Public Employees' Retirement Board
December 22, 2015

Topic: 401(a) - Defined Contribution Plan Document Revisions

The PERS-DCRP 401(a) Plan document is revised to incorporate changes related to the 2015 Qualification Legislation – HB 214 and HB 107 regarding employer contributions to the Plan Choice Rate UAL and then on to the DC member's account.

Due to time constraints, 2.43.3501 will be amended in February to adopt this revised plan document by reference.

Staff Recommendation:

Adopt revised plan document effective 12/22/2015

Board Motion:

☐ uphold staff recommendation

Or

☐ Board pleasure

_____

Moved by

_____

Seconded by

_____

Vote

THE STATE OF MONTANA PUBLIC EMPLOYEE DEFINED CONTRIBUTION PLAN

Effective December 22, 2015

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DRAFT August 10, 2015¶

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THE STATE OF MONTANA PUBLIC EMPLOYEE
DEFINED CONTRIBUTION PLAN

Whereas, the Public Employees' Retirement Board was authorized by 19-3-2102, MCA, to establish within the Public Employees' Retirement System ("PERS") a defined contribution plan in accordance with Montana law;

Whereas, the Plan was established as a pension plan for the exclusive benefit of members and their beneficiaries and as a "qualified plan" pursuant to section 401(a) of the Internal Revenue Code and its implementing regulations;

Whereas, assets of the Plan are held in trust, with the Board acting as trustee;

Whereas, the Plan was established in addition to any retirement, pension, deferred compensation, or other benefit plan administered by the State or a political subdivision; and

Whereas, the Board has the powers and shall perform the duties regarding the defined contribution plan as provided in 19-2-403, MCA, as applicable and may also exercise the powers and shall perform the duties provided in Title 19, Chapter 3, MCA;

Whereas, the Board adopted this Plan in compliance with all applicable laws and regulations prior to July 1, 2002 and by the process set out in Montana Administrative Procedure Act;

Whereas, effective February 11, 2010 the Board adopted the State of Montana Public Employees Pooled Trust as part of this Plan; and

Whereas, the Board further determined to clarify the definition of "Participant" to ensure consistency with Federal definitions retroactive to January 1, 2008;

Now, therefore, effective _____, 2015 and subject to the dates set forth above, the Public Employees' Retirement Board hereby amends and restates the State of Montana Defined Contribution Plan, a defined contribution plan under Section 401(a) of the Internal Revenue Code. The Plan consists of the provisions set forth in this document and the provisions of 19-3-2101 et. seq., MCA; the applicable provisions in Title 19, Chapter 2, Parts 2, 3, 4, 5, 6, 7, 9, and 10; the applicable provisions in Title 19, Chapter 3, Parts 1, 2, 3, and 4; and, the Montana Administrative Procedure Act. **[DOUBLE CHECK ON ATTACHED SCHEDULES – WILL NEED TO MAKE CONSISTENT WITH WHAT IS DECIDED THERE.]**

ARTICLE I

DEFINITIONS

Section 1.01. "**Accounts**" means the accounts maintained for a Participant by the Administrator. Each Participant shall have an Employer Contribution Account, a Member Contribution Account, and an Other Contribution Account.

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Section 1.02. "**Active Participant**" means a Participant who is a paid Employee of an Employer, is making required contributions, and is properly reported to the Board for the most current reporting period.

Section 1.03. "**Administrator**" means the Montana Public Employees' Retirement Board or the Montana Public Employee Retirement Administration.

Section 1.04. "**Applicable Form**" means the appropriate form as designated and furnished by the Administrator to make an election or provide a notice as required by the Plan. If a written election or consent is not specifically required by the Code, the Board may prescribe a verbal, electronic or telephonic instruction in lieu of or in addition to a written form.

Section 1.05. "**Beneficiary**" means the natural person or persons, charitable organizations, estates or trusts for the benefit of natural living persons, designated by a Participant pursuant to an Applicable Form to receive any benefit payable upon the Participant's death.

Section 1.06. "**Board**" refers to the Montana Public Employees' Retirement Board created in 2-15-1009, MCA, and to any person to whom the Board has delegated any function with respect to the Plan.

Section 1.07. "**Code**" means the Internal Revenue Code of 1986.

Section 1.08. "**Compensation**" means remuneration paid out of funds controlled by an employer before any pretax deductions allowed by state or federal law are made. Pretax deductions allowed by federal law include: any elective deferral to a Code Section 403(b) plan, any deferrals by reason of Code Sections 125 or 457, and picked up contributions. Compensation does not include: (1) the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a), MCA; or (2) remuneration in excess of the limits established under Section 4.03 ($265,000 for 2015, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B)).

(a) In addition, any compensation described in this section that is paid within 2 ½ months after an employee's Termination from Service, or, if later, the end of the Plan Year during which the Termination from Service occurred, does not fail to be compensation merely because it is paid after the Employee's Termination from Service. The following are types of post-severance payments that are not excluded from compensation because of timing if they are paid within 2 ½ months following Termination from Service:

(i) Payments that, absent a Termination from Service, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation;

(ii) Payments for accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued; or

(iii) Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Employee at the same time if the Employee had continued employment with the Employer and only to the extent that the payment is includible in the Employee's gross income.

(b) Any payments not described above are not considered compensation if paid after Termination from Service, even if they are paid within 2 ½ months following Termination from Service or, if later, the end of the Plan Year during which the Termination from Service occurred.

(c) Compensation also includes payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(d) Compensation also includes compensation described in Treas. Reg. § 1.415(c)-2(g)(4) with respect to Participants who are permanently and totally disabled.

Section 1.09. "**Defined Benefit Plan**" means the defined benefit plan within the Montana Public Employees' Retirement System, established in 19-3-103, MCA.

Section 1.10. "**Disability" or "Disabled**" means a total inability of the Participant to perform the Participant's duties by reason of physical or mental incapacity. The disability must be incurred when the Participant is an active Participant and must be one of permanent duration or extended duration, as determined by the Board on the basis of competent medical opinion.

