



THE PERA DEFERRED COMPENSATION PLAN

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ARTICLE 1-INTRODUCTION AND PURPOSE OF PLAN

1.1 Establishment of Plan

Effective July 1, 2009, in accordance with the provisions of Section 24-51-1601, C.R.S., *et seq.*, the PERA Board of Trustees adopted an amendment and restatement of the PERA Deferred Compensation Plan (the "Plan") as a continuation of the State Deferred Compensation Plan previously administered under Part 1 of Article 52 of Title 24, as said part existed prior to its repeal in 2009. The Plan has been amended and restated since its adoption, most recently on June 21, 2019. The Plan shall be maintained for the exclusive benefit of covered individuals and is intended to comply with the eligible deferred compensation plan requirements under §457 of the Internal Revenue Code of 1986, as amended, and regulations thereunder, and other applicable law.

1.2 Purpose of Plan

The purpose of this Plan is to enable Eligible Employees who become covered under the Plan to enter into agreements with their Employer to defer a portion of their Compensation and receive benefits at termination of employment, retirement or death or in the event of financial hardship due to unforeseeable emergencies. Participation in this Plan shall not be construed to establish or create an employment contract between the Eligible Employee and the Employer.

ARTICLE 2-DEFINITIONS

- 2.1 **"Account"** means the Participant's Deferred Compensation Account and Rollover Account.
- 2.2 **"Administrator"** means the Board, or any individual(s) or entity appointed by the Board to administer the Plan.
- 2.3 **"Beneficiary"** means the person, persons, or legal entity entitled to receive benefits under this Plan which become payable 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.
- 2.4 **"Board"** means the board of trustees of PERA as established under the provisions of Article 51 of Title 24, Colorado Revised Statutes.
- 2.5 **"Code"** means the Internal Revenue Code of 1986, as amended and includes any regulations thereunder.

- 2.6 “Compensation”** means, solely for the purposes of determining the amount of Deferrals made to this Plan, compensation as determined by the Employer. Notwithstanding the above and consistent with IRS regulations, Compensation may include any amount paid to a Participant for unused accrued bona fide sick, vacation, or other leave by the later of two and one half months following Severance from Employment or the end of the calendar year that contains the Severance from Employment.
- 2.7 “Deferral”** means the amount of a Participant's Tax-Deferred Contributions, or if Roth Contributions are authorized by the Employer in accordance with procedures established by the Administrator, both Roth Contributions and Tax-Deferred Contributions, contributed by a Participant to the Plan pursuant to a properly executed Voluntary Salary Deferral Agreement.
- 2.8 “Deferred Compensation Account”** means the account established and maintained on behalf of a Participant as provided in Section 8.4.
- 2.9 “Eligible Employee”** means any person who is employed by an Employer.
- 2.10 “Employer”** means any employer affiliated with the Association that is also affiliated with the Plan pursuant to Section 24-51-1602(2) and (3), C.R.S, in accordance with procedures established by the Administrator.
- 2.11 “Includable Compensation”** means for any taxable year, an Eligible Employee's compensation as defined in Code Section 415(c)(3), for services performed for an Employer. Compensation under Code Section 415(c)(3) includes any elective deferrals as defined in Code Section 402(g) (3), and any amount which is contributed or deferred by the State at the election of the Eligible Employee and which is not includable in the gross income of the employee by reason of Code Sections 125, 132(f)(4) or 457.
- 2.12 “Investment Options”** means any equity investments, fixed-income investments, life insurance company products, any investments permitted pursuant to Section 24-51-206, C.R.S., and any other funding vehicle which the Board permits under the terms of the Plan, consistent with Code Section 457(g).
- 2.13 “Normal Retirement Age”** means that combination of age and years of service credit specified by the Public Employees' Retirement Association (“PERA”) that would result in an unreduced retirement benefit or, if the Participant continues to provide services to the Employer after reaching his or her normal retirement age described above, such Participant's

Normal Retirement Age shall be such later age as the Participant selects, but not to exceed age 70½. If the Participant's retirement plan is a defined contribution plan, then the Participant's Normal Retirement Age shall be age 65.

- 2.14 “Participant”** means an Eligible Employee or former Eligible Employee who has been enrolled in this Plan and who retains the rights to benefits under the Plan.
- 2.15 “Plan”** means The Public Employees' Retirement Association of Colorado Deferred Compensation Plan as it may be amended from time to time.
- 2.16 “Rollover Account”** means the account established and maintained on behalf of a Participant as provided in Section 8.5.
- 2.17 “Roth Contribution”** means an amount contributed by a Participant to the Plan that is designated irrevocably by the Participant in a Voluntary Salary 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 Voluntary Salary Deferral Agreement.
- 2.18 “Severance From Employment”** means the severance of a Participant's employment with all Employers including retirement and death as defined under §457(d)(1)(A)(ii) of the Code. Any Participant who is granted a leave of absence by the Employer will not be treated as incurring a Severance from Employment as long as the leave of absence is approved by the Employer. If an approved leave of absence is terminated by the Employer or the Participant without the resumption of the employment relationship, the Participant shall be treated as incurring a Severance from Employment under this Plan as of the date of termination of such leave. A Participant shall be treated as having a Severance from Employment during any period the individual is performing service in the uniformed services pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008, to the extent provided in Section 4.7.
- 2.19 “Tax-Deferred Contribution”** means an amount contributed by a Participant to the Plan on a pre-tax basis pursuant to a Voluntary Salary Deferral Agreement.

