

**TRUST AGREEMENT
FOR
COLORADO FIREFIGHTER HEART, CANCER, AND
BEHAVIORAL HEALTH BENEFITS TRUST**

November 24, 2014
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Amended November 12, 2019
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TRUST AGREEMENT

THIS TRUST AGREEMENT (this “Agreement”) is entered by and between the undersigned Colorado state and local governmental entities (who, together with and any other Colorado governmental entities that becomes a participating Member under this Trust, are collectively the “Members”) and the undersigned trustees constituting the “Trust Committee” for the Trust, as defined herein (the “Trust Committee”).

WITNESSETH:

WHEREAS, the Members are exempt from federal income tax under the Internal Revenue Code of 1986, as amended, as a state or territory of the United States, or any political subdivision, municipality or agency thereof, or an agency of such political subdivision or municipality (including any corporation owned or controlled by any state or territory of the United States or by any political subdivision, municipality, or agency); and

WHEREAS, the Members desire by and through this Agreement to provide a benefit plan that provides heart and circulatory malfunction benefits program consistent with the provisions of Part 3 of Article 5 of Title 29, Colorado Revised Statutes (C.R.S.), as amended, as specified in the Colorado Firefighter Heart and Circulatory Malfunction Benefits Plan, cancer benefits program consistent with the provisions of Part 4 of Article 5 of Title 29, C.R.S., as amended, as specified in the Colorado Firefighter Cancer Benefits Plan, behavioral health benefits program consistent with the provisions of Part 5 of Article 5 of Title 29, C.R.S., as specified in the Colorado Firefighter Behavioral Health Benefits Plan, and the hazardous materials trooper program consistent with the provisions of Part 4 of Article 5 of Title 29, C.R.S., as amended, as specified in the Hazardous Materials Trooper Plan (collectively, the “Plan”); and

WHEREAS, the Members desire for the Trust to accept funds that shall from time to time be paid over to the Trust Committee in accordance with the terms of this Agreement, together with the earnings and profits thereon, if any, and to hold the funds in trust (the “Trust”) and to make disbursements from the Trust in accordance with the provisions of this Agreement and the Plan; and

WHEREAS, the Members desire to appoint the Trust Committee as a trustee to hold and administer the assets of the Plan in accordance with this Agreement; and

WHEREAS, the Trust Committee has agreed to serve as trustee of the trust established under this Agreement; and

WHEREAS, the Members intend that the Trust hereby established, together with the Plan, shall constitute an irrevocable trust exempt from taxation under Internal Revenue Code § 115; and

WHEREAS, the Members intend that the Trust hereby established, together with the Plan, shall constitute a multiple employer health and behavioral health trust for the purposes of Part 3, Part 4, and Part 5 of Article 5 of Title 29, C.R.S.;

NOW, THEREFORE, the Members and the Trust Committee hereby mutually covenant and agree as follows:

ARTICLE I DEFINITIONS

The following words and phrases, when used herein with an initial capital letter, shall have the meanings set forth below unless a different meaning plainly is required by the context. Any reference to a section number shall refer to a section of this Agreement unless otherwise specified.

