section 13.05, after Termination of Employment (including but not limited to federal tax liens under federal law and certain child support and domestic relations orders under state law), payment by the Plan may be required. The payment will be paid in cash as soon as administratively practicable after the Service Provider receives all required information and all requirements for payment are satisfied. The payment shall be allocated between the Investment Funds in proportion to the value of the Participant's Account in each Investment Fund and shall be allocated between each tax-deferred and after-tax component of such Account in proportion to the value of each component.

#### **9.07 Coronavirus-Related Distribution (CRD)**

Effective from January 1, 2020, to December 30, 2020, a Participant who has had a Termination of Employment and meets the criteria of a qualified individual, as such term is defined in Section 2202 of the CARES Act and any amendments thereto, including any later-issued guidance from the IRS, may take up to \$100,000 from the Participant's Account as a CRD. The Plan Administrator and Service Provider may rely on the Participant's certification that the Participant meets the eligibility

requirements of a qualified individual. Any CRD paid pursuant to this Section will be made in accordance with all applicable IRS guidance as it exists at the time of distribution from, and any repayment to, the Plan.

## **ARTICLE 10—MINIMUM DISTRIBUTION REQUIREMENTS**

### **10.01 General Rules**

(A) Effective Date

The minimum distribution requirements, as set forth in Article 10, apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year, or, if later, the year specified by the below sections.

(B) Precedent

The requirements of this Article will take precedence over any inconsistent provisions of the Plan.

(C) Requirements of Treasury Regulations Incorporated

Notwithstanding anything herein to the contrary, all distributions required under this Article will be determined and made in accordance with a reasonable and good faith interpretation of Section 401(a)(9) of the Code and the provisions of this Article 10. This provision is applicable for all years to which Section 401(a)(9) of the Code applies to the Plan.

### **10.02 Required Minimum Distributions During Participant's Lifetime**

(A) Required Beginning Date

The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

(B) Amount of Required Minimum Distribution for Each Distribution Calendar Year

During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (i) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year, or

- (ii) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, and the spouse is more than 10 years younger than the Participant, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (C) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death
- Required minimum distributions will be determined under this Section beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

### **10.03 Required Distributions—Deaths Occurring Before October 1, 2011**

- (A) Death of Participant Before Distributions Begin
- If the Participant dies before distributions begin, the Participant's Account Balance will be distributed in a lump sum by December 31 of the calendar year immediately following the calendar year in which the Participant died. Notwithstanding the foregoing, if a Participant whose assets are transferred to the Plan pursuant to Section 24-51-1402(5)(a), C.R.S., died prior to July 1, 2009, those assets will be distributed in a lump sum by December 31, 2010.
- (B) Death On or After Date Distributions Begin
- (i) Participant Survived by Designated Beneficiary
- If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the Participant's Account Balance will be distributed by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (ii) No Designated Beneficiary
- If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the Participant's Account Balance will be distributed by December 31 of the calendar year immediately following the calendar year in which the Participant died.

## **10.04 Required Distributions—Deaths Occurring On or After October 1, 2011, and Before January 1, 2021**

### **(A) Death of Participant Before Distributions Begin: Timing of Distributions**

If the Participant dies before distributions begin, the Participant's Account Balance will be distributed, or begin to be distributed, no later than as follows:

#### **(i) Surviving Spouse as Beneficiary**

If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, except as provided in Section 10.04(B)(ii), distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or if later, by December 31 of the calendar year in which the Participant would have attained age 70½, if the Participant reached such age by January 1, 2020, or by December 31 of the calendar year in which the Participant would have attained age 72, if the Participant had not yet turned age 70½ by January 1, 2020.

#### **(1) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin**

If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under this section, this section will apply as if the surviving spouse were the Participant.

#### **(ii) Non-spouse Beneficiary**

If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, distributions to the non-spouse designated Beneficiary(ies) will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, unless the Beneficiary makes the election as provided in Section 10.04(B)(ii).

#### **(iii) No Designated Beneficiary**

If there is not a designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's Account Balance will be distributed by lump sum

by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(B) Death of Participant Before Distributions Begin: Amount of Distributions

(i) Designated Beneficiary - Life Expectancy Rule

The minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 10.04(C).

(ii) Designated Beneficiary - Five-Year election

A Beneficiary may elect, in lieu of applying the Life Expectancy Rule in subsection (i), to have the Participant's entire interest distributed to the designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death (the "5-year rule") if such interest may be distributed either as a lump sum or as an annuity. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under the preceding subsections of Section 10.04(A), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If the Participant's interest may only be distributed in the form of a lump sum, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) For purposes of this Section 10.04, unless Section 10.04(A)(i)(1) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 10.04(A)(i)(1) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.04(A)(i).

(C) Death on or After Date Distributions Begin

(i) Participant Survived by Designated Beneficiary

If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will

be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Surviving Spouse as Beneficiary

If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(3) Non-spouse Beneficiary

If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) No Designated Beneficiary

If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the remaining Account balance will be distributed by lump sum by the time required by law.

**10.05 Required Distributions—Deaths Occurring On or After January 1, 2021**

(A) Distributions following Death of Participant

If the Participant dies before the Participant's entire Account Balance is distributed, regardless of whether the Participant began distributions prior to death, the Participant's Account Balance will be distributed no later than the tenth calendar year following the year of the Participant's death, except as follows:

(i) Eligible Designated Beneficiary – Generally

If the Participant's beneficiary is an Eligible Designated Beneficiary, distributions to the Eligible Designated Beneficiary must begin the year after the calendar year in which the Participant died, and may be taken by applying the life expectancy of the Eligible Designated Beneficiary in accordance with Code Section 409(a)(9)(B)(iii).

