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# **The PERA Deferred Compensation Plan**

**Colorado  
Public  
Employees'  
Retirement  
Association**

Amended and Restated Effective July 1, 2009

# The PERA Deferred Compensation Plan

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## **Article 1-Introduction and Purpose of Plan**

### **1.1 Establishment of Plan**

In accordance with the provisions of Section 24-51-1601, C.R.S., *et seq.*, the PERA Board of Trustees hereby adopts, effective as of July 1, 2009, this 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 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 there under, 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 on a tax deferred basis 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** “**Administrator**” means the Board, or any individual(s) or entity appointed by the Board to administer the Plan.
- 2.2** “**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.
- 2.3** “**Board**” means the board of trustees of PERA as established under the provisions of Article 51 of Title 24, Colorado Revised Statutes.
- 2.4** “**Code**” means the Internal Revenue Code of 1986, as amended and includes any regulations thereunder.
- 2.5** “**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.

- 2.6** “**Deferral**” means the annual amount of Compensation that a Participant elects to defer pursuant to a properly executed Voluntary Salary Deferral Agreement.
- 2.7** “**Deferred Compensation Account or Account**” means the account established and maintained on behalf of a Participant as provided in Section 8.4.
- 2.8** “**Eligible Employee**” means any person who is employed by an Employer.
- 2.9** “**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.
- 2.10** “**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.
- 2.11** “**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).
- 2.12** “**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.
- 2.13** “**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.
- 2.14** “**Plan**” means The Public Employees’ Retirement Association of Colorado Deferred Compensation Plan as it may be amended from time to time.

- 2.15** “**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.
- 2.16** “**Trust**” means the trust which may be established under this Plan or under a separate trust agreement which forms a part of this Plan.
- 2.17** “**Trust Fund**” means the assets of the Trust.
- 2.18** “**Trustee**” means the Board, or any individual(s) or committee appointed in the future by the Board to serve as trustee of the Trust.
- 2.19** “**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; or
- (iii) by cessation of deferrals under the Plan.

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

**2.20** “**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.

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 his Deferred Compensation 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 §4.1.

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

A Participant can elect to begin catch-up Deferral up to the maximum limit no earlier than three (3) consecutive taxable years immediately preceding the year a Participant attains Normal Retirement Age and no later than the full taxable year before the year a Participant actually retires, however, the start date of such election becomes irrevocable once catch-up Deferral begins. The maximum 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 §4.1(a) above and subject to modification by the catch-up limitation described in §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. Any excess deferral is included in the gross income of the Participant for the taxable year of the excess deferral.

#### **4.2 Minimum Deferral**

Each Eligible Employee who becomes a Participant must agree to defer at a rate of a minimum of twenty-five dollars (\$25.00) per month.

#### **4.3 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 participation as provided in Section 4.4) are subject to the limitations specified in the Plan.

#### **4.4 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.

#### **4.5 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 4.3 or revokes the Deferral in accordance with Section 4.4.

#### **4.6 Rollover Amounts From Other Eligible Plans**

- (a) Subject to rules adopted by the Board, a Participant may make and the Plan will accept a direct rollover or regular rollover of an Eligible Rollover Distribution as defined in §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.
- (b) Upon receipt of an Eligible Rollover Contribution, the Trustee shall credit the amount of any Eligible Rollover Contribution to the contributing Participant's Rollover Account in the Plan 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 Board that the amount tendered as a Rollover Amount represents an Eligible Rollover Distribution of the Participant from an eligible plan maintained by the former employer(s) of the Participant or an IRA. The Board shall have the authority to determine whether or not a contribution proposed by a Participant constitutes an Eligible Rollover Contribution under Code Section 402. In making such determination, the Board may require reasonable proof by the Participant of the eligibility of the proposed contribution for rollover treatment. The Board 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 Contribution Account without the limitations of Article 5.

#### **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). If a Participant elects to receive a distribution upon a Severance From Employment during any period the Participant is performing service in the uniformed services pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008, the Participant shall not be eligible to make any elective deferrals to the Plan for a period of six (6) months following the date of such distribution.