- 1.1 **Administrator** means the person, committee or entity appointed by the Trust Committee to serve as plan administrator of the Plan. The Administrator shall be retained by the Trust Committee and shall administer the Plan pursuant to an administrative services agreement entered into between the Administrator and the Trust Committee.
- 1.2 **Authorized Investment** has the same meaning as in Section 6.3.
- 1.3 **Beneficiary** means any person designated under the terms of the Plan to receive benefits payable upon the death of a Participant.
- 1.4 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.5 **Custodian** means Wells Fargo Bank, N.A., which shall serve as custodian for the Trust Fund or any successor custodian as the Trust Committee shall designate. To the extent any assets are held by any custodian other than Wells Fargo Bank, N.A., such party shall also be considered a Custodian for the Trust. Any Custodian must be an eligible public depository, pursuant to C.R.S. § 11-47-103(6), as amended, and otherwise comply with the Savings and Loan Association Public Deposit Protection Act, C.R.S. § 11-47-101, et seq., as amended.
- 1.6 **Enrolled Employer** means an employer, as defined by C.R.S. § 29-5-501(1), as amended, that enrolls its Participant employees for the behavioral health benefit program, but is not a full participating Member under this Trust pursuant to Article VIII, below.
- 1.7 **Fiscal Year** means the accounting year of the Trust, which shall commence on July 1 of each calendar year and end on June 30 of the following year.
- 1.8 **Investment Committee** means the person, committee or entity appointed in accordance with the terms of the Trust to make and effect investment decisions under the Plan and Trust. Unless the Trust Committee appoints an Investment Committee, the Trust Committee shall be deemed to be the Investment Committee.
- 1.9 **Investment Fund** means any of the separate funds established by the Investment Committee for the investment of Plan assets.
- 1.10 **Investment Manager** means any person, corporation or other organization or association appointed by the Trust Committee pursuant to the terms of Section 4.1 to manage, acquire,

or dispose of the assets of an Investment Fund.

- 1.11 **Members or Member** means an employer, as defined by C.R.S. §§ 29-5-301(1), 29-5-402(3), or 29-5-501(1), as amended, that becomes a participating Member under this Trust pursuant to Article VIII, below.
- 1.12 **Member Representative** means that person who has been designated in writing by a Member as its representative to the Trust.
- 1.13 **Participant** means: an employee or former employee of the Member or Enrolled Employer; or, an employee of an employer, as defined by C.R.S. § 29-5-501(1) as amended, that has not yet properly enrolled its Participant employees in the behavioral health benefit program.
- 1.14 **Plan** means the Colorado Firefighter Heart and Circulatory Benefits Plan, the Colorado Firefighter Cancer Benefits Plan, the Colorado Firefighter Behavioral Health Benefits Program and the Colorado Hazardous Materials Trooper Program set forth in Part 3, Part 4, and Part 5 of Article 5 of Title 29, Colorado Revised Statutes, and in the Plan Summaries of Benefits as such Plan may be amended from time to time.
- 1.15 **Trust** means the trust established by this Agreement.
- 1.16 **Trust Committee** means the Trust Committee appointed pursuant to Section 3.1 of this Trust Agreement, acting as a group or body.
- 1.17 **Trust Fund** means the total amount of cash and other property held in the Trust under this Agreement.
- 1.18 **Trustee** means the Trust Committee members and their successors as provided by this Agreement.

ARTICLE II ESTABLISHMENT OF THE TRUST

- 21 **Trust Established.** The Members hereby establish with the Trust Committee, as a funding medium for the Plan, a Trust consisting of the Trust Fund and such earnings, profits, increments, additions, and appreciation thereto and thereon as may accrue from time to time.
- 22 **Limit of Interest - Impossibility of Diversion.** It shall be impossible at any time for any part of the Trust to be used for or diverted to purposes other than for the exclusive benefit of the Participants and Beneficiaries covered under the Plan, except that the payment of administration expenses may be made from Trust funds as hereinafter provided. Funds of the Trust may not be transferred to any other account or fund of a Member.
- 23 **Trust Committee's Acceptance.** The Trust Committee accepts the Trust hereby created and agrees to perform the duties hereby required of the Trust Committee.

ARTICLE III TRUSTEES AND SUCCESSOR TRUSTEES

3.1 **Trustees.** The Trust shall be administered by the Trust Committee. The Trust Committee shall be comprised of nine (9) individual Trustees; provided, however, that the Trust Committee shall be deemed duly constituted and may commence operations of the Trust upon seating of and execution of this Agreement by four (4) initial Trustees. Each Trustee must be a Participant and current employee of a Member, except as provided below. Trustees shall be appointed by the Board of Directors of the Colorado State Fire Chiefs (“CSFC Board”) from among the following:

- (a) One Trustee who is a Member Representative from a fire district or fire authority serving an area having less than thirty thousand (30,000) in population;
- (b) One Trustee who is a Member Representative from a fire district or fire authority serving an area having more than thirty thousand (30,000) in population;
- (c) One Trustee who is a Member Representative from a municipality having less than thirty thousand (30,000) in population;
- (d) One Trustee who is a Member Representative from a municipality having more than thirty thousand (30,000) in population;
- (e) One Trustee who is a Participant and officer of the Colorado Professional Firefighters Association (“CPFF”), who is designated for appointment by CPFF; and
- (f) Four Trustees who are Member Representatives from four other Members of any size or type, who are elected or appointed officials or employees of the Member and are not firefighters eligible for participation in the Plan, and at least two of whom are persons holding full-time positions in risk management or human resources for their appointing Member.