(ii) Eligible Designated Beneficiary – Spouse

If the Participant's Eligible Designated Beneficiary is a surviving spouse, distributions may be made beginning when the Participant would have turned 72, instead of beginning distributions the year after the calendar year in which the Participant died.

(iii) Eligible Designated Beneficiary – Child

If the Participant's Eligible Designated Beneficiary is a child who has not reached the age of majority, any remainder of the Participant's interest remaining after the child reaches majority shall be distributed within 10 years after such date.

(B) Death of Eligible Designated Beneficiary

If an Eligible Designated Beneficiary dies before that individual's portion of the Participant's Account Balance is fully distributed, any remaining portion must be distributed within 10 years after the death of the Eligible Designated Beneficiary as required by Code Section 401(a)(9)(H)(iii).

**10.06 Definitions for Required Minimum Distributions**

(A) Designated Beneficiary

The individual who is designated as the Beneficiary under Section 1.04 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4, Q&A-1, of the Treasury regulations.

- (B) **Distribution Calendar Year**  
A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 10.03, 10.04, or 10.05. The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.
- (C) **Eligible Designated Beneficiary**  
Has the same meaning as defined in Code Section 409(a)(9)(E)(ii).
- (D) **Life Expectancy**  
Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (E) **Participant's Account Balance**  
The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (F) **Required Beginning Date**  
Means April 1 of the year after the year in which the Participant turns 70½ and has had a Termination of Employment. For Participants who have not yet attained age 70½ by January 1, 2020, the Required Beginning Date is April 1 of the year after the year in which the Participant turns 72 and has had a Termination of Employment.

## **10.07 Required Minimum Distribution Waiver of 2020**

Notwithstanding any other provisions of Article 10 of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 but for the enactment of Code Section 401(a)(9)(l) (“2020 RMDs”), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or life expectancies) of the Participant and the Participant’s designated Beneficiary, or for a period of at least 10 years (“Extended 2020 RMDs”), will not receive those distributions for 2020 unless the Participant or Beneficiary chooses to receive such distribution, or has made a previous election to receive future payments. A Participant or Beneficiary who received a payment for the amount of a 2020 RMD from the Service Provider prior to the enactment of Section 401(a)(9)(l) may elect to repay the full amount of the distribution to the Plan during the 60-day period that such payment is eligible for rollover, plus any extensions granted by the IRS.

## **ARTICLE 11—ADMINISTRATION OF PLAN**

### **11.01 Appointment of Administrator**

Except as otherwise provided herein, the Executive Director of PERA shall be the Administrator and shall be responsible for the administration of the Plan. The Administrator shall be reimbursed for any necessary and reasonable expenses incurred in the performance of the duties for the Plan. If at any time the Administrator shall be incapable of acting, the Trustee may act as it, in its sole discretion, deems appropriate and advisable in the circumstances for carrying out of the provisions of the Plan and Trust.

### **11.02 Duties and Powers of the Administrator**

The Administrator, subject to the limitations herein and to such other restrictions as the State of Colorado may make, shall have the power, duty and discretion to take all actions and to make all decisions necessary or proper to carry out the provisions of the Plan. The determination of the Administrator as to any question involving the general administration and interpretation of the Plan and the Administrator’s exercise of any

discretion granted hereunder shall be final, conclusive and binding unless appealed pursuant to Section 11.05. The general administration and interpretation of the Plan and any discretionary actions to be taken under the Plan shall be done uniformly and consistently by the Administrator to all persons similarly situated. Without limiting the generality of the foregoing, the Administrator shall have full discretion to carry out the following powers and duties:

- (A) Subject to the limitations herein and to such other restrictions as the State of Colorado may make, the Administrator may establish such written procedures for the administration of the Plan and the transaction of its business as the Administrator deems necessary for the efficient administration of the Plan.
- (B) The Administrator may require any Participant, Beneficiary, or other person to furnish such information as the Administrator requests for the purpose of the proper administration of the Plan and as a condition for receiving any payments under the Plan.
- (C) The Administrator may require any Employer to furnish such information as the Administrator requests for the purpose of the proper administration of the Plan.
- (D) The Administrator shall interpret where necessary the provisions of the Plan and the applicable laws and rules and determine the rights and payments to the Participants and other persons under the Plan.
- (E) The Administrator shall maintain, or cause to be maintained, records showing the individual balances in each Participant's Accounts. However, maintenance of such records and Accounts shall not require any segregation of the funds of the Plan.
- (F) The Administrator may contract for accounting, custodial, recordkeeping, insurance, legal, and other services as may be required to carry out the provisions of the Plan.
- (G) The Administrator may discharge any power or duty through delegation to any designated deputy, assistant, or contractor.

### **11.03 Prudent Conduct**

The Administrator and any delegate of the Administrator shall be a fiduciary and shall use that degree of care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of a similar situation.