- 2.20** “Trust” means the trust which may be established under this Plan or under a separate trust agreement which forms a part of this Plan.
- 2.21** “Trust Fund” means the assets of the Trust.
- 2.22** “Trustee” means the Board, or any individual(s) or committee appointed in the future by the Board to serve as trustee of the Trust.
- 2.23** “Unforeseeable Emergency” means a severe financial hardship of the Participant or Beneficiary resulting from:
- (i) an illness or accident of the Participant or Beneficiary, the Participant’s or Beneficiary’s spouse, or the Participant’s or Beneficiary’s dependent (as defined in Code Section 152 without regard to section 152[b][1], [b][2] and [d][1][B]);
 - (ii) loss of the Participant’s or Beneficiary’s property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner’s insurance, such as the result of a natural disaster);
 - (iii) the imminent foreclosure of or eviction from the Participant or Beneficiary’s primary residence;
 - (iv) the need to pay for medical expenses of the Participant or Beneficiary, the Participant or Beneficiary’s spouse, or the Participant or Beneficiary’s dependent, including nonrefundable deductibles, as well as the cost of prescription drug medication; or
 - (v) the need to pay for funeral expenses of a spouse or a dependent of the Participant or Beneficiary (as defined in Internal Revenue Code §152, and, for taxable years beginning on or after January 1, 2005, without regard to §152[b][1], [b][2] and [d][1][B]).

The circumstances that will constitute an “Unforeseeable Emergency” will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

- (i) through reimbursement or compensation by insurance or otherwise;
- (ii) by liquidation of the Participant’s assets, to the extent the liquidation of such assets would not itself cause severe financial hardship;

- (iii) by cessation of deferrals under the Plan; or
- (iv) by taking a loan from the Participant's assets, to the extent the loan would not itself cause severe financial hardship.

The decision of the Administrator or its designee concerning the payment of benefits under this section shall be final and binding upon the Participant.

2.24 “Voluntary Salary Deferral Agreement” means the agreement between a Participant and the Employer to defer receipt by the Participant of Compensation not yet earned. Such agreement shall state the Deferral amount to be withheld from a Participant's paycheck and shall become effective as determined by the Employer, but no earlier than the first day of the month following the execution of such agreement by the Participant.

ARTICLE 3-PARTICIPATION OF EMPLOYEES

3.1 Eligibility

Each Eligible Employee may become a Participant in this Plan on his or her date of commencement of employment as an Eligible Employee, or on any date thereafter, after enrollment pursuant to Section 3.2. Any person elected or appointed to a term of office with any Employer shall be deemed to commence employment at the time such person assumes office.

3.2 Enrollment

Eligible Employees may enroll in the Plan by completing a Voluntary Salary Deferral Agreement and submitting it to the Employer prior to the first day of the month after the date of commencement of employment or prior to the first day of any subsequent month. Deferrals shall commence as soon as administratively practicable thereafter, but in no event before the later of the first day of the next payroll period or the first day of the month after the day the Employer receives a properly executed Voluntary Salary Deferral Agreement for the Participant. An Eligible Employee may also enroll in the Plan by making a rollover contribution in accordance with Section 4.5 or a transfer in accordance with Section 8.3.

Upon establishment of the Trust under the Plan, the Employer shall contribute to the Trust an amount equal to the Deferrals made by a Participant within five days of the date contributions were deducted from the Participant's salary.

3.3 Termination

A Participant terminates participation in the Plan in the month in which the entire amount of the Participant's Account has been paid to or on behalf of the Participant.

ARTICLE 4-CONTRIBUTIONS

4.1 Maximum Deferral

(a) Primary Limitation

The maximum Deferral amount for any Participant in any taxable year shall not exceed the lesser of:

- (i) the applicable dollar amount as provided in Code §457(e)(15), or
- (ii) one hundred percent (100%) of the Participant's Includable Compensation for the taxable year.

The applicable dollar limit for Deferrals established under subparagraph (i) of this paragraph (a) is increased for eligible Participants who have attained the age of 50 or older before the close of the calendar year by the additional amounts permitted under Section 414(v) of the Code. The additional Deferral amount is not available during the three years the Participant is utilizing the regular catch-up Deferral limitation under paragraph (b) of this Section 4.1.

(b) Catch-up Limitation

A Participant can elect to begin catch-up Deferrals up to the maximum limit no earlier than three (3) consecutive taxable years immediately preceding the year a Participant attains Normal Retirement Age. The start date of such election becomes irrevocable once catch-up Deferrals begin. The maximum catch-up Deferral amount shall be the lesser of: (i) twice the applicable dollar limit established under subparagraph (i) of paragraph (a), or (ii) the sum of: (A) the primary limitation amount determined under paragraph (a) for the current year, and (B) that portion of the primary limitation amount not utilized in prior taxable years in which the Participant was eligible to participate in the Plan, beginning after 1978. A Participant may use a prior year only if the Deferrals under the Plan in existence during that year were subject to the then current maximum deferral amount described in applicable regulations. The catch-up limitation is available to a Participant during one three-year period only. If the Participant elects and completes a consecutive

three year catch-up period and then postpones retirement or returns to work after retirement, the catch-up limitation shall not be available again. If a Participant elects and begins the catch-up Deferral, retires, and returns to employment with an Employer after retirement within the previously elected three year catch-up period, such a rehired Participant is eligible to make catch-up Deferrals for the remainder of the previously elected three year catch-up period.