Section 1.11. "**Effective Date**" means the State of Montana's PERS 401(a) Defined Contribution Plan's original effective date, July 1, 2002.

Section 1.12. "**Eligible Employee**" means a person who is employed and paid by an Employer and who is a member of the Public Employees' Retirement System and has an election to participate in this Plan under 19-3-2112, MCA.

Section 1.13. "**Employer**" means the State of Montana, including its University system or any of the colleges, schools, components or units of the university system, and any contracting employer as provided in 19-3-108 and 19-3, Part 2, MCA.

Section 1.14. "**Inactive Participant**" means a Participant who is not an Active Participant or retired Participant.

Section 1.15. "**Investment Option**" means an investment option which forms part of the Trust Fund as selected and monitored by the Trustees.

Section 1.16. "**MCA**" means the Montana Code Annotated.

Section 1.17. "**Membership Service**" means the periods of service that are used to determine eligibility for retirement and other benefits under the Defined Benefit Plan.

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Section 1.18. "**MUS-RP**" means the Montana University System's Retirement Program established under Chapter 21 of Title 19, MCA.

Section 1.19. "**Participant**" An individual who is currently contributing to this Plan as member, or who has previously contributed to this Plan as a member and who has not received a distribution of his or her entire Account(s) under this Plan.

Section 1.20. "**Participation Election Form**" means the Applicable Form completed by an Eligible Employee to participate in the Plan.

Section 1.21. "**Plan**" refers to the Defined Contribution Plan established pursuant to 19-3-103 and Part 21 of Title 19, Chapter 3, MCA.

Section 1.22. "**Plan Year**" means the calendar year.

Section 1.23. "**Service Manager**" means the person or organization appointed by the Administrator to perform third party service and administrative functions.

Section 1.24. "**State**" means the State of Montana.

Section 1.25. "**Termination from Service**" means severance of a Participant's employment with the Employer for any reason, including disability and retirement. A Participant shall be deemed to have terminated employment with the Employer for purposes of the Plan when, in accordance with the established personnel practices of the Employer, the employment relationship is considered actually terminated and the Participant has been paid all compensation due upon termination of employment, including, but not limited to, payment of accrued annual leave credits, as provided in 2-18-617, MCA, and payment of accrued sick leave credits, as provided in 2-18-618, MCA. Compensation as a result of legal action, court order, appeal or settlement to which the Board was not a party is not a payment due upon termination.

Section 1.26. "**Trust**" means the trust established by the Board pursuant to a written agreement that constitutes a valid trust under the law of Montana.

Section 1.27. "**Trust Fund**" means the assets of the Trust in all Investment Options selected by the Trustees.

Section 1.28. "**Trustees**" means the Montana Public Employees' Retirement Board created in 2-15-1009, MCA.

Section 1.29. "**Vested Accounts**" means the sum of the Employee Contribution Account, the Other Account, and the vested amount in the Employer Contribution Account.

If a term is defined in Chapters 2 or 3 of Title 19, MCA, that definition applies to the term as used in this Plan. Words used herein in the masculine or feminine gender shall be construed to include the feminine or masculine gender where appropriate and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

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ARTICLE II

PARTICIPATION

Section 2.01. Eligibility. An Eligible Employee may become a Participant in this Plan as follows:

(a) An individual who is an active participant of the Defined Benefit Plan on the Effective Date may elect to transfer to and become a Participant in this Plan within twelve months after the Effective Date regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period. If such an election is not made, the individual remains a member of the Defined Benefit Plan, unless they are a university system employee and have opted into the MUS-RP.

(b) An individual who is an inactive member of the Defined Benefit Plan on the Effective Date who is rehired as an Eligible Employee after the Effective Date may elect to transfer to and become a Participant in this Plan within twelve months from the month that the Employer properly reports the new or rehired member to the Board regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period. If such an election is not made within twelve months after the rehire date, the individual remains a member of the Defined Benefit Plan, unless they are a university system employee and have opted into the MUS-RP.

(c) An individual who is initially hired as an Eligible Employee on and after the Effective Date may elect to become a Participant in this Plan within twelve months from the month that the Employer properly reports the new or rehired member to the Board regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(d) Any Eligible Employee who does not elect into this Plan will remain in the Defined Benefit Plan, unless they are a university system employee and have opted into the MUS-RP.

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(e) Unless employed in two or more positions, one of which is covered by PERS and another covered by the MUS-RP, an individual may only be a member of one of the following at any one time: the Defined Benefit Plan, the MUS-RP, and this Plan.

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(f) An Eligible Employee who is subject to a family law order or an execution or income withholding order may not become a Participant unless the order is modified to apply under the Plan and an election is made within the permissible twelve month period under the applicable provision above.

Section 2.02. Changes to Election.

(a) All elections are irrevocable.

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(b) Except as provided in (c) and (d), if a Participant in this Plan becomes an Inactive Participant and is rehired by an Employer, that Participant remains as a Participant in this Plan, and may not elect into the Defined Benefit Plan.

(c) A Participant who becomes an Inactive Participant and who is rehired by an Employer will be a member in the Defined Benefit Plan if both of the following occur:

(i) The Participant receives a refund of the Participant's Vested Account prior to the rehire date.

(ii) The Participant terminates employment and does not return to employment within twenty-four (24) months.

Such an Eligible Employee may elect to be a Participant in this Plan within twelve (12) months of their rehire date, as reported on the Employer's payroll report, but otherwise, if no election is made, shall remain a member of the Defined Benefit Plan.

(d) A Participant who terminates participation in this Plan and who is rehired by an Employer within twenty-four (24) consecutive months of Termination from Service shall remain a member of this Plan.

(e) Notwithstanding anything contained herein to the contrary, an individual in the MUS-RP may not elect to be a Participant in this Plan unless the individual is hired into a PERS-covered position for which MUS-RP membership is not an option.

Section 2.03. Termination of Plan Participation. A Participant shall cease to be a Participant in this Plan on the distribution of the Participant's Vested Account in the Plan.