#### **11.04 Indemnification**

To the maximum extent permitted by law, no Administrator shall be personally liable by reason of any contract or other instrument executed by the Administrator or on behalf of the Administrator nor for any mistake of judgment made in good faith, and each Administrator, each other employee of PERA, and each other employee of the Employer to whom any duty or power with respect to this Plan may be delegated or allocated, shall be indemnified and held harmless, directly from the funds of the Plan, to the extent such person or other employee is not otherwise indemnified by an Employer, against any cost or expense (including reasonable counsel fees) and liability (including any sum paid in settlement of a claim or legal action) arising out of anything done or omitted to be done in connection with the Plan unless arising out of such person's or other employee's own fraud or bad faith.

#### **11.05 Appeal Procedures**

If a dispute arises regarding any question involving the Plan (other than a question involving the Trust), a claim must be filed with the Administrator and the Administrator's decision shall be final, conclusive and binding unless appealed in accordance with the administrative review procedures set forth in the Board rules. If a timely appeal is made, the dispute shall be resolved through administrative review pursuant to PERA Rule 2.20. A final decision by the Board shall then be final, conclusive and binding subject only to review by proper court action pursuant to Colorado Rule of Civil Procedure 106(a)(4).

#### **11.06 Limitation of Actions**

No action shall be brought by a Participant related to any questions involving the Plan (other than a question involving the Trust), regardless of the theory upon which suit is brought, or against whom suit is brought, unless it shall first have been presented as a claim to the Administrator pursuant to Section 11.05 and to the Board as an appeal. In no event shall any action be brought more than 30 days after the date of the final decision of the Board, or with respect to matters, if any, as to which the administrative review under Section 11.05 is not enforceable, more than one year after the date the Participant could have, in the exercise of reasonable diligence, submitted a claim to the Administrator.

## ARTICLE 12—TRUST

### 12.01 **Assets Held in Trust**

All of the assets of the Plan shall be held in Trust for the exclusive benefit of the Plan's Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan. The Trust shall accept and receive all sums of money paid to it from time to time pursuant to the terms of this Plan and shall hold, invest, reinvest, manage and administer those monies and all increments, earnings, and income thereon as trust funds exclusively for such purposes. All of the assets of the Plan shall be held in trust, in a separate trust fund, as required by the laws of the State of Colorado.

Except under the circumstances described in Section 3.07(A), 3.07(B), or 13.05, it shall be impossible for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of the Participants or their Beneficiaries or to defray the reasonable expenses of administering the Plan.

### 12.02 **The Trustee**

The Board shall serve as the Trustee for the Trust. The members of the Board, when discharging their functions for this Trust, shall be held to the standard of conduct provided in Article 51 of Title 24, Colorado Revised Statutes.

### 12.03 **Payments from Accounts**

The Trustee shall direct the Administrator to make payments in accordance with the Plan to such persons, at such times, and in such amounts as shall be set forth in written instructions furnished by the Administrator; provided, however, that in no event shall the Trustee be under any obligation to make any payment other than from the funds in this Trust. The Trustee shall be fully protected in relying and acting upon notice, instruction, certification or other document in writing which was made or purports to have been made in accordance with this Plan, and the Trustee shall be under no duty to make any investigation or inquiry as to the truth and accuracy of the statements contained therein.

### 12.04 **Investments Authorized**

The Trustee shall collect the income and the assets of the Trust fund, without distinction between corpus and income, and shall invest and reinvest them, except such amounts as may be estimated from time to time to be required for current payments and expenses. The Trustee shall select the nature of the investments available and the specific Investment Funds available as provided in Article 4.

## **12.05 Duties and Powers of the Trustee**

The Trustee, subject to the limitations herein and to such other restrictions as the State of Colorado may make, shall have the power and the duty to take all actions and to make all decisions necessary or proper to carry out the provisions of the Trust. Without limiting the generality of the foregoing, the Trustee shall have the following powers and duties:

- (A) Subject to the limitations herein and to such other restrictions as the State of Colorado may make, the Trustee may promulgate rules in accordance with the requirements of state law for rulemaking.
- (B) The Trustee shall interpret where necessary the provisions of the Trust and determine rights under the Trust. The determination of the Trustee as to any question involving the Trust shall be final, conclusive and binding unless appealed pursuant to Section 12.08.
- (C) The Trustee shall maintain, or cause to be maintained, records of receipts and disbursements and shall prepare and furnish periodic financial reports.
- (D) The Trustee may purchase or otherwise acquire property for the Trust, whether real or personal; hold it, and sell, convey, transfer, lease, or otherwise dispose of, and also grant options with respect to it. The Trustee may cause any securities or other property to be registered in the Trustee's own name or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust fund.
- (E) The Trustee may retain agents, attorneys, investment managers, auditors, and others to provide services as may be required to carry out the provisions of the Trust and may pay them reasonable compensation out of the Trust.
- (F) The Trustee, in carrying out the provisions of the Trust, may authorize one or more persons or any agent to negotiate, execute, or deliver any agreement or instrument or make any payment on their behalf and may allocate among themselves or delegate to other persons all or such portion of their duties under the Trust, as they, in their sole discretion, shall decide.

- (G) If any person, whether a Participant, a Beneficiary, or otherwise, receives money to which such person was not entitled, the Trustee is authorized in its discretion to recover such money through one or more of the following: from the recipient through any available legal process or remedy, from the recipient through offset against other amounts not yet paid to the recipient, or from the Account from which the excess was taken through offset against amounts not yet paid. The Trustee is authorized to recover such amount in full and to assess interest thereon.
- (H) The Trustee shall be authorized and empowered to do all acts, whether or not expressly authorized herein, which the Trustee may deem necessary or proper to protect and carry out the purpose of the Trust or to qualify the Plan under Sections 401(a) and 401(k) of the Code.