(c) Coordination With Other Plans

If a Participant participates in more than one eligible deferred compensation plan (as defined in §457[b] of the Code) other than a plan that is a qualified governmental excess benefit arrangement (as defined in §415[m][3] of the Code), the maximum deferral under all such eligible deferred compensation plans shall not exceed the primary limitation amount described in Section 4.1(a) above and subject to modification by the catch-up limitation described in Section 4.1(b) above, and it shall be solely the Participant's responsibility to ensure that such limitations are not exceeded.

(d) Return of Excess Deferrals

The Employer shall notify the Administrator as to the amount of a Participant's deferrals into other §457(b) Plans maintained by the Employer. If a Participant's Deferrals to the Plan and all other plans maintained by the Participant's Employer in any taxable year exceed the primary limitation amount in Section 4.1(a) above, as modified by the catch-up limitation in Section 4.1(b), such excess deferral, including any income allocable to such amount, shall be distributed by the Plan to the Participant as soon as administratively practicable after the Plan determines that the amount is an excess deferral. In the event that Deferrals are returned to the Participant, the Plan will distribute Tax-Deferred Contributions first. Any excess deferral is included in the gross income of the Participant for the taxable year of the excess deferral.

4.2 Modifications to Amount Deferred

A Participant may change Deferrals with respect to Compensation not yet earned by submitting a new Voluntary Salary Deferral Agreement to the Employer. Such change shall take effect as soon as administratively practicable after the Participant submits the Voluntary Salary Deferral Agreement to the Employer but no earlier than the later of the first day of the month or the first day of the payroll period following receipt by the

Employer of the Voluntary Salary Deferral Agreement from the Participant. Modifications (other than a revocation of Deferral as provided in Section 4.3) are subject to the limitations specified in the Plan.

4.3 Revocation of Deferral

Any Participant may revoke his or her election to have Compensation deferred by so notifying the Employer in writing. The Participant's full Compensation on a nondeferred basis will then be restored as soon as administratively practicable, but no earlier than the later of the first day of the month or the first day of the payroll period following receipt of such written notice by the Employer from the Participant. Notwithstanding a revocation under this Section, the Participant's benefits under the Plan shall be paid only as provided in Article 5.

4.4 Duration of Deferral Election

Once a Deferral election has been made by the Participant, the election shall continue in effect until the Participant's Severance from Employment, unless the Participant modifies the Deferral in accordance with Section 4.2 or revokes the Deferral in accordance with Section 4.3.

4.5 Rollover Amounts From Other Eligible Plans

- (a) Subject to rules adopted by the Board, an Eligible Employee may make and the Plan will accept a direct rollover or regular rollover of an Eligible Rollover Distribution as defined in Section 5.6, excluding after-tax participant contributions, from an eligible governmental plan under §457(b) of the Code as permitted by §408(d)(3) of the Code or an Eligible Retirement Plan as defined in Section 5.6. An Eligible Rollover Distribution includes a rollover of Roth monies provided it is a Direct Rollover from another Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code Section 402(c).
- (b) Upon receipt of an Eligible Rollover Distribution, the Trustee shall credit the amount of any Eligible Rollover Distribution to the appropriate subaccount in the contributing Participant's Rollover Account in the Plan in accordance with Section 8.5 and Section 402(c)(10) of the Code and shall invest such amount in accordance with the provisions of this Plan.

- (c) For purposes of determining whether any amount tendered by a Participant for rollover is an Eligible Rollover Distribution, the Participant shall establish to the satisfaction of the Administrator that the amount tendered as a rollover represents an Eligible Rollover Distribution of the Participant from an eligible plan maintained by the former employer(s) of the Participant or an IRA, if applicable. The Administrator shall have the authority to determine whether or not a contribution proposed by a Participant constitutes an Eligible Rollover Distribution under Code Section 402. In making such determination, the Administrator may require reasonable proof by the Participant of the eligibility of the proposed contribution for rollover treatment. The Administrator may rely conclusively upon the opinion of legal counsel for the Trust Fund in making any such determination. Prior to Severance from Employment, a Participant may request a full or partial distribution or Direct Rollover of the Participant's Rollover Account without the limitations of Article 5.

Rollovers made pursuant to this section shall be separately accounted for in a Participant's Rollover Account.

4.6 In-Plan Roth Rollover Amounts

As of the date approved by the Administrator, 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 4.8 into the Roth Contribution subaccount in accordance with the applicable requirements of the Code and regulations thereunder, and subject to any additional restrictions imposed by the Administrator. Additionally, Participants may elect to roll over non-Roth rollover contributions made pursuant to Section 4.5 into the Roth Rollover subaccount. Notwithstanding anything in this paragraph, a Participant may elect an in-Plan Roth Rollover no more than two times per Plan Year.

4.7 Military Service

Notwithstanding any provision of this Plan to the contrary, contributions and benefits with respect to qualified military service will be provided in accordance with Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994 (Title 38 U.S. Code, Chapter 43, Sections 4301-4333, Public Law 103-353). Effective January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414[u]), the Participant's Beneficiary 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 4.8 in accordance with Section 414(u)(9) of the Code.

4.8 Regular Employer 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. Such Employer contributions are not subject to the requirement that there be an agreement in place before the beginning of the month for which deferrals commence, as specified in Sections 2.24, 3.2, 4.2, and 4.3 of the Plan.

(b) Limitations

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

(c) Payment by Employer

Contributions pursuant to Section 4.8 shall be paid to the Plan by the Employer, along with all reports required by the Administrator, no later than the date established by rule of the Board. The reports shall show Employer contributions under Section 4.8 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 17.40A. For purposes of the Code, late payments of contributions shall be treated as if they had been made on time and payments of interest shall be disregarded.