ARTICLE III

CONTRIBUTIONS

Section 3.01. Contributions. Contributions shall be made to the Plan in accordance with this Article and subject to the limitations under Article IV.

Section 3.02. Employer Contributions. Subject to § 19-3-316(4), MCA, the Employer contribution shall be calculated as follows:

(a) 6.9%, less

(1) the plan choice rate determined under 19-3-2117 and 19-3-2121, MCA, less

(2) the education fund rate and less

(3) the long term disability fund rate under 19-3-2117; and

(b) an additional contribution of 1.27% based on increased employer contributions of .135 July 1, 2007, .135 July 1, 2009 and 1% beginning on July 1, 2013 and increased by 0.1% each fiscal year starting fiscal year 2014 through fiscal year 2024. Thereafter, the

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percentage is 2.27% continuing until the additional contributions terminate pursuant to § 19-3-316, MCA. The additional contributions must be allocated as set forth in § 19-3-2117, MCA.

Section 3.03. Employee Contributions. Subject to 19-3-315(2), MCA, employee contributions under the Plan shall be 7.9% of Compensation. These contributions shall be picked-up pursuant to Section 414(h)(2) of the federal Internal Revenue Code.

Section 3.04. Payment of Employer and Employee Contributions. The contributions for each payroll period shall be paid within such time as required by law. The Board shall establish policies and procedures for the remittance and collection of contributions.

Section 3.05. Rollover Contributions. Rollovers from other permissible sources will be allowed to the extent permitted by law, subject to any conditions, proofs, or acceptance the Board or its designee deems appropriate. Permissible sources shall include a qualified plan described in section 401(a) or 403(a) of the Code, including after-tax employee contributions; an annuity contract described in section 403(b) of the Code, excluding after-tax employee contributions; or an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income. The Plan will accept a direct rollover of eligible distributions only to the extent permitted by the Code, including a rollover from an eligible Roth account ~~of a retirement plan described in Code Section 402A€(1) but only to the extent the rollover is permitted under requirements of Code Section 402(c)~~under 408A of the Code.

ARTICLE IV

LIMITATIONS ON CONTRIBUTIONS

Section 4.01. Applicability of Article. Notwithstanding any provision of the Plan to the contrary, contributions to the Plan and additions to Accounts of Participants shall be limited as provided in Code Section 415 as provided in this Article or Montana statute.

Section 4.02. Limitation under Code Section 415. Notwithstanding anything in the Plan to the contrary, the following limitations shall apply:

(a) To the extent required under Code Section 415(c), in no event shall the "annual addition," as defined in this Section for a Participant for any Plan Year, exceed the lesser of:

(i) Fifty-three Thousand Dollars ($53,000 for 2015) as adjusted under Code Section 415(d) or

(ii) one-hundred percent (100%) of the "compensation," as defined in this Section, of such Participant received during the Plan Year.

(b) For purposes of this Section and subject to Code Section 415(h), all defined

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contribution plans of each Employer are to be treated as a single defined contribution plan.

~~(c) If the annual addition for a Participant under the Plan, determined without regard to the limitation of paragraph (a), would have been greater than the annual addition for such Participant as limited by paragraph (a), then the excess, if due to a reasonable error in estimating compensation or such other circumstances as found by the Secretary of the Treasury to justify application of this paragraph, shall be reduced, to the extent necessary to satisfy such limitation by holding the excess unallocated in a suspense account and using it to reduce Employer contributions in subsequent Plan Years.~~

(c) For purposes of this Section, "annual addition" means the annual addition as defined in Code Section 415(c) and as modified in Code Sections 415(l)(1) and 419A(d)(2). In general, Code Section 415(c) defines the annual addition as the sum of the following amounts credited to a Participant's accounts for the limitation year under this Plan and any other defined contribution plan maintained by an Employer:

(i) employer contributions; and

(ii) employee contributions.

(d) For purposes of this Section, the following types of contributions are not employer contributions and are not "annual additions:"

(i) The restoration of an employee's accrual benefit by the employer in accordance with Code Section 411(a)(3)(D) or Code Section 411(a)(7)(C) will not be considered an annual addition for the limitation year in which the restoration occurs.

(ii) The transfer of funds from one qualified plan to another will not be considered an annual addition for the limitation year in which the transfer occurs.

(e) For purposes of this Section, the following types of contributions are not "annual additions" for limitation purposes:

(i) Rollover contributions.

(ii) Repayments of amounts described in Code Section 411(a)(7)(B).

(iii) The direct transfer of employee contributions from one qualified plan to another.

(iv) Any employer contributions to the education fund;

(v) Any employer contributions to the long-term disability trust fund.

(vi) Any employer contributions used by the Board to meet the expense of the Plan's startup expenses.

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(vii) Any employer contributions to the Defined Benefit Plan to eliminate the plan choice rate unfunded actuarial liability.

(f) For purposes of this Section, "compensation" means compensation as defined in Code Section 415(c)(3). In general, Code Section 415(c)(3) defines compensation as all of a Participant's wages as defined in Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)); provided, however, compensation shall also include the amount of any elective deferrals, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the employer at election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125, 132(f), or 457.

Payments made by the later of 2 ½ months after severance from employment or the end of the limitation year that includes the date of the Participant's severance from employment shall be included in compensation if they are payments that, absent a severance from employment, would have been paid to the Participant while the Participant continued in employment with the Employer and are:

(i) regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular work hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and the compensation would have been paid to the Participant prior to a severance from employment if the Participant had continued employment with the Employer; or

(ii) payments for unused accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued; or

(iii) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Participant at the same time if the Participant had continued employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

Any payments not described above are not considered compensation if paid after severance from employment, even if they are paid within 2 ½ months following severance from employment, except for payments to the individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

~~Compensation also includes payments to an individual who does not currently perform services for the Employer by reason of any service in the uniformed services (as that term is defined in chapter 43 of title 38, United States Code to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform~~

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~~services for the Employer rather than entering qualified military service.~~ An Employee who is in qualified military service (within the meaning of Internal Revenue Code Section 414(u)(1)) shall be treated as receiving compensation from the Employer during such period of qualified military service equal to (i) the compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the Employee would have received from the Employer but for the absence during the period of qualified military service, or (ii) if the compensation the Employee would have received during such period was not reasonably certain, the Employee's average compensation from the Employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

Section 4.03. Limitation under Code Section 401(a)(17). The annual compensation of each participant taken into account in determining allocations for any Plan Year shall not exceed $200,000 ($265,000 for 2015), as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the Plan Year (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. Wages in excess of the limits established in Code Section 401(a)(17)(B) shall also not be used in calculation of limits under this Section.