#### **12.06 Prudent Conduct**

The Trustee, the members of the Board, and any delegate of the Trustee shall use that degree of care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of a similar situation.

#### **12.07 Indemnification**

To the maximum extent permitted by law, neither the Board nor any member of the Board shall be liable by reason of any contract or other instrument executed by the Trust or on behalf of the Trust nor for any mistake of judgment made in good faith, and each member of the Board, each employee of PERA, and each other employee of the Employer to whom any duty or power with respect to this Trust may be delegated or allocated, shall be indemnified and held harmless, directly from the funds of the Trust, to the extent such member or other employee is not otherwise indemnified by an Employer, against any cost or expense (including reasonable counsel fees) and liability (including any sum paid in settlement of a claim or legal action) arising out of anything done or omitted to be done in connection with the Trust unless arising out of such Board member's or other employee's own fraud or bad faith.

#### **12.08 Appeal Procedures**

If a dispute arises regarding any question involving the Trust, a claim must be filed with the Trustee and the Trustee's decision shall be final, conclusive and binding unless appealed in accordance with the administrative review procedures set forth in the Board rules. If a timely

appeal is made, the dispute shall be resolved through administrative review pursuant to PERA Rule 2.20. A final decision by the Board shall then be final, conclusive and binding subject only to review by proper court action pursuant to Colorado Rule of Civil Procedure 106(a)(4).

#### **12.09 Limitation of Actions**

No action shall be brought by a Participant related to any question involving the Trust, regardless of the theory upon which the suit is brought, or against whom suit is brought, unless it shall first have been presented as a claim to the Trustee pursuant to Section 12.08 and to the Board as an appeal. In no event shall any action be brought more than 30 days after the date of the final decision of the Board, or with respect to matters, if any, as to which the administrative review under Section 12.08 is not enforceable, more than one year after the date the Participant could have, in the exercise of reasonable diligence, submitted a claim to the Trustee.

## **ARTICLE 13—GENERAL PROVISIONS**

#### **13.01 Qualification Under the Code**

The Plan is intended to qualify under Sections 401(a) and 401(k) of the Code and the Trust is intended to be tax exempt. Any ambiguities, inconsistencies, or uncertainties under the Plan or the Trust shall be resolved by interpreting and administering them in a way that complies with the applicable requirements for qualification.

#### **13.02 Applicable Law**

All questions pertaining to the validity, construction and administration of the Plan and the Trust shall be determined in conformity with the laws of the State of Colorado, except to the extent federal law preempts state law.

#### **13.03 Construction**

- (A) The titles and headings of the Articles and Sections in this instrument are for convenience only. In case of ambiguity or inconsistency, the text rather than such titles or headings shall control.
- (B) If any provision of the Plan, the Trust, or the application thereof to any circumstance or person is invalid, the remainder of the Plan and the Trust and the application of such provision to other circumstances or persons shall not be affected thereby.

#### **13.04 No Guarantee Against Loss**

The State of Colorado, the Trust, the Trustee, the Plan, the Administrator, and all Employers do not in any way guarantee the Trust against loss or depreciation, do not in any way guarantee payment from the Trust, and do not in any way guarantee the Investment Funds or any part thereof against loss or depreciation. Payment to a Participant or Beneficiary is limited to the balance in such Participant's Account. Payments are further limited to the assets of the Trust. All persons having any interest in the Investment Funds shall look solely to such funds for payment with respect to such interest.

#### **13.05 Plan Account Not Subject to Legal Process**

Except as required by Section 24-51-212, Colorado Revised Statutes, and except as otherwise provided in this Plan, none of the moneys, accounts, or contributions shall be assignable either in law or in equity or be subject to execution, levy attachment, garnishment, bankruptcy proceedings, or other legal process. Pursuant to Section 24-51-212, Colorado Revised Statutes, an Account in this Plan is subject only to federal tax liens on distributions, assignments for child support purposes as provided for in Sections 14-10-118(1) and 14-14-107, Colorado Revised Statutes, as they existed prior to July 1, 1996, income assignments for child support purposes pursuant to Section 14-14-111.5, Colorado Revised Statutes, for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for payments from the Association in compliance with a properly executed court order approving a written agreement entered into pursuant to Section 14-10-113(6), Colorado Revised Statutes, and for offset under the circumstances described in Section 12.05(G). Participant Accounts are subject to garnishment resulting from a judgment taken for arrearages for child support or for child support debt only if the Participant has terminated membership in the Association. For a domestic relations order entered pursuant to Section 14-10-113(6), Colorado Revised Statutes, the PERA-provided form must be used without modification and the procedures specified in PERA Rule 15 must be followed.

#### **13.06 No Enlargement of Employment Rights**

The establishment of the Plan shall not confer any legal rights upon any Employee or other person for a continuation of employment, nor shall it interfere with the rights of the Employer to discharge any Employee and to treat the Employee without regard to the effect which that treatment might have upon the Employee as a Participant of the Plan.

**13.065 Payment**

Payments from the Plan shall be made only as provided under the Plan and only to the extent permitted under Section 3.07, Article 7, 8, 9 or 10 or under Section 13.05.