- (d) Nonforfeitability
All such contributions shall be fully vested and nonforfeitable at all times.
- (e) 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.

ARTICLE 5-DISTRIBUTION OF BENEFITS

5.1 Eligibility for Payment

Except as otherwise provided in this Plan, distribution of a Participant's Deferred Compensation Account from the Plan may commence upon Severance from Employment of the Participant upon proper application in a manner approved by the Board. The distribution shall not occur prior to the earliest of: (i) the calendar year in which the Participant attains age seventy and one-half (70½), (ii) the Participant's Severance from Employment, (iii) the Participant's death, or (iv) the date the Participant incurs a financial hardship due to an Unforeseeable Emergency. Notwithstanding the preceding, a Participant shall be permitted to receive a distribution from the Participant's Deferred Compensation Account under the Plan as provided in, and subject to the conditions of, Section 5.5.

5.2 Distribution Due to Unforeseeable Emergency

In accordance with the provisions of Code Section 457 and the regulations thereunder, a Participant who has not had a Severance from Employment and who has not attained age 70½ may request a distribution due to a severe financial hardship by submitting a written request to the Administrator accompanied by evidence to demonstrate that the circumstances being experienced qualify as an Unforeseeable Emergency. The Administrator shall have the authority to require such evidence as deemed necessary to determine if a distribution is warranted as set forth in this Section and Section 2.23. The allowed distribution shall be payable in a method determined by the Administrator as soon as possible after approval of such distribution.

All decisions by the Administrator or its designee in matters relating to distributions under this Section shall be final and binding on all parties.

5.3 Commencement of Distributions

The distribution of the Account shall be made in accordance with one of the payment options described in Section 6.2. Distribution of a Participant's Account must commence no later than the first day of April following the calendar year in which the later of the Participant's Severance from Employment or attainment of age seventy and one-half (70½) occurs (the "Required Beginning Date") in accordance with a reasonable and good faith interpretation of Code Section 401(a)(9) and the Treasury Regulations promulgated thereunder.

5.35 Required Minimum Distribution Waiver of 2009

Notwithstanding any other provisions of Article 5 of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or life expectancies) of the Participant and of the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. If the Participant or Beneficiary has not elected to receive a 2009 RMD or Extended 2009 RMD then the Participant or Beneficiary will not receive a 2009 or Extended 2009 RMD unless the Participant elects to receive the distribution(s).

5.4 Death Distribution Provisions

(a) Death After Distribution

If the Participant dies after the distribution of his or her interest has commenced, the remaining portion of his or her Account, if any, will be distributed to the Beneficiary determined pursuant to Section 2.3 at least as rapidly as under the method of distribution being used for the distribution to the Participant prior to his or her death. Notwithstanding the preceding, distribution of the Participant's Account must be distributed in accordance with a reasonable and good faith interpretation of Code Section 401(a)(9) and the Treasury Regulations promulgated thereunder.

(b) Death Before Distribution

If the Participant dies before distribution of his or her Account commences, the Participant's Account will be distributed to the Beneficiary determined pursuant to Section 2.3, in the form permitted by the Administrator and elected by the Participant or the Beneficiary. Notwithstanding the preceding, distribution of the Participant's Account must be distributed in accordance with a reasonable and good faith interpretation of Code Section 401(a)(9) and the Treasury Regulations promulgated thereunder.

5.5 In-Service Distributions of Small Amounts

Effective January 1, 1997, a Participant shall be entitled to receive, and the Administrator shall be permitted to make, a distribution from the Plan of the balance of the Participant's Account without the Participant's consent prior to the Participant's attainment of age seventy and one-half (70½), Severance from Employment or death and without the Participant being required to produce evidence of the occurrence of an Unforeseeable Emergency if (i) the amount of the distribution does not exceed five thousand dollars (\$5,000), (ii) the Participant has not, during the two (2) year period ending on the date of the distribution under this Section, made any contributions to the Participant's Deferred Compensation Account maintained under the Plan and (iii) the Participant has not received a prior distribution under this Section.

5.6 Direct Rollovers

A Distributee may elect, in a manner consistent with Code Section 457(e)(16) and at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. For purposes of applying this Section 5.6, the following definitions shall apply:

(a) Eligible Rollover Distribution

An Eligible Rollover Distribution is any distribution meeting the definition of an Eligible Rollover Distribution pursuant to Code Section 402(c)(4).

(b) Eligible Retirement Plan

An Eligible Retirement Plan means any plan meeting the requirements for an Eligible Retirement Plan under Code Section 402(c)(8)(B), and effective January 1, 2008, also means a Roth IRA as described in Code Section 408A(b) subject to any limitations

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

(c) Distributee

A Distributee includes a Participant, former Participant, a Participant's spouse or former spouse, and any other nonspouse beneficiary permitted to make a rollover under Code Section 402(c).

(d) Direct Rollover

A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(e) 2009 Required Minimum Distributions

Notwithstanding any other provisions of the Plan, and solely for purposes of applying the rollover provisions of the Plan, 2009 RMDs and Extended 2009 RMDs, will be treated as eligible rollover distributions in 2009.

5.7 Transfers to Purchase Defined Benefit Plan Service Credit

Subject to rules established by the Board and as permitted by Section 457(e)(17) of the Code, a Participant may elect to have all or any portion of the Participant's Account paid via a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in Section 414[d] of the Code) for the purchase of permissive service credit (as defined in Section 415[n][3][A] and [D] of the Code) or for repayments under Section 415(k)(3) of the Code. A Participant may elect this transfer twice per calendar year. Until and unless the Administrator determines otherwise consistent with 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, and any in-Plan Roth Rollover.