Nominations for Trustees from the Members and CPFF shall be made by the respective elected governing body of the Member (i.e., district board of directors, city council, CPFF Board of Directors) and be submitted to the CSFC Board at such time as the CSFC Board may provide. Terms of the Trustees shall be two-year, overlapping terms or until their successors have been appointed, except that in the initial appointment of Trustees, four of them shall serve an initial term of no more than two years and five of them shall serve an initial term of no more than one year so as to establish the staggering of terms. The term shall begin on a January 1, and end at midnight on a December 31, except that the initial Trustees’ terms shall begin upon the formation of the Trust.

A vacancy shall occur on the Trust Committee when a Trustee (1) submits a written resignation to the Trust Committee; (2) dies; (3) ceases to be a Participant; (4) ceases to be a Member Representative, except in the case of the CPFF Trustee to whom such requirement (4) does not apply; (5) fails to attend three consecutive regular meetings of the Trust Committee without the Committee having entered upon the record its proceedings an approval for an additional absence

or absences, except that such additional absence or absences shall be excused for temporary mental or physical disability or illness; or (6) is convicted of a felony. Any vacancy on the Trust Committee shall be filled by appointment by the CSFC Board for the unexpired portion of the term. Upon appointment and written acceptance thereof, a successor Trustee shall have all the title, rights, powers and privileges and duties conferred or imposed upon the initial or predecessor Trustee.

3.2 **Successor Trustees.** No successor Trustee need examine the accounts, records, and acts of any previous Trustee of any allocation of the Trust assets, nor shall such successor Trustee be responsible for any act or omission to act on the part of any previous Trustee. All Trustees and their successors from time to time acting under this Agreement shall have all the rights, powers and duties of the initial Trustees named in this Agreement, unless this Agreement is amended to provide otherwise.

3.3 **Compensation.** The Trustees shall receive no compensation for their services rendered under this Agreement other than any compensation as an employee of a particular Member. The Trust Committee may adopt policies to reimburse Trustees for actual meeting and travel expenses and attendance at the Trust Committee meetings and other properly incurred expenses on Trust matters.

3.4 **Chair and Officers; Sub-Committees.** The officers of the Trust Committee shall be the chair, vice chair and secretary. The officers shall be appointed by the Trust Committee from among its members. Appointment of officers shall occur at the first meeting of the Trustee Committee each year. The Trust Committee may establish sub-committees necessary or appropriate to the exercise of its powers.

3.5 **Meetings.** The Trust Committee shall determine the time and place of its regular meetings. Special meetings of the Trust Committee may be called by the chair or by four (4) Trustees. The Trustees shall be provided with at least ten (10) days prior written notice designating the time, place and agenda of a regular meeting and three (3) days prior written notice designating the time, place and agenda of any special meeting. The manner of giving notice of meetings may include, without limitation, service by electronic mail to the Trustee's e-mail address. Regular and special meetings of the Trust Committee may be held in person, telephonically, by other remote methods, or by a combination of these methods. Any meeting at which all Trustees are present in person or by remote methods, or concerning which all Trustees have waived notice in writing, shall be a valid meeting without the requirement to provide any notice. All meetings shall be in compliance with the Colorado Open Meetings Law set forth at C.R.S. § 24-6-401, et seq.

3.6 **Proxy.** Any Trustee may duly authorize in writing another Trustee to cast a vote on one (1) or more specific matters to be voted on at a meeting, on behalf of such Trustee. Any such written authorization must specify the matter or matters and be given for a specific meeting and may not carry over to subsequent meetings.