**13.07 Facility of Payment**

If the Plan shall find that any Participant or Beneficiary is unable to care for such person's own affairs because of incompetence, illness, or accident or is a minor, the Plan may, in its sole discretion, cause any payment due hereunder, unless prior claim shall have been made for the benefit by a duly appointed legal representative, to be paid to the person deemed by the Administrator to be maintaining or responsible for the maintenance of such Participant or other Beneficiary. Any such payment shall be deemed a payment for the benefit of such Participant or Beneficiary and shall constitute a complete discharge of any liability under the Plan for that Account.

**13.08 Information Required by Plan**

Participants, their Beneficiaries, other recipients and Employers shall furnish to the Administrator and the Trustee such evidence, data and information, as the Administrator considers necessary or desirable for the purpose of administering the Plan.

**13.09 Available Information**

The Administrator shall advise all Employees of the eligibility requirements under the Plan. The Administrator shall make available for inspection at reasonable times by Participants and Beneficiaries copies of the Plan, any amendments thereto, and all reports of the Plan and Trust operations required by law.

**13.10 Employer Authorization of Roth Contributions**

Notwithstanding anything herein to the contrary, Employers are not required to offer the Employer's Employees the availability of Roth Contributions. Employers must authorize the Plan Administrator to accept Roth Contributions on behalf of the Employees of the Employer. Such authorization must be made by written application to, and must be accepted by, the Plan Administrator, in such form as requested by the Plan Administrator.

## ARTICLE 14—AMENDMENT, MERGER, AND TERMINATION

### 14.01 **Amendment of Plan and Trust**

The Board reserves the right at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the Plan and Trust. However, no amendment shall eliminate the Trust nor make it possible for any part of the Trust funds of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to payments under the Plan. No amendment shall be made which has the effect of reducing a Participant's nonforfeitable percentage in the balance of the Participant's Account below the nonforfeitable percentage computed under the Plan as in effect on the date on which the amendment is adopted or, if later, the date on which the amendment becomes effective.

### 14.02 **Merger or Consolidation**

The Plan and Trust may not be merged or consolidated with, and its assets or liabilities may not be transferred to, any other plan unless each person entitled to payments under the Plan would receive, if the merged, consolidated or transferee plan were terminated immediately following such event, a payment which is equal to or greater than the payment the person would have been entitled to receive if the Plan had been terminated immediately before the event.

### 14.03 **Termination of Plan and Trust**

The Board may terminate the Plan and Trust or completely discontinue contributions under the Plan for any reason at any time. In case of termination or partial termination of the Plan and Trust, or complete discontinuance of contributions to the Plan, the rights of affected Participants to their Accounts under the Plan as of the date of the termination or discontinuance shall remain fully vested and nonforfeitable. The total amount in each Participant's Account shall be distributed, as the Board shall direct, to the Participant or continued in trust for the Participant's benefit.

## ARTICLE 15—DC PLAN COMPONENT

### 15.01 Establishment

The Association establishes this defined contribution retirement plan effective January 1, 2006, pursuant to Section 24-51-1501, C.R.S. The Plan shall be known as the DC Plan and shall be a component of PERA's 401(k) Plan. The Plan is a governmental profit-sharing plan that is intended to satisfy the requirements of Section 401(a) of the Code.

### 15.02 Definitions

As used in this Article 15, unless the context otherwise requires, the following terms shall have the following meanings:

- (A) **"Compensation"** means PERA salary, as defined in Section 24-51-101(42), C.R.S., as limited in accordance with Section 1.07.
- (B) **"DC Plan"** means the portion of this Plan described in this Article 15.
- (C) **"DC Plan Account"** means the contributions to the DC Plan on behalf of a DC Plan Participant and the earnings thereon, decreased by any withdrawals, any distributions, any losses, and the Participant's allocable portion of the costs and expenses of administering the Plan.
- (D) **"DC Plan Participant"** or **"Participant"** means any person who has become a participant of the DC Plan as provided in this Article 15 and whose interest in the DC Plan Account has not been fully distributed, transferred, or forfeited.
- (E) **"Defined Benefit Plan"** means the Association plan authorized in Parts 4 to 11 of Article 51 of Title 24, Colorado Revised Statutes.
- (F) **"Eligible Employee"** means an eligible Employee of an Employer, as specified in Section 24-51-1502(2), C.R.S.
- (G) **"Employer"** has the same meaning as defined in Section 24-51-1501(4), C.R.S.
- (H) **"Termination of Membership in the Association"** means loss of active membership in PERA, which occurs on the date the person terminates PERA-covered employment in both the defined benefit plan and the defined contribution plan, retires, or dies.
- (I) **"12-Month Break in Service"** means, except as otherwise required by federal law, 12 consecutive months for which no contributions are made on the Participant's behalf pursuant to Section 15.05.

- (J) “**Year of Participation**” means each 12 months, not necessarily consecutive, during which contributions are made on the Participant’s behalf pursuant to Section 15.05. A DC Plan Participant’s total Years of Participation shall be calculated by dividing the total number of months during which contributions are made on the Participant’s behalf to the DC Plan by 12. For this purpose, credit shall not be provided with respect to contributions that are transferred pursuant to Section 15.04(B). Years of Participation before a 12-Month Break in Service shall not count for purposes of determining a Participant’s Years of Participation after such 12-Month Break in Service.