5.8 Participant Loan Program

Effective January 1, 2004, the Plan established a Participant loan program in accordance with the requirements of Code Sections 457 and 72(p) and the regulations thereunder. The provisions governing the loan program effective for loans issued on and after October 1, 2011, are as follows:

- (a) 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 Administrator. 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.
- (b) Maximum Amount of the Loan
 - (i) The amount of a loan to a Participant from the Participant's Account shall not exceed the least of:
 - (A) \$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
 - (B) the greater of
 - (1) \$10,000 or
 - (2) one-half the balance in the Participant's Account, or
 - (C) the Participant's Account balance as further reduced in accordance with the administrative procedure as approved by the Plan Administrator.
 - (ii) 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.
 - (iii) 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.
- (c) Terms and Limitations for the Loan
 - (i) If the Administrator approves a loan, in accordance with its procedures, the Administrator shall issue a check for the loan proceeds. Cashing of such check shall constitute the Participant's agreement to the promissory note, secured by the Participant's Account and such other collateral as the

Plan may require, and to all of the terms of the loan and the Participant's acknowledgement of receipt of Truth In Lending and other disclosures.

- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) The minimum amount of a loan shall be \$1,000, plus any fees.
- (vii) The minimum monthly payment owed for a loan shall be \$100.
- (viii) A Participant shall have no more than two loans outstanding at any given time.
- (ix) A loan may be paid in full at any time without penalty. 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.

- (x) 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 Administrator.
- (xi) 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 Article 5.
- (xii) 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 5 could otherwise be made under the Plan.
- (xiii) A Participant may not request another loan following a loan default occurring on or after January 1, 2002. 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 Section 5.8. Payments to the Plan attributable to a defaulted loan plus accrued interest shall be accounted for separately.
- (xiv) 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.
- (xv) Notwithstanding any other provision herein, a loan that has been issued to a Participant prior to October 1, 2011, shall be administered by the Administrator under the existing terms of the loan, including those terms that conflict with this Section 5.8, except that no annual loan maintenance fee shall be

charged after October 1, 2011. Loans issued under the Plan on or after October 1, 2011, shall be subject to the limitations set forth in this Section 5.8.

- (xvi) 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.

(d) Allocations

- (i) 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 Option 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.
- (ii) 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 Options in accordance with the Participant's then effective investment election, but will not be credited to any Investment Options that are in a participant directed investment brokerage arrangement.

ARTICLE 6-FORM OF PARTICIPANT'S BENEFIT DISTRIBUTION

6.1 Election

A Participant may elect the form of distribution of his or her Account and may revoke that election (with or without a new election) at any time by notifying the Administrator in writing, subject to the Administrator's approval. If applicable, 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.

6.2 Distribution Options

Distributions may be made by the Administrator in the following forms: (i) a lump sum cash payment, or (ii) substantially equal periodic installment payments over a period of years not longer than the life expectancy of the Participant or the joint life expectancy of the Participant and the Participant's spouse (as determined under A-2 and A-3 of Treasury Regulation §1.401[a][9]-9).

6.3 Failure to Make Election

If a Participant or Beneficiary fails to elect a form of distribution before thirty (30) days preceding the distribution commencement date, benefits shall be paid no later than the date described in Section 5.3 or 5.4 in a lump sum.

6.4 Revocation of Prior Election

Any election made under this Article 6 may be revoked at any time prior to the elected distribution commencement date.

ARTICLE 7-BENEFICIARY INFORMATION

7.1 Designation

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

7.2 Special Rules

The designated Beneficiary or Beneficiaries will receive the balance of the Participant's Account upon the Participant's death in accordance with Section 5.4 and the following:

- (a) Participants may designate primary and contingent Beneficiaries. A contingent Beneficiary and/or Beneficiaries will become entitled to a distribution of any remaining balance of the Participant's Account only after the death of any and all primary Beneficiaries.
- (b) If more than one Beneficiary is named in either category, benefits will be paid according to the following rules:
 - (i) Beneficiaries can be designated to share equally in or to receive specific percentages of, the remaining balance, if any, of the Participant's Account.
 - (ii) If a Beneficiary dies before the Participant, only the surviving Beneficiaries will be eligible to receive any benefits in the event of the death of the Participant. If more than two Beneficiaries are originally named to receive different percentages of the benefits, surviving Beneficiaries will share in the same proportion to each other as indicated in the original designation.
- (c) A person, trustee, estate or other legal entity may be designated as a Beneficiary.
- (d) If a Beneficiary has not been designated, or a designation is ineffective due to the death of any and all Beneficiaries prior to the death of the Participant, or prior to the date benefits commence to a Beneficiary, or the designation is ineffective for any reason, the estate of the Participant shall be the Beneficiary.
- (e) Upon the death of the Participant, any Beneficiary entitled to the value of the Account under the provisions of this Section shall become a "Vested Beneficiary" and have all the rights of the Participant with the exception of making any Deferrals, including the right to designate a Beneficiary(ies) to the extent such designation does not conflict with a prior Beneficiary designation made by the Participant pursuant to Section 7.2(d). 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.

- (f) Notwithstanding the foregoing, distribution to a Beneficiary under this Section must be distributed by the required beginning date and in the form and manner set forth in Section 5.4.