3.7 **No Delegates.** A Trustee and/or the Trustee's Member Representative may not appoint a delegate to serve in his or her place.

3.8 **Quorum and Voting.**

- (a) To constitute a quorum at any regular or special meeting of the Trust Committee and for any action to be valid at such meeting, there must be present in person or by proxy a majority of the appointed Trustees
- (b) Valid actions at meetings at which a quorum is present require the affirmative vote of a simple majority of those Trustees present and voting, except where an absolute majority is expressly required. Each Trustee shall cast his or her vote on each matter upon which action is taken, except where abstention from voting is required because of conflict of interest.
- (c) To approve the following items, an absolute majority vote (as defined below) is required:
 - (1) Annual budget;
 - (2) Incurring any debt other than liabilities in the ordinary course of business; and
 - (3) Settling any litigation involving the Plan or Trust.

An absolute majority vote is the affirmative vote of at least five (5) Trustees.

3.9 **Conflicts of Interest.** Trustees should avoid the appearance of impropriety. A Trustee shall exercise care that the Trustee's independent judgment in the discharge of Trust Committee responsibilities is not impaired as a result of conflicts between the interests of the Trust and the Trustee's own financial interests or personal interests, or the financial interests or personal interests of the members of the Trustee's family or associates. A Trustee shall not vote or decide upon any matter relating solely to himself or herself or vote in any case in which his or her individual right or claim to any benefit under the Plan is particularly involved or in which he or she otherwise has a conflict of interest. In the event that a Trustee believes that he or she has a conflict of interest, the Trustee shall disclose the conflict to the Trust Committee and shall refrain from participating in the matter to which the conflict relates. The minutes of the meeting where the disclosure is made shall reflect the disclosure and the fact of the Trustee having abstained from participation in the matter. A Trustee shall not use confidential information acquired in the course of the performance of Trust Committee responsibilities to further that Trustee's own financial interests or personal interests, or the financial interests or personal interests of the members of the Trustee's family or associates.

3.10 **Office Location and Meeting Place.** All meetings of the Trust Committee shall be held at a place designated annually by the Trust Committee.

3.11 **Agent for Service of Legal Process.** The designated agent for service of legal process shall be Dianne Criswell, Trust Counsel, 225 E 16th Ave Suite 1000, Denver, CO 80203, or any successor agent as the Trust Committee shall designate.

3.12 **Rules and Regulations.** The Trust Committee shall have the power at any regular or

special meeting to adopt rules, regulations, and policies for the administration of the Trust, and for the conduct of the affairs of the Trust Committee. Any rules, regulations, and policies of the Trust Committee shall be consistent with the written provisions of the Trust Agreement and shall be binding upon all persons dealing with the Trust and upon any and all persons claiming any benefits under the Plan.

ARTICLE IV DUTIES OF TRUST COMMITTEE

4.1 **Duties.** It shall be the duty of the Trust Committee:

- (a) **Receipt of Contributions.** To receive any contributions paid to it under this Agreement in cash or in other property acceptable to the Trust Committee. The Trust Committee shall not be responsible for the calculation or collection of any contribution required to be paid by the Member to the Trust under the Plan, but shall be responsible only for property actually received by it pursuant to this Agreement.
- (b) **Management of Funds.** To hold, invest, reinvest, manage and administer (except as otherwise provided herein) all contributions so received, together with the income therefrom and any other increment thereon, for the benefit of Participants and their Beneficiaries in accordance with the terms of this Agreement.
- (c) **Payments.** To direct payments under the Plan; provided, however, that the Trust Committee may rely upon the directions received from the Administrator, and the Administrator hereby indemnifies the Trust Committee from any loss, claim, damage or liability, including legal expenses, that may arise in connection with the Trust Committee's acting upon such direction.
- (d) **Appointment of Administrator.** To appoint such person, committee or entity as the Trust Committee shall determine to serve as Administrator of the Plan, and to contract with the Administrator for provision of its services. The Trust Committee shall