### **15.03 Participation in the Plan**

(A) Initial Participation

An Eligible Employee who elects to be covered by the DC Plan in accordance with procedures established by the Association pursuant to Section 24-51-1503(1), C.R.S., shall become a DC Plan Participant on the first Valuation Date on or after such election becomes effective. Effective July 1, 2009, any participant in the State Defined Contribution Plan established pursuant to Part 2 of Article 52, of Title 24, as said Part existed prior to its repeal in 2009, shall become a Participant in the DC Plan pursuant to Section 24-51-1501(2), C.R.S., and the Participant’s account balance in the State Defined Contribution Plan shall be transferred to the Plan. Any Employee of an Employer who is hired on or after July 1, 2009, and who has been an active participant in the State Defined Contribution Plan during the twelve months prior to the date that the Employee commences employment shall be a member of the DC Plan.

(B) Continued Participation

A rehired Eligible Employee who was a DC Plan Participant immediately prior to his termination of employment and who has not incurred a 12-Month Break in Service shall automatically continue to participate in the DC Plan.

(C) Additional Election to Participate

(i) An Eligible Employee who is a member of the Defined Benefit Plan may make a one-time irrevocable election at any time during the second to fifth year of the Eligible Employee’s current period of membership in the Defined Benefit Plan since last becoming a member of the Defined Benefit Plan pursuant to

Section 24-51-1503(1), C.R.S., to terminate membership in the Defined Benefit Plan and become a DC Plan Participant in accordance with procedures established by the Association pursuant to Section 24-51-1506(4), C.R.S. Years of membership in the Defined Benefit Plan for purposes of this Section 15.03(C) shall be determined in accordance with PERA Rules.

- (ii) An Eligible Employee who, prior to January 1, 2006, became eligible to participate in the State Defined Contribution Plan, established pursuant to Part 2 of Article 52, of Title 24, as said Part existed prior to its repeal in 2009, who was a member or inactive member of the Association, may, as long as the Employee is employed in a position with an Employer for which the DC Plan is available, make a written election pursuant to Section 24-51-1506.5, C.R.S., to participate in the DC Plan.
- (D) Election to Terminate Participation
- (i) A DC Plan Participant may make a one-time irrevocable election at any time during the second to fifth Year of Participation in the DC Plan since last electing to participate in the DC Plan pursuant to Section 24-51-1503(1) to terminate participation and become a member of the Defined Benefit Plan in accordance with procedures established by the Association pursuant to Section 24-51-1506(1), C.R.S. A Participant who became a member of the DC Plan pursuant to Section 24-51-1501(2) or 24-51-1503(3), C.R.S., is not eligible to make such an election.
  - (ii) A DC Plan Participant who, prior to January 1, 2006, became eligible to participate in the State Defined Contribution Plan, established pursuant to Part 2 of Article 52, of Title 24, as said Part existed prior to its repeal in 2009, and who participated in the State Defined Contribution Plan before July 1, 2009, and became a member of the DC Plan pursuant to Section 24-51-1501(2) or 24-51-1503(3), C.R.S., may terminate participation in the DC Plan and become a member of the Association's Defined Benefit Plan in accordance with procedures established by the Association pursuant to Section 24-51-1506.5(3), C.R.S.

- (iii) A Participant who makes an election under this Section 15.03(D) shall cease to participate in the DC Plan, and the vested portion of the Participant's DC Plan Account shall be transferred to the Transfer Account.
- (E) Return to Employment  
A Participant who has reached the age at which a distribution would not be subject to penalty pursuant to the Code, who returns to work after electing distributions pursuant to Rule 16.70, shall be deemed to be a Retiree of the Association subject to the provisions of Part 11 of Article 51 of Title 24, Colorado Revised Statutes.
- (F) Beneficiary Designation
  - (i) Participants may make separate Beneficiary designations for their 401(k) Account and their DC Plan Account. In the event no Beneficiary is designated for the DC Plan Account, the Beneficiary shall be the Beneficiary designated for the Participant's 401(k) Plan Account, if any. In the event the Participant does not have a 401(k) Plan Account, or in the event no Beneficiary is designated for the 401(k) Plan Account, or if no person, persons, or entity so designated shall survive the Participant, the Beneficiary shall be deemed to be the estate of the Participant.
  - (ii) If a Participant had a DC Plan Account balance as of July 1, 2009, and that Participant had assets transferred to the plan on July 1, 2009, pursuant to Section 24-51-1501(2), C.R.S., the Beneficiary of the DC Plan Account shall be the Beneficiary designated for the DC Plan account prior to such transfer of assets. In the event no Beneficiary is designated for the DC Plan Account, the Beneficiary shall be the Beneficiary designated for the Participant's 401(k) Plan Account, if any. In the event the Participant does not have a 401(k) Plan Account, or in the event no Beneficiary is designated for the 401(k) Plan Account, or if no person, persons, or entity so designated shall survive the Participant, the Beneficiary shall be deemed to be the estate of the Participant.
  - (iii) If a Participant became a Participant in the DC Plan pursuant to Section 24-51-1501(2), C.R.S., and that Participant did not have a DC Plan Account balance as of July 1, 2009, but has a

DC Plan Account balance after July 1, 2009, as a result of the transfer of assets pursuant to Section 24-51-1501(2), C.R.S., the Beneficiary of the DC Plan account shall be the Beneficiary, if any, designated with the service provider that held the assets prior to their transfer on July 1, 2009, as reported to PERA. This Beneficiary can be changed in accordance with this Section 15.03(F) or Section 2.03(A) of this Plan. In the event that multiple service providers held assets prior to their transfer on July 1, 2009, and such service providers have different beneficiary designations on file for the Participant, all such designations will be null and void and a new designation will be required to be made in accordance with this Section 15.03(F). In the absence of such a designation, the Beneficiary shall be the Beneficiary designated for the Participant's 401(k) Plan Account, if any. In the event the Participant does not have a 401(k) Plan Account, or in the event no Beneficiary is designated for the 401(k) Plan Account, or if no person, persons, or entity so designated shall survive the Participant, the Beneficiary shall be deemed to be the estate of the Participant.