### **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 2.19. If an application for a hardship distribution due to an Unforeseeable Emergency is approved, the distribution shall be limited to an amount sufficient to meet the emergency and the Participant will be required to cease deferrals into the Plan for a period of six months beginning after receipt of the distribution. 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 Deferred Compensation Account shall be made in accordance with one of the payment options described in Section 6.2. Distribution of a Participant's Deferred Compensation 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 the requirements of Code Section 401(a)(9) and the Treasury Regulations promulgated thereunder.

## **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 Deferred Compensation Account, if any, will be distributed to the Beneficiary determined pursuant to Section 2.2 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 Deferred Compensation Account must be distributed in accordance with the requirements 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 Deferred Compensation Account commences, the Participant's Deferred Compensation Account will be distributed to the Beneficiary determined pursuant to Section 2.2, in the form permitted by the Administrator and elected by the Participant or the Beneficiary, or at the discretion of the Administrator, in the form of a lump sum payment as soon as administratively practicable after the Participant's death. Notwithstanding the preceding, distribution of the Participant's Deferred Compensation Account must be distributed in accordance with the requirements 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 Deferred Compensation 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).
- (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.

**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) of the Code) or for repayments under Section 415(k)(3) of the Code.

**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 are as follows:

- (a) **Eligibility**  
Any Participant who is currently employed by an Employer may apply for a loan. The Participant must have a minimum vested account balance of \$2,000.00 to allow for the minimum loan amount available under the Plan.
- (b) **Minimum and Maximum Loan Amounts**  
The minimum loan amount available to a Participant is \$1,000.00. The maximum loan amount is determined in accordance with Section 72(p) of the Code. The vested account balance remaining after loan disbursement may not be reduced below the amount of the outstanding loan balance at any time by withdrawal or distribution, including hardship withdrawals. The vested account balance securing the outstanding loan amount is not available for hardship distribution.

- (c) **Number of Outstanding Loans**  
The maximum number of active loans available to any Participant at any given time is one (1).
- (d) **Loan Fees**  
A loan origination fee of \$50.00 shall be charged for each loan. The origination fee shall be deducted from the proceeds of the approved loan amount at the time of the disbursement to the Participant. An annual loan maintenance fee of \$25.00 (\$6.25 per quarter) will be deducted quarterly from the Participant's account balance.
- (e) **Loan Initiation**  
Participant must submit a loan application to the Administrator. If the application is approved, the Administrator will issue a combined Promissory Note and Loan Check in one document as soon as administratively practicable after all requirements have been satisfied. By endorsing the Check, the Participant agrees to the terms of the Promissory Note and the repayment obligation, authorizes the periodic payroll deduction for repayment, and acknowledges receipt of all required Truth In Lending and other disclosures.
- (f) **Distribution of Loan Amount**  
Loan distribution amounts will be prorated across all available investment options in the Participant's Account from which the loan is made.
- (g) **Types of Loans Available**  
There are two types of loans available to a Participant:
  - (i) **General Purpose Loan**  
A general purpose loan has a duration of 1 to 5 years. The Participant is not required to provide any reason or documentation for the loan.
  - (ii) **Principal Residence Loan**  
A principal residence loan has a duration of 1 to 15 years. This loan must be utilized for the purchase of a primary residence. A Participant may not use this loan to re-finance an existing principal residence loan. A Participant shall submit supporting documentation with the loan application as may be reasonably required by the Administrator.
- (h) **Interest**  
The interest rate for either a General Purpose Loan or a Principal Residence Loan is fixed for the life of the loan. Subject to change by the Administrator from time to time,

the rate is one percent (1%) over the Prime Rate published in the *Wall Street Journal* on the first business day of the month in which the loan is approved. The previous sentence notwithstanding, in no event shall the rate of interest exceed twelve percent (12%) Annual Percentage Rate (APR), or such higher or lower rate permitted for non-“supervised loans” under the Colorado Uniform Consumer Credit Code, Colorado Revised Statutes, Title 5, Articles 1-9, as amended.