ARTICLE V

TRANSFERS

Section 5.01. Transfer from Defined Benefit Plan for Participants with Service Before the Effective Date. For a Participant who was an active member of the Defined Benefit Plan on the Effective Date, and who elects to transfer to this Plan, the Board shall transfer the following from the Defined Benefit Plan:

(a) to the Participant's Employee Contribution Account, the Participant's regular employee contributions and any additional employee contributions to the Defined Benefit Plan, plus 8% compounded annual interest from the month the contributions were received;

(b) to the Participant's Employer Contribution Account, the sum of the following:

(i) an amount determined under the following table:

Years of Service as of Date of Transfer	Percentage of Employer Contributions to the Defined Benefit Plan to be Transferred
Less than 5 years	65.53%
5 years but less than 10	58.59%
10 years but less than 15	55.26%
15 years but less than 20	55.42%
20 or more years	57.53%

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plus 8% compounded annual interest from the month the contributions were received; and

(ii) for amounts contributed on or after July 1, 2002, the Board shall transfer from the Defined Benefit Plan to the Employer Contribution Account an amount equal to the Employer Contributions that would have been allocated under Plan Section 3.02, plus 8% compounded annual interest from the month the contributions were received until July 1, 2011.

(iii) For amounts contributed on or after July 1, 2011, the Board shall transfer from the Defined Benefit Plan to the Employer Contribution Account an amount equal to the Employer Contributions that would have been allocated under Plan Section 3.02, plus 7.75% compounded annual interest from the month the contributions were received.

Section 5.02. Transfers from the Defined Benefit Plan for Participants Hired on or after the Effective Date. For an Eligible Employee hired on or after the Effective Date who elects to be a Participant in this Plan, the Board shall transfer from the Defined Benefit Plan the following:

(a) to the Participant's Employer Contribution Account, an amount equal to amount that would have been allocated under Section 3.02 by the Employer had the Eligible Employee been a Participant on the Eligible Employee's most recent hire date plus (1) 8% compounded annual interest for amounts contributed before July 1, 2011; and (2) 7.75% compounded annual interest for amounts contributed on or after July 1, 2011; and

(b) to the Participant's Employee Contribution Account, an amount that would have been contributed under Section 3.03 by the Employee had the Eligible Employee been a Participant on the most recent hire date plus (1) 8% compounded annual interest for amounts contributed before July 1, 2011; and (2) 7.75% compounded annual interest for amounts contributed on or after July 1, 2011.

Section 5.03. Transfer from the Defined Benefit Plan for Inactive Participant with Service Before the Effective Date. For a Participant who was an inactive Defined Benefit Plan member on the Effective Date and who becomes an active PERS member after the Effective Date and elects to transfer to this Plan, the Board shall transfer from the Defined Benefit Plan amounts pursuant to Section 5.01 for all contributions prior to the Effective Date and amounts pursuant to Section 5.02 for all contributions after the Effective Date.

ARTICLE VI

ACCOUNTS AND REPORTS

Section 6.01. Accounts. The Administrator or a duly appointed delegate shall maintain three Accounts with respect to each Participant. The Employer Contribution Account shall be credited with the Employer Contributions for each pay period, and the Employee Contribution Account shall be credited with the Participant's Employee Contributions for each pay period.

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The Other Contribution Account shall be credited with any rollovers or transfer to the Plan for the benefit of the Participant other than Employer and Employee Contributions made pursuant to Sections 3.02 and 3.03. The balance of such Accounts shall be adjusted daily to reflect any distribution to the Participant and all interest, dividends, account charges and changes of market value resulting from the investment of the Participant's Accounts. All Plan records, including individual account information, that are maintained by the Board or its delegate shall be the exclusive property of the Trustees.

Section 6.02. Statements of Accounts. A written report of the status of each Participant's Accounts shall be furnished by the Service Manager within thirty (30) days after the end of each Plan quarter. All reports to Participants shall be based on the fair market value of investments credited to their Accounts as of the reporting dates. Participant reports shall be deemed to have been accepted by the Participant as correct unless written notice to the contrary is received by the Service Manager within sixty (60) days after the mailing or distribution of a report to the Participant.

Section 6.03. Statements of Account to the Administrator. A written report of the Plan assets shall be furnished by the Service Manager to the Administrator within thirty (30) days after the end of each Plan quarter. The Administrator may request additional reports from the Service Manager, in the Administrator's sole discretion.

Section 6.04. Year End Reports. A written report shall be prepared as of June 30 of each year and submitted to the Administrator by the Service Manager within thirty (30) days (and maintained on file by the Administrator) showing the assets held under the Plan, a schedule of all receipts and disbursements and all material transactions of the Plan during the preceding year. This report shall be in a form and shall contain other information as the Administrator deems appropriate. The Service Manager shall also provide such information to the Administrator as the Administrator deems necessary or appropriate for preparation of its annual report.

Section 6.05. Account Reviews. In accordance with Montana law, the Administrator's records shall be open to inspection during normal business hours by any Participant or a designated representative of the Employer or a Participant. However, no Participant may review any record specifically relating to any other Participant.

ARTICLE VII

VALUATION OF ACCOUNTS

Section 7.01. Valuation. The managers of each Investment Option shall value the investments in their fund each business day based on acceptable industry practices. All daily transactions shall be based on that day's closing market values. The Service Manager shall apply such values to appropriate Participant Accounts.