#### **15.04 Trustee-to-Trustee Transfer from the Defined Benefit Plan**

(A) Initial Transfer

If member and Employer contributions are made to the Defined Benefit Plan during the initial election period on behalf of an Eligible Employee who elects to be covered by the DC Plan pursuant to Section 15.03(A), such contributions (without interest) shall be transferred to the DC Plan within 90 days after the Eligible Employee's election becomes effective.

(B) Transfer upon Subsequent Election

(i) An active DC Plan Participant, who has a member contribution account in the Defined Benefit Plan but is not an active member of the Defined Benefit Plan making contributions, may elect to terminate membership in the Defined Benefit Plan by directing that all moneys credited to the Participant's member contribution account, as defined in Section 24-51-101(31), C.R.S., be transferred to the DC Plan Participant's DC Plan Account. After-tax contributions transferred to the DC Plan shall be credited to the Participant's After-Tax Account.

- (ii) An active DC Plan Participant who elected to participate in the DC Plan pursuant to Section 24-51-1506.5(1), C.R.S., but who is not an active member of the Association's Defined Benefit Plan, may elect to terminate membership in the Association's Defined Benefit Plan and direct that all moneys credited to the Participant's member contribution account, as defined in Section 24-51-101(31), C.R.S., plus interest accrued pursuant to Section 24-51-407, C.R.S., and matching employer contributions paid pursuant to Section 24-51-408, C.R.S., be transferred to the DC Plan Participant's DC Plan Account in accordance with Section 24-51-1506.5(2)(b), C.R.S.

## **15.05 Contributions**

### **(A) Amount**

The Employer shall pay the amount of member and employer contributions determined in accordance with Section 24-51-1505(1), C.R.S.

### **(B) Employee Contributions Picked Up**

For purposes of deferring federal income tax imposed on salary, the employee contributions assumed and paid for by the Employer shall be in lieu of paying such amounts as salary and shall be treated as Employer contributions pursuant to Section 414(h)(2) of the Code. For all other purposes, employee contributions assumed and paid for by the Employer shall be considered employee contributions.

### **(C) Limitations**

In no event shall contributions exceed the limits set forth in Section 3.06. In the event a contribution to the DC Plan would exceed the foregoing limits, the excess shall be corrected in accordance with the Employee Plans Compliance Resolution System or other applicable guidance of the Internal Revenue Service. If the Participant participates in more than one qualified defined contribution plan, the excess shall be considered to have first occurred in such other plan.

### **(D) Time and Method of Payment of Contributions**

Employer and employee contributions shall be paid in accordance with PERA Rule 16.60A.

- (E) Allocation, Investment and Valuation  
DC Plan contributions made on behalf of each DC Plan Participant shall be allocated to the Participant's DC Plan Account, and invested and valued in accordance with Articles 4 and 5; provided, however, that the provisions of Article 4 governing investment elections shall apply separately (i) to the Participant's Account, excluding the Participant's Transfer Account, and (ii) to the Participant's DC Plan Account and/or Transfer Account.
- (F) Tax-Deferred and Rollover Contributions
  - (i) DC Plan Participants shall be eligible to make Tax-Deferred Contributions and rollover contributions in accordance with Article 3.
  - (ii) If a DC Plan Participant has assets transferred to the Plan pursuant to Section 24-51-1501(2), C.R.S., and those assets contain rollover contributions, the rollover contributions will be transferred to the Participant's 401(k) Account and shall not remain in the Participant's DC Plan Account.
- (G) Qualified Military Service  
Section 3.08 shall apply to the DC Plan.

## **15.06 Vesting**

- (A) Employee Contributions  
Employee contributions, together with accumulated investment gains or losses, shall be fully vested and nonforfeitable at all times. In addition, DC Plan Participants shall be 100% vested in their member contribution account transferred pursuant to Section 15.04(B).
- (B) Employer Contributions  
DC Plan Participants shall be fully and immediately vested in 50% of their Employer contributions, together with accumulated investment gains or losses on the vested portion. For each full Year of Participation in the DC Plan, the Participant's vested percentage shall increase by 10%. Participants shall be 100% vested in their Employer contributions, together with accumulated investment gains or losses, upon completion of 5 Years of Participation in the DC Plan. Notwithstanding the foregoing, a Participant with an accrued balance in the DC Plan who became a Participant pursuant to Section 24-51-1501(2) or 24-51-1503(3), C.R.S., shall be fully vested in 100% of the Employer's past and future contributions to the Plan,

together with accumulated investment gains or losses on that vested portion. If a person becomes a Participant in the Plan without an existing DC Plan Account balance or after a 12-Month Break in Service, the Participant shall begin a new vesting schedule with regard to vesting of future Employer contributions in accordance with this Section 15.06(B) and Section 24-51-1505(3) and (4), C.R.S.