ARTICLE 8-PLAN ADMINISTRATION AND FUNDING

8.1 Plan Administration

This Plan shall be administered by the Administrator. The Administrator shall have full power and authority to adopt rules and regulations for the administration of the Plan, to enter agreements on behalf of the Administrator which are necessary to implement this Plan and to interpret, alter, amend, and revoke any rules and regulations so adopted. All decisions concerning withdrawal, payment, method of payment, investment of funds, etc., shall be solely the responsibility of the Administrator. The Administrator shall have responsibility for the operation and administration of the Plan and shall direct payment of Plan benefits. The Administrator shall have the power and authority to delegate ministerial duties and employ such outside professionals, as may be required for prudent administration of the Plan. Members of the Administrator, if otherwise eligible, may participate in the Plan, but shall not be entitled to make decisions which impact solely on his or her own participation.

8.2 Ownership of Assets

Effective on and after July 1, 1998, as provided in Section 8.6, all amounts of Compensation deferred under the Plan and all amounts rolled over or transferred to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in Trust.

8.3 Plan-to-Plan Transfers

- (a) Notwithstanding any other provisions under the Plan, amounts deferred by a former Participant of the Plan may, in the Administrator's discretion, instead of being distributed upon Severance from Employment, be transferred at the request of the Participant to another eligible governmental deferred compensation plan (as defined in §457 of the Code) in which the former Participant has become a participant, provided:

- (i) the plan receiving such amounts provides for acceptance of such transfers, including any transfers of Roth funds;
 - (ii) the Participant will have an amount deferred immediately after the transfer at least equal to the amount deferred immediately before the transfer; and
 - (iii) the Participant's Severance from Employment has occurred and the Participant has accepted employment with the eligible employer (as defined in §457 of the Code) maintaining the receiving plan.
- (b) Notwithstanding any other provisions under the Plan, the Administrator, in its sole discretion, may provide for the transfer of all assets of another eligible governmental deferred compensation plan (as defined in §457 of the Code) to this Plan, provided:
- (i) the transfer is from an eligible governmental plan of an Employer;
 - (ii) all of the assets held by the transferor plan are transferred;
 - (iii) the transferor plan provides for transfers;
 - (iv) the Plan provides for the receipt of transfers;
 - (v) the participant or beneficiary whose deferred amounts are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred immediately before the transfer; and
 - (vi) the participants or beneficiaries whose deferred amounts are being transferred are not eligible for additional annual deferrals in the Plan unless they are performing services for an Employer.
- (c) Notwithstanding any other provisions under the Plan, the Administrator, in its sole discretion, may permit the transfer of assets of another eligible governmental deferred compensation plan (as defined in §457 of the Code) to this Plan; provided:
- (i) the transfer is from an eligible governmental plan of an Employer;
 - (ii) the transferor plan provides for transfers;
 - (iii) the Plan provides for the receipt of transfers;
 - (iv) the participant or beneficiary whose deferred amounts are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred immediately before the transfer; and

- (v) the participants or beneficiaries whose deferred amounts are being transferred are not eligible for additional annual deferrals in the Plan unless they are performing services for an Employer.

8.4 Deferred Compensation Account

The Administrator shall establish and maintain a Deferred Compensation Account on behalf of each Participant. Such Deferred Compensation Account shall maintain two subaccounts, if applicable, as follows:

- (a) A Tax-Deferred Contribution subaccount, into which Tax-Deferred Contributions made by the Employee or the Employer have been credited, along with any such amounts transferred pursuant to Section 8.3. This subaccount shall be further credited or debited, as applicable, with (i) any increase or decrease resulting from investments pursuant to Section 10.4, (ii) any expenses incurred by the Administrator in maintaining and administering this Plan, which may be paid out of the Plan, and (iii) the amount of any distribution; and
- (b) A Roth Contribution subaccount, into which Roth Contributions made by the Employee have been credited, along with in-Plan Roth transfer or rollover contributions credited pursuant to Section 4.6 and any Roth amounts transferred pursuant to Section 8.3. Such amounts shall be accounted for separately, to the extent required. This subaccount shall be further credited or debited, as applicable, with (i) any increase or decrease resulting from investments pursuant to Section 10.4, (ii) any expenses incurred by the Administrator in maintaining and administering this Plan, which may be paid out of the Plan, and (iii) the amount of any distribution.

The Deferred Compensation Account shall be valued at fair market value as of the last day of the calendar year and such other dates as necessary for the proper administration of the Plan and each Participant shall receive a periodic written accounting of his or her Deferred Compensation Account balance following such valuation.

8.5 Rollover Account

The Administrator shall establish and maintain a Rollover Account on behalf of each Participant who rolls over money to the Plan pursuant to Section 4.5. Such Rollover Account shall maintain two subaccounts, if applicable, as follows:

- (a) A Tax-Deferred Rollover subaccount, into which the amount of any pre-tax rollover contributions shall be credited, and which shall be further credited or debited, as applicable, with (i) any increase or decrease resulting from investments pursuant to Section 10.4, (ii) any expenses incurred by the Administrator in maintaining and administering this Plan, which may be paid out of the Plan, and (iii) the amount of any distribution; and
- (b) A Roth Rollover subaccount, into which the amount of any Roth rollover contributions which shall be credited, along with in-Plan Roth rollover contributions credited pursuant to Section 4.6 and further credited or debited, as applicable, with (i) any increase or decrease resulting from investments pursuant to Section 10.4, (ii) any expenses incurred by the Administrator in maintaining and administering this Plan, which may be paid out of the Plan, and (iii) the amount of any distribution.