Section 7.02. Deposits. In all cases, deposits of contributions shall be treated as actually made only as of the date the funds are accepted as in good order by the Administrator.

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ARTICLE VIII

TRUST

Section 8.01. Trust Status. All assets held in connection with the Plan, including all contributions to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan.

Section 8.02. Trust Fund. All amounts of compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan, shall be transferred to the Board to be held, managed, invested and distributed as part of the Trust Fund in accordance with the provisions of the Plan. All contributions to the Plan must be transferred by the Employers to the Trust Fund. All benefits under the Plan shall be distributed solely from the Trust Fund pursuant to the Plan.

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Section 8.03. Board as Trustee. The Board is the trustee for the Plan assets.

Section 8.04. Adoption of Pooled Trust. The State of Montana Public Employees Pooled Trust ("Pooled Trust") was adopted as part of this Plan effective February 11, 2010.

Section 8.05. Transfer of Funds to the Pooled Trust. In accordance with this Plan and the Pooled Trust, the Administrator may, from time to time, transfer funds of this Plan to and from the Pooled Trust.

ARTICLE IX

INVESTMENT OF ACCOUNTS

Section 9.01. Investment Options. The Trustees or their duly appointed designee shall evaluate annually the available Investment Options for Participants (or Beneficiaries upon the death of the Participant). Following such evaluation, the Trustees shall determine available Investment Options in their sole discretion. The Participants may direct the investment of their Accounts among the Investment Options selected by the Trustees. The Administrator shall follow the Participants' (or Beneficiaries') directions with respect to the investment of each Participant's (or Beneficiary's) Account.

Section 9.02. Remittance of Contributions. All contributions under the Plan shall be transferred by the Employers to the Trust immediately following the payroll date under Section 3.02. In no event shall contributions be transferred by the Employer to the Plan later than ten (10) business days after the payroll date.

Section 9.03. Investment of Contributions. All contributions shall be transferred to the Service Manager by the Administrator within two (2) Business Days after receipt of the contribution in good order from the Employer. The Service Manager shall then transfer all

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contributions to the selected Investment Options within two (2) Business Days after receipt of the contribution in good order from the Administrator.

Section 9.04. Investment Default. If a Participant does not have a valid investment direction on file, the Participant's Accounts shall be invested in the balanced fund selected from time to time by the Board. In such event, the Participant shall be deemed to have directed that option for their Accounts.

ARTICLE X

VESTING

Section 10.01. Vesting Standards for Employee Contribution Account. A Participant shall be one hundred percent (100%) Vested in the Participant's Employee Contribution Account at all times.

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Section 10.02. Vesting Standards for Employer Contribution Account.

(a) A Participant shall be one hundred percent (100%) Vested in the Participant's Employer Contribution Account only upon the completion of five (5) years of Membership Service.

(b) Normal retirement age under the plan is age 65. Upon a Participant's attainment of normal retirement age and the completion of five (5) years of Membership Service, the Participant has a nonforfeitable right to the Employer Contributions Account.

(c) Any non-Vested amounts shall be forfeited upon Termination of Service.

Section 10.03. Vesting of Active Participant Upon Death. If an Active Participant dies prior to completion of five (5) years of Membership Service, any amounts in the Participant's Employer Contribution Account shall be forfeited.

Section 10.04. Vesting Standards for the Other Contribution Account. A Participant shall be one hundred percent (100%) vested in the Participant's Other Contribution Account at all times.

Section 10.05. Forfeitures. Any amount forfeited under Sections 10.02 and 10.03 shall be held in a separate Plan forfeiture account and shall be used to pay the administrative expenses including startup expenses of the Plan. These forfeitures shall not be used to increase any Participant's benefit nor shall they be credited against any Employer contributions.

ARTICLE XI

PAYMENTS

Section 11.01. Benefit Payments. Benefits shall be paid from the Trust Fund in accordance with this Article following a Participant's Termination of Service or Death. In the case of Disability, benefits may commence at the later of age 65 or Termination, subject to subsection (c). Benefits payable to a Participant or a Beneficiary shall be based upon the value of the Participant's Vested Accounts.

(a) **Termination of Service**. Upon Termination of Service, a Participant is entitled to the Participant's Vested Accounts, and may elect to have benefits commence on a date which is no later than the required distribution date of Code Section 401(a), as specified in Section 11.04. If no election is made, benefits shall commence 120 days after Termination of Service. A Participant may elect to change the commencement date of distribution of the Vested Accounts to a later date otherwise permitted under this Article, so long as the commencement date meets the required distribution date provisions of Code Section 401(a)(9). All benefits shall be paid under a payment option under Section 11.02, subject to the restrictions in Section 11.04.

(b) **Death**. In the event of the Participant's death prior to the commencement of benefits under paragraph (a), the value of the Participant's Vested Accounts shall be paid to the Beneficiary under a payment option elected by the Beneficiary under Section 11.02, subject to the restrictions in Section 11.04. Such benefits shall be payable commencing within 60 days

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after receipt by the Board of satisfactory proof of the Participant's death. However, if the Beneficiary is the spouse of the Participant, then the spouse may elect within 60 days of Participant's death, to defer distribution to a date not later than the date when the Participant would have attained age 70-½.

(c) **Disability**. A Disabled Participant whose Accounts are 100% Vested is entitled to the Disability benefit set forth in 19-3-2141, MCA. A Participant receiving Disability payments under 19-3-2141, MCA, remains a Participant of the Plan irrespective of employment status and may not receive a distribution from his or her Accounts prior to age sixty-five (65). On or after age sixty-five (65), the Disabled Participant is eligible for payments, if any, pursuant to Section 11.01(a) or Section 11.01(b). A Participant may change the commencement date of distributions of the Accounts to a later date otherwise permitted under this Article. All distributions shall be paid under a payment option listed in Section 11.02.

A Participant who is not eligible for Disability payments under 19-3-2141, MCA, or who chooses to not receive Disability benefits under 19-3-2141, MCA, may elect to have benefits commence either on the later of: (i) Termination of Service or (ii) a date no later than the required beginning date under Code Section 401(a)(9), as specified in Section 11.04.