(C) Forfeitures

Except as otherwise required by federal law, upon the earlier of (i) a 12-Month Break in Service, (ii) the distribution of the vested portion of the Participant's DC Plan Account pursuant to Section 15.08, or (iii) the transfer of the vested portion of the Participant's DC Plan Account to the Transfer Account pursuant to Section 15.03(D), the Participant shall forfeit the portion of the Participant's DC Plan Account that is not vested. The vested portion of the Participant's DC Plan Account that remains after item (i) above shall be transferred from the Participant's DC Plan Account to the Participant's Transfer Account. Forfeitures shall be used to pay Plan expenses. If required by federal law, the forfeited portion of the Participant's DC Plan Account, without earnings, shall be reinstated upon the Participant's resumption of participation in the DC Plan.

**15.07 In-Service Distributions and Transfers**

(A) In-Service Withdrawals Prohibited

Prior to Termination of Membership in the Association, the Participant may not elect to make a withdrawal from the Participant's DC Plan Account.

(B) Purchase of Service Credit in the Defined Benefit Plan

The vested portion of the Participant's DC Plan Account that is transferred to the Participant's Transfer Account, in accordance with Section 15.03(D) or 15.06(C), may be used to purchase service credit in the Defined Benefit Plan, to the extent the member is eligible to purchase service credit pursuant to Part 5 of Article 51 of Title 24, Colorado Revised Statutes.

(C) Payment Required by Law

Section 7.07 shall apply to a Participant's DC Plan Account.

(D) Loans Not Available

A Participant may not obtain a loan from the Participant's DC Plan Account and the DC Plan Account shall not be included under Section 8.02 in determining the maximum amount of a loan permitted under Article 8.

- (E) Distribution Restrictions Applicable to Transfer Account  
Notwithstanding anything herein to the contrary, a Participant's Transfer Account shall be subject to the distribution restrictions applicable to the Participant's DC Plan Account, as specified in this Section 15.07.

## **15.08 Distributions Upon Termination of Membership in the Association**

- (A) Eligibility

The entire vested balance of the Participant's DC Plan Account shall become available for distribution as soon as administratively practicable following the date of the DC Plan Participant's Termination of Membership in the Association, but the distribution shall not be made earlier than the date all of the Participant's contributions are credited.

- (B) Distribution Options

At the election of the DC Plan Participant and subject to procedures of the Association, the distribution may be made either (i) in accordance with one or more of the options specified in Section 9.03, or (ii) by purchasing with the Participant's vested DC Plan Account a lifetime annuity contract pursuant to procedures adopted by the Association. Notwithstanding anything herein to the contrary, the distribution options specified in this Section 15.08(B) shall apply to a Participant's Transfer Account.

- (C) Distribution in the Event of the Participant's Death

Distributions due to death will be paid to the DC Plan Participant's Beneficiary designated in accordance with Section 15.03(F) in the form of a lump sum in accordance with Section 9.04 and Article 10.

- (D) Procedures and Restrictions

Distributions shall be made in accordance with Sections 9.05 and 9.06 and Article 10.

## **15.09 General Provisions**

- (A) Administration

The DC Plan shall be administered in accordance with Articles 11 through 14; provided that the penultimate sentence in Section 14.03 shall provide that in case of termination or partial termination of the Plan and Trust, or complete discontinuance of contributions to the Plan, the rights of affected Participants to the employee contribution portion of their DC Plan Account, as specified in Section 15.06(A),

shall remain fully vested and nonforfeitable, and the rights of affected Participants to the Employer contribution portion of their DC Plan Account, as specified in Section 15.06(B), shall remain vested solely to the extent then vested pursuant to Section 15.06(B).

(B) Optional Benefits and Coverage

- (i) Except as provided in Section 15.03(E), DC Plan Participants shall not be considered members or retirees and their survivors or Beneficiaries shall not be considered benefit recipients for the purposes of Parts 4 to 12 of Article 51 of Title 24, Colorado Revised Statutes; provided, however, that a DC Plan Participant shall be eligible to enroll in the health care program as a benefit recipient pursuant to Section 24-51-1204(1)(a), C.R.S., only if the Participant elects to purchase a lifetime annuity contract with his or her DC Plan Account. For purposes of the previous sentence and Section 24-51-1509(3), C.R.S., a DC Plan Participant who receives distributions in an amount calculated consistent with the required minimum distribution method of determining a substantially equal periodic payment pursuant to guidance promulgated by the Internal Revenue Service, and approved by the Association, may be treated as having elected to purchase a lifetime annuity contract with his or her DC Plan Account. Any premium subsidy paid shall be based on the member's years of service credit in the Defined Benefit Plan.
- (ii) DC Plan Participants shall be eligible to participate in long term care insurance and optional life insurance offered pursuant to Section 24-51-1208, C.R.S., and Part 13 of Article 51 of Title 24, Colorado Revised Statutes.
- (iii) The Association may, at its sole discretion and in accordance with procedures adopted by the Association, offer disability, survivor or retiree health care coverage to DC Plan Participants.





Your rights, benefits, and obligations as a PERA member are governed by Title 24, Article 51 of the Colorado Revised Statutes, and the Rules of the Colorado Public Employees' Retirement Association, which take precedence over any interpretations in this brochure.

14/25 (REV 9-20) 1M

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