(i) Payment Requirements

Loan repayments will be made by means of periodic payroll deductions in equal installments sufficient in amount to fully amortize the loan over the repayment period. The payroll deduction authorization shall be irrevocable until the loan is repaid in full. Loans must be repaid in full and loan payments may not be stopped due to financial hardship or bankruptcy. Loan repayments will be allocated to the Participant’s account according to the current allocation instructions on file for regular contributions. Once a new loan has been initiated the appropriate payroll department will be sent a report to begin loan payments. Loans are in arrears and delinquent when any payment is missed. A late loan payment notice will be issued at the end of the calendar month in which the payment is delinquent. If the late loan is not paid up-to-date by a lump sum payment by the end of the calendar quarter after the calendar quarter in which a payment is first delinquent (“Grace Period”), the loan will be in default and considered a deemed distribution pursuant to the Internal Revenue Code of 1986, as amended from time to time. The Participant’s outstanding loan balance will be offset against any type of distribution after separation of service. Pursuant to the Internal Revenue Code of 1986, as amended from time to time, a defaulted loan of a Participant will remain on the books until a qualifying event occurs, even though tax income has been reported to the IRS. Participants may not voluntarily elect to stop loan payments and treat an outstanding loan as a “deemed distribution” until separation from service.

(j) Security

The only acceptable security that can be used by a Participant to secure a loan is with an irrevocable pledge and assignment of up to 50% of his or her nonforfeitable account balance to the extent the value of the Participant’s account balance equals the outstanding balance on the loan. Any outstanding loan will be a first lien against the Participant’s account and the amount of any unpaid

principal and interest due shall be deducted from the account in determining the remaining balance available for any distribution or withdrawal under the Plan(s).

(k) Military Service or Disability

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 balances, 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, 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. In no event may the term of the loan be extended beyond its original due date; except upon express approval of the hardship committee.

(l) Miscellaneous

(i) Loans may not be refinanced.

(ii) Upon a Participant's Severance of Employment, any unpaid loan balance shall be accelerated and become immediately due and payable. If the loan is not paid in full prior to the end of the Grace Period, the Administrator will report the loan as a deemed distribution in accordance with the Internal Revenue Code of 1986, as amended from time to time.

(iii) Payments of delinquent loans or accelerated shall be made by a cashier's check or money order. Payments will be applied first to all accrued interest and then to principal.

- (iv) A loan can be prepaid, in part or in full, at any time and without penalty, by means of a cashier's check, money order, or a personal check. A fee of \$25.00 will be assessed if the personal check is not honored by the Participant's financial institution. 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 (without regard to any grace period). 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.

## **Article 6-Form of Participant's Benefit Distribution**

### **6.1 Election**

A Participant may elect the form of distribution of his or her Deferred Compensation 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.

### **6.2 Limit on Settlement Options**

Distributions may be made by the Administrator in the following forms: (i) a lump sum cash payment, (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 Table V and VI of Treasury Regulation §1.401(a)(9)-9), or (iii) through the purchase of an annuity which provides for payments described in (ii) of this Section 6.2. The purchase of an annuity under this Section shall be a complete discharge of the Plan's obligation to the Participant and no further benefits shall be payable by the Plan.

### **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 Deferred Compensation Account upon the Participant’s death in accordance with Section 5.4 and the following:

- (a) Participants may designate primary and secondary Beneficiaries. A secondary Beneficiary and/or Beneficiaries will become entitled to a distribution of any remaining balance of the Participant’s Deferred Compensation 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 Deferred Compensation 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 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 Deferred Compensation 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.

- (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 5.3.

## **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, 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;

- (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 Accounts and Expenses**

The Administrator shall establish and maintain a Deferred Compensation Account on behalf of each Participant. Such 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. Each Participant's Deferred Compensation Account shall be credited with the amount of any Deferrals, Rollover Contributions and any amounts transferred pursuant to Section 8.3 and shall be further credited or debited, as applicable, with (a) any increase or decrease resulting from investments pursuant to Section 10.4, (b) any expenses incurred by the Administrator in maintaining and administering this Plan, which may be paid out of the Plan, and (c) the amount of any distribution.

#### **8.5 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 and earnings on Deferred Compensation 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 shall cease. The Board in its sole discretion shall retain all Deferrals and Deferred Compensation Account balances until distribution of benefits commences under Article 5 in the form determined under Article 6 or shall distribute all Deferrals and Deferred Compensation 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 are not State funds and shall not revert or inure to the benefit of the State.

### **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.

#### **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:
  - (1) 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.

- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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.

- (6) 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.
  - (7) 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.
  - (8) To compromise any claims existing in favor of or made against the Trust Fund.
  - (9) 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.
  - (10) 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.
  - (11) 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, 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.

#### **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, 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.

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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