Section 11.02. Payment Options. The election of a payment option by a Participant or a Beneficiary under this Section must be made no later than 30 days before the commencement of such benefits. Subject to restrictions established by the Administrator, the Plan shall permit payout options in the form of lump sums (including rollovers); periodic payments of a fixed amount, or life expectancy re-determined annually; or life contingent annuities. Absent such an election, the Vested Accounts will be paid in a lump sum.

Section 11.03. Lump Sum Settlement. Notwithstanding anything in this Plan to the contrary, if a Participant's Vested Accounts balances are less than $1,000 (or such other amount as determined by the Administrator from time to time) at the time of Termination of Service, the Administrator shall effect a lump sum distribution of the Participant's Vested Accounts.

Section 11.04. Minimum Distribution Rules. Notwithstanding any provision of this Plan to the contrary, any distribution under the Plan shall be made in accordance with a good faith interpretation of the requirements of Code Section 401(a)(9) and the regulations established thereunder as they are amended. No payment option may be selected by a Participant unless the amounts payable to the Participant are expected to be at least equal to the minimum distribution required under Section 401(a)(9) of the Code. The amounts payable also must satisfy the minimum distribution incidental benefit requirements of Section 401(a)(9)(G) of the Code.

Payment of the Vested Accounts of a Participant shall begin no later than the "required beginning date." For purposes of this Section, "required beginning date" means April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches age seventy and one-half (70½), or (ii) the calendar year in which the Participant retires. The amount to be distributed each year, beginning with distributions for the first distribution year shall not be less than the quotient obtained by dividing the Participant's benefit by the lesser of (i) the applicable life expectancy, or (ii) if the Participant's spouse is not the designated beneficiary, the applicable divisor specified in Code Section 401(a)(9) or the regulations promulgated thereunder.

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Distributions after the death of the Participant shall be distributed using the applicable life expectancy as the relevant divisor. Life expectancies shall not be recalculated annually.

Section 11.05. Designated Beneficiary. A Participant shall have the right to file with the Administrator an Applicable Form designating the Beneficiary or Beneficiaries who shall receive the benefits payable under the Plan in the event of the Participant's death. No Beneficiary designation shall take effect until an Applicable Form is signed by the Participant and received and accepted by the Administrator. If the Participant dies without a Beneficiary form on file with the Administrator, the benefit payments shall be made to the Participant's estate.

A Participant shall have the right to designate at least one primary and contingent Beneficiary and to indicate whether the Beneficiaries in each class are to share equally or according to specified percentages. A contingent Beneficiary shall receive benefit payments only if there is no surviving primary Beneficiary. If a Beneficiary predeceases the Participant, the surviving Beneficiaries in the same class (i.e., primary or contingent) will share equally the deceased Beneficiary's share. In the event of the death of a Beneficiary, after the Beneficiary has become entitled to receive benefits, the remaining benefits shall be paid to the estate of the Beneficiary.

Section 11.06. Payments to Beneficiary. In the event of the Participant's death, any remaining benefit shall be distributed according to the following subject to compliance with Code Section 401(a)(9) and regulations thereunder.

(a) If the Participant had begun receiving periodic payments from the Plan that were not annuitized, the balance of the Vested Accounts shall be paid to the Beneficiary at least as rapidly as under the payment option selected by the Participant.

(b) If the Participant had begun receiving payments under an annuity contract, the Beneficiary shall be bound by all restrictions of that contract and the form of payment selected thereunder, and remaining payments, if any, shall be paid to the Beneficiary under the contract.

(c) If the Participant dies before distributions have commenced, a spouse Beneficiary may delay the commencement of benefits until as late as the date the Participant would have attained age 70-½ and may elect to receive payments at such time over the Beneficiary's life expectancy.

(d) If the Participant dies before distributions have commenced, a non-spouse Beneficiary may take a lump sum or roll the account balance to an individual retirement account or individual retirement annuity that is treated as an inherited individual retirement account or annuity. In the case of a lump sum, payment must be made no later than one year after the date of the Participant's death.

(e) Notwithstanding the foregoing, any payment to an estate, charitable organization or a trust, shall be made in a lump sum.

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Section 11.07. Required Minimum Distribution Waiver of 2009. (a) Notwithstanding Section 11.04 above, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary elects to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. However, those Participants and Beneficiaries who received required minimum distributions though the automatic payment system will continue to receive 2009 RMDs unless he or she elect not to receive the 2009 RMDs.

(b) Further, the 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions in 2009.

ARTICLE XII

DISTRIBUTIONS THAT ARE NOT ALLOWED

Section 12.01. No Plan Loans. Plan loans to Participants shall not be permitted.

Section 12.02. No Hardship Distributions. Hardship distributions shall not be permitted.

ARTICLE XIII

FAMILY LAW ORDERS

Family law orders and child support order under 19-2-907, MCA and 19-2-909, MCA shall be honored by the Plan.

ARTICLE XIV

ELIGIBLE ROLLOVER DISTRIBUTIONS FROM THIS PLAN

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The following definitions shall apply to this Section:

(a) An "Eligible Rollover Distribution" is any distribution under Article XI of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal

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periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more, or (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9). A portion of the distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such after-tax portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or in a direct trustee-to-trustee rollover to a qualified trust under Code Section 401(a) or 403(a) that is part of a defined contribution or defined benefit plan, or to an annuity contract described in Code Section 403(b), and such trust or annuity contract separately accounts for amounts so transferred, including separate accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible. Effective January 1, 2008, an Eligible Rollover Distribution shall also mean a qualified rollover contribution to a Roth IRA within the meaning of Code Section 408A.

(b) An "Eligible Retirement Plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), a tax sheltered annuity or account under Code Section 403(b), a qualified trust described in Code Section 401(a), or an eligible deferred compensation plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state which agrees to separately account for amounts transferred into such plan from this Plan that accepts the Distributee's Eligible Rollover Distribution. Effective January 1, 2008, an Eligible Retirement Plan shall also mean a Roth IRA described in Code Section 408A.