The Rollover Account shall be valued at fair market value as of the last day of the calendar year and such other dates as necessary for the proper administration of the Plan and each Participant shall receive a periodic written accounting of his or her Rollover Account balance following such valuation.

8.6 Funding Requirements

Notwithstanding anything in this Article or in the Plan to the contrary, effective on and after July 1, 1998, all assets held in respect of the Plan, including all Deferred Compensation Accounts maintained as of July 1, 1998 and all Deferrals, rollovers, transfers and earnings on such Accounts after such date, shall be held in trust or in an alternative funding medium for the exclusive benefit of Participants and their Beneficiaries as required (or permitted) under Code §457(g) in accordance with an instrument in writing satisfying the requirements of Code §457(g).

ARTICLE 9-AMENDMENT OR TERMINATION OF PLAN

9.1 Amendment of Plan

The Board shall have the right to amend the Plan, at any time and from time to time, in whole or in part, provided that no amendment shall increase the duties or liabilities of the Trustee without the written consent of the Trustee. Any amendment shall be set forth in an instrument in writing, a copy of which shall be provided to the Trustee as soon as practicable following its adoption.

9.2 Termination

Although the Board has established this Plan with the intention and expectation to maintain the Plan indefinitely, the Board may terminate or freeze the Plan in whole or in part at any time without any liability for such termination or discontinuance. Upon Plan termination or freeze, all Deferrals and other contributions shall cease. The Board in its sole discretion shall retain all Account balances until distribution of benefits commences under Article 5 in the form determined under Article 6 or shall distribute all Account balances to Participants and Beneficiaries as soon as administratively practicable.

ARTICLE 10-TRUST AND TRUSTEE

10.1 Trust Accounts

The Board shall serve as Trustee of the Trust, which has been established to hold all the contributions to and assets of the Plan.

10.2 Trust Fund

The Trust Fund shall consist of all the contributions made or transferred to the Trust Fund as provided herein, and the investments and reinvestments thereof and the income thereon, which shall be accumulated and added to principal. Prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, it shall be impossible for any part of the assets in the Trust to be used for, or diverted to, purposes other than the exclusive purpose of providing benefits to Participants and Beneficiaries and paying the reasonable costs of administering the Plan. The Trustee shall act with the care, skill, prudence, and diligence in light of the circumstances then prevailing that a person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. Assets in the Trust shall not revert or inure to the benefit of any Employer.

10.3 Trustee Control

The Trustee shall hold and invest the funds and assets received by the Trustee under this Plan subject to the terms of this Plan and for the purposes herein set forth. The Trustee shall invest and reinvest all Trust Fund assets in accordance with its duties as specified in Section 24-51-1601, C.R.S. The Trustee shall be responsible only for such funds and assets as shall actually be received by the Trustee as Trustee hereunder.

So long as a Trustee is acting, title to any of the assets of the Trust Fund may be held or registered in the name of a nominee of the Trustee for ease of dealing with the same, provided that the books of the Trust reflect actual ownership. The assets so held or registered shall at all times remain in the possession or under the control of the Trustee.

10.4 Investment Options

- (a) The Trustee shall establish such Investment Options as it elects, and shall divide the Trust among Investment Options in accordance with the investment directions of Participants or Beneficiaries that are made as provided in this Plan.
- (b) The Trustee may offer Investment Options including a Participant directed brokerage arrangement. Neither the Board, the Trustee, nor the Administrator has any duty, responsibility, or liability to determine or review the appropriateness of Investment Options made available through any Participant directed investment brokerage arrangement established under the Plan.
- (c) Investment Options shall be established either by direct investment or through the medium of a bank, a trust fund, an insurance contract or regulated investment company mutual fund, as the Trustee shall direct. Each Investment Option shall be held and administered as part of the Trust, but shall be separately invested and accounted for. For this purpose, a participant directed brokerage arrangement established under paragraph (b) shall be considered a single Investment Option. The assets of the Trust invested in each of the Investment Options shall be separately valued at fair market value as of the appropriate valuation date.
- (d) The 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”) or paying the Participant’s Plan expenses. Any trading fees will be paid out of the Participant’s account balance unless otherwise directed pursuant to a DRO.

10.5 Management of Trust Assets

- (a) Powers of the Trustee or Investment Manager
The Trustee who is managing and administering the Trust Fund or, if applicable, an investment manager which has been appointed

by the Trustee to manage the Plan's assets, shall be and hereby is empowered and authorized, in its sole discretion and subject to current rules and regulations at the time the investment is made and subject to the provisions of the Plan with respect to Participant direction (and voting) of investments:

- (i) To invest and reinvest contributions and any accretions thereto, whether capital gains or income or both, and the proceeds of any sale, pledge, lease or other disposition of any assets of the Trust Fund in bonds, notes, mortgages, commercial paper, mutual funds, contracts with insurance companies including group annuity contracts, variable annuity contracts, and guaranteed interest contracts, or in any other type of personal or real property as permitted by law.
- (ii) To vote any and all stock held hereunder and to continue any investment in stocks, bonds, real estate notes or other securities, or real or personal property, which may at any time form a part of the Trust Fund.
- (iii) To invest, reinvest and change investments; to sell, mortgage, lease, assign, transfer, and convey any and all of the Trust Fund property for cash or on credit, at public or private sale; to exchange any Trust Fund property for other property; to grant options to purchase or acquire any Trust Fund property; to determine the prices and terms of sales, exchanges, or options; and to execute, acknowledge, and deliver any and all deeds or other trust instruments of conveyance which may be required to carry the foregoing powers into effect, without obligation on the part of the purchaser, lessee, lender, assignee or transferee, or anyone to whom the property may in any way be conveyed to see to the application of the purchase money loans or property exchanged, transferred, assigned, or conveyed.
- (iv) To allow cash in the Trustee's custody to remain on deposit in the commercial or savings department of any bank or trust company supervised by the United States or a State or agency of either, at any time and from time to time in a reasonable amount; and, as to such amount on deposit, the Trustee shall have liability for such interest as may be paid on such deposit.