(c) A "Distributee" includes an employee or former employee, as well as the employee's or former employee's surviving spouse.

(d) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(e) Effective January 1, 2007, and notwithstanding anything in the Plan to the contrary that otherwise would limit a Distributee's election under this Section, and to the extent allowed under the applicable provisions of the Code and the Treasury regulations, a Distributee who is a Beneficiary, but not a surviving spouse, spouse or former spouse who is an alternate payee may elect, at the time and in the manner prescribed by the Administrator, to have all or any part of his or her Account that qualifies as an Eligible Rollover Distribution paid in a direct trustee-to-trustee transfer to an Eligible Retirement Plan that is an individual retirement plan described in clause (i) or (ii) of Code Section 402(c)(8)(B). If such a transfer is made, (i) the transfer shall be treated as an Eligible Rollover Distribution (ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Code section 408(d)(3)(C), and (iii) Code Section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such individual retirement plan.

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ARTICLE XV

EMPLOYER OBLIGATIONS

Each Employer is required to remit contributions on a timely basis pursuant to Section 3.02. Beyond that, an Employer has no obligation to each Participant. An Employer shall not be liable for losses arising from expense charges of any kind or from depreciation or shrinkage in the value of investments made under this Plan.

ARTICLE XVI

ADMINISTRATION OF PLAN

Section 16.01. Compliance with Code Section 401(a). At all times, the Plan shall be administered in accordance with and construed to be consistent with Section 401(a) of the Code and its accompanying regulations. The Plan is a money purchase plan, whereby contributions are determined pursuant to Section 3.02 of the Plan.

Section 16.02. USERRA and HEART Compliance. Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") [as codified at Chapter 43, Title 38, of the United States Code]; Code Section 414(u); and, effective January 1, 2007, Code Section 401(a)(37), as amended from time to time.

(a) For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(b) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service may elect to make Employee Contributions upon resumption of employment with the Employer in accordance with USERRA. Except to the extent provided under Code Section 414(u), this right applies for the shorter of (i) five years following the resumption of employment or (ii) for a period equal to three times the period of the interruption or leave. If the Participant elects to make such Employee Contribution the Employer shall make-up the related Employer Contribution which would have been required had such contributions actually been made during the period of interruption or leave.

(c) Effective January 1, 2007, and to the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall 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 timely resumed employment in accordance with USERRA and then terminated employment with the Employer on account of death. Qualified military service shall be counted as years of Membership Service in determining a Participant's Vested Account.

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(d) Effective January 1, 2009, a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer, will be treated as an Participant of the Employer and the differential wage payment will be treated as Compensation.

(e) Effective January 1, 2009, a Participant who becomes Disabled while performing qualified military service shall be treated as if the Participant had resumed reemployment with the Employer in accordance with the Participant's reemployment rights under USERRA on the day preceding his or her disability and terminated employment on the actual date of disability. Qualified military service shall be counted as years of Membership Service in determining a Participant's Vested Account.

Section 16.03. Board Duties and Powers. The Administrator shall have the authority to control and manage the operation and administration of the Plan and shall be a named fiduciary of the Plan.

(a) The Administrator shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Administrator to carry out its duties under the Plan. By way of illustration and not limitation, the Administrator is empowered and authorized:

(i) to establish rules, regulations and procedures with respect to administration of the Plan, not inconsistent with the Plan and the Code, and to amend or rescind such rules, regulations or procedures;

(ii) to determine, consistently with the Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Plan and eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan, including without limitation, Participants, former Participants, Beneficiaries, Employees and former Employees;

(iii) pursuant to Article XI of the Plan, to make payments from the Trust Fund to Participants, their Beneficiaries and other persons as the Administrator may determine;

(iv) to contract with one or more Service Managers to perform education, recordkeeping, investment services, and administrative services under this Plan;

(v) to accept service of legal process;

(vi) subject to and consistent with the Code, to construe and interpret the Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Plan with respect to same.

(b) Any action by the Administrator which is not found to be an abuse of discretion, shall be final, conclusive and binding on all individuals affected thereby. The Administrator may

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take any such action in such manner and to such extent as the Administrator in its sole discretion may deem expedient and the Administrator shall be the sole and final judge of such expediency.

Section 16.04. Advice. The Administrator may employ or contract with one (1) or more persons to render advice with regard to its responsibilities under the Plan.

Section 16.05. Delegation by Administrator. In addition to the powers stated in Section 16.03, the Administrator may from time to time delegate to an individual, committee or organization certain of its fiduciary responsibilities under the Plan. Any such individual, committee or organization shall remain a fiduciary until such delegation is revoked by the Administrator, which revocation may be without cause and without advance notice. Such individual, committee or organization shall have such power and authority with respect to such delegated fiduciary responsibilities as the Administrator has under the Plan.

Section 16.06. Fiduciary Insurance. The Administrator may require the purchase of fiduciary liability insurance for any of such fiduciaries to cover liability or losses occurring by reason of the act or omission of a fiduciary.

Section 16.07. Payment of Benefits. The Administrator, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment, or may file, in any state court of competent jurisdiction, a suit, in such form as it considers appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator may also bring a suit or take such other action as it deems appropriate in the case of questions involving investment directions. The Administrator shall comply with the final order of the court in any such suit, and Participants, Beneficiaries, Administrator, and Service Manager shall be bound thereby insofar as such order affects the benefits payable under this Plan or the method or manner of payment.

Section 16.08. Payment of Expenses. All expenses and costs associated with the administration and investments of the plan shall be assessed against Plan assets. Administrative costs shall be explicitly assessed against individual Participant Accounts. Investments costs shall be assessed explicitly against each specific Investment Option in a manner determined appropriate by the management of each Investment Option and approved by appropriate federal regulating entities and the Trustees if appropriate.

Section 16.09. Limitation on Recovery. Participants and Beneficiaries may not seek recovery against the Administrator, or any employee, contractor or agent of the Employer or Administrator for any loss sustained by any Participant or Beneficiary due to the nonperformance of their duties, negligence or any other misconduct of the above named persons. This paragraph shall not, however, excuse fraud or a wrongful taking by any person.

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ARTICLE XVII

CLAIMS PROCEDURE

Claims under the Plan shall be processed under the terms of the Montana Administrative Procedures Act, 2-4-601 et. seq. MCA.

ARTICLE XVIII

AMENDMENT OF THE PLAN

Section 18.01. Amendment. Subject to the provisions of any applicable law, a majority of the Board may at any time amend or modify this Plan without the consent of the Employers or of Participants (or any Beneficiaries thereof), provided that:

(a) All amendments shall become effective on the first day of the month following the giving of not less than forty-five (45) days prior notice of the amendment to Participants. However, this forty-five (45) day notice requirement shall be applicable only if the amendment limits or otherwise restricts the deferral and distribution rights of the Participants. Notice shall be deemed given when the amendment is posted in the office of the Board and is sent to each Employer. No amendments shall deprive any Participant of any of the benefits to which the Participant is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment.

(b) If the Plan is amended or modified, the Administrator shall nonetheless be responsible for the supervision and the payment of benefits resulting from amounts contributed prior to the amendment or modifications in accordance with this Article.

Section 18.02. Amendment for Qualification of Plan. It is the intent of the State that the Plan shall be and remain qualified for tax purposes under the Code. The State shall promptly submit the Plan to the Internal Revenue Service for approval under the Code and all expenses incident thereto shall be borne by the State. The Board may make any modifications, alterations, or amendments to the Plan necessary to obtain and retain approval of the Secretary of the Treasury or his delegate as may be necessary to establish and maintain the status of the Plan as qualified under the provisions of the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. Any modification, alteration, or amendment of the Plan, made in accordance with this Section, may be made retroactively, if necessary or appropriate. A certified copy of the resolution of the Board making such amendment shall be delivered to the Board, and the Plan shall be amended in the manner and effective as of the date set forth in such resolution, and the Employers, Employees, Participants, beneficiaries, Board, and all others having any interest under the Plan shall be bound thereby.

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ARTICLE XIX

TERMINATION

Section 19.01. Termination of Participating Employer. An Employer may terminate participation in the Plan by terminating participation in PERS under 19-3-201, MCA. In the case of the complete or partial termination of the Plan, as to one (1) or more Employers, including a termination arising from the complete discontinuance of contributions, the affected portion of the Trust Fund shall continue to be held pursuant to the direction of the Board, for the benefit of affected Participants pursuant to Article XI. The Plan shall remain in full effect with respect to each Employer that does not terminate its participation in the Plan on behalf of its Employees. Employees of an Employer that terminates the Employer's participation in the Plan shall be vested in the Employer Contribution Account regardless of their years of Membership Service.

Section 19.02. Termination of Plan. The Board shall have the right to completely terminate this Plan, subject to any statutory requirements. In such a case, the Board shall be responsible for directing distribution of all assets of the Trust Fund to Participants, Beneficiaries or to a successor plan. In the case of termination of the entire Plan, all Participants as of the termination date shall be vested in the Employer Contribution Account regardless of their years of Membership Service.

ARTICLE XX

NONASSIGNABILITY

Section 20.01. Nonassignment. Except as provided in Article XIII, no Participant, Beneficiary or designee may commute, sell, assign, transfer or otherwise convey the right to receive any payment under the Plan, provided that such payment and right thereto is expressly declared to be nonassignable and nontransferable.

Section 20.02. Rights. Except as provided in Article XIII, the rights of Participants and Beneficiaries under this Plan shall not be subject to the rights of their creditors, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third person, except to the extent a benefit distributable under Article XI is subject to a federal tax levy.

ARTICLE XXI

MISCELLANEOUS

Section 21.01. Federal Taxes. The Employers and the Board do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Plan.

Section 21.02. Contract. This Plan, including any properly adopted amendment hereof, shall constitute the total agreement or contract between the Employer and any Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by any Participant.

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Section 21.03. Conflicts. In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that (i) causes the Plan to constitute a qualified plan under the provisions of Code Sections 401 and 414(d) and the Trust to be exempt from tax under Code Sections 115 and 501, (ii) causes the Plan to comply with all applicable requirements of the Code and (iii) causes the Plan to comply with all applicable Montana statutes and rules, shall prevail over any different interpretation.

Section 21.04. Limitation on Rights. Neither the establishment nor maintenance of the Plan, nor any amendment thereof nor any act or omission under the Plan (or resulting from the operation of the Plan) shall be construed:

(a) as conferring upon any Participant, Beneficiary or any other person a right or claim against the Trust, any Employer, the Board, the Administrator, or the Service Manager, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the Employer for the validity or effect of the Plan;

(c) as a contract between the Employer and any Participant or other person;

(d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Participant or other person to continue or terminate the employment relationship at any time; or

(e) as giving any Participant the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or other person at any time.

Section 21.05. Erroneous Payments. If the Board makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Board may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Board, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Board may deduct it when making any future payments directly to that Participant.

Section 21.06. Release. Any payment to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Board may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Board.

Section 21.07. Liability. The Board shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document or electronic transmission believed by the Board to be genuine or to be executed or sent by an authorized person.

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Section 21.08. Governing Laws. The law of the State of Montana shall apply in determining the construction and validity of this Plan, with venue in the First Judicial District in Montana.

Section 21.09. Necessary Parties to Disputes. Necessary parties to any accounting, litigation or other proceedings relating to the Plan shall include only the Board. The settlement or judgment in any such case in which the Board are duly served shall be binding upon all affected Participants in the Plan, their beneficiaries, estates and upon all persons claiming by, through or under them.

Section 21.10. Severability. If any provision of the Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

Section 21.11. Supersession. The terms of the Plan shall supersede any previous agreement between the parties pertaining to the Plan.

Section 21.12. Counterparts. This Plan may be executed in one (1) or more counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF the undersigned has executed this Plan on the date indicated:

BOARD OF TRUSTEES

_____	_____
Date	President

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