- (v) To exercise with respect to all investments all of the rights, powers and privileges of an owner including, without limiting the foregoing, the power to give proxies and to pay calls, assessments and other sums deemed necessary for the protection of the Trust Fund; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the Trustee may deem advisable; to exercise or sell stock subscriptions or conversion rights and to accept and retain as an investment hereunder any securities received through the exercise of any of the foregoing powers.
- (vi) To take any action with respect to conserving or realizing upon the value of any Trust Fund property and with respect to foreclosures, reorganizations, or other changes affecting the Trust Fund property; to collect, pay, contest, compromise, or abandon demands of or against the Trust Fund estate, wherever situated; and to execute contracts, conveyances and other instruments, including instruments containing covenants and warranties binding upon and creating a charge against the Trust Fund estate.
- (vii) To employ agents, including investment counsel, for advice and to manage the investment of the Trust Fund property, to employ attorneys, auditors, depositories, and proxies, with or without discretionary powers and all such parties shall have the right to rely upon and execute the written instructions of the Trustee, and shall not be obligated to inquire into the propriety of the acts of directions of the Trustee.
- (viii) To compromise any claims existing in favor of or made against the Trust Fund.
- (ix) To engage in any litigation, either for the collection of monies or for other properties due the Trust Fund, or in defense of any claim against the Trust Fund.

- (x) To invest or reinvest all or any part of the Trust assets in any common, collective, or commingled trust fund that is maintained by a bank or other institution.
- (xi) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

(b) Investment Manager

Notwithstanding the foregoing, the Trustee reserves the right to appoint an investment adviser registered as such under the Investment Advisers Act of 1940, a bank (as defined in that Act) or an insurance company qualified to perform investment management services under the laws of more than one state to manage the investments of all or any part of the Trust Fund. Upon such appointment, and acknowledgment by the appointee that it is a fiduciary, the appointee shall have all rights to manage the investments of that portion of the Trust Fund over which authority has been granted. The Trustee shall be relieved of all further responsibility in respect thereof and shall abide by the instructions of such appointee.

(c) Powers of the Participants

The provisions of this subsection shall govern the voting and tendering of stock, as long as the resulting voting and tendering (or nontendering) of stock are proper and are in accordance with the terms of the Plan and applicable law. If the voting and tendering (or nontendering) of stock that would result from the application of the provisions of this Article are not proper or are not in accordance with the terms of the Plan, the Trustee shall vote or tender (or not tender) stock in the manner consistent with its duties hereunder. The Trustee shall vote and tender (or not tender) itself or by proxy, all shares of stock held in trust under the Plan pursuant to the procedures established by the Administrator including, if elected by the Administrator in its discretion, pursuant to instructions received by the Administrator from Participants concerning the vesting and tendering of stock in which their respective accounts are invested.

10.6 Legal Counsel

The Trustee may consult with legal counsel concerning any question which may arise with reference to its obligation to discharge its duties under this Plan for the exclusive benefit of Participants and Beneficiaries, and the Trustee may rely in good faith upon the opinion of such counsel.

10.7 Accounting of Funds and Transactions

- (a) The Trustee shall keep true and accurate records of all transactions of the Trust Fund which records shall be available for inspection by Participants at reasonable times.

Although a separate Account for each Participant under the Plan shall be maintained as herein provided, it shall not be necessary for the Trustee to make or maintain an actual physical division of the assets of the Trust Fund until the time shall arrive for the payment to a Participant or a Beneficiary, and, at such time or times, the Trustee need only make an actual division of so much of any Account as may be necessary to satisfy the particular payments to be made.

10.8 Reliance on Trustee

No person contracting or in any way dealing with the Trustee shall be under any obligation to ascertain or inquire: (a) into any powers of the Trustee, (b) whether such powers have been properly exercised, or (c) about the sources or applications of any funds received from or paid to the Trustee. Any person contracting or in any way dealing with the Trustee may rely on the exercise of any power or authority as the conclusive evidence that the Trustee possesses such power or authority.

ARTICLE 11-MISCELLANEOUS

11.1 Limitation of Rights

Neither the establishment of this Plan nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving a Participant or other person any legal or equitable right against the Board except as provided in the Plan.

11.2 No Contract of Employment

Nothing in this Plan shall be deemed to be an agreement, consideration, inducement, or condition of employment, nor shall the rights or obligations of the Employer or of any Eligible Employee to continue or terminate employment at any time be affected hereby.

11.3 Limitation on Assignment

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, and 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. 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.

11.4 Representations

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

11.5 Severability

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

11.6 Applicable Law

This Plan shall be construed in accordance with applicable federal law and, to the extent otherwise applicable and to the extent not superseded by applicable federal law, the laws of the State of Colorado.

11.7 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 Administrator to accept Roth Contributions on behalf of the Employees. Such authorization must be made by written application to, and must be accepted by, the Administrator, in such form as requested by the Administrator.

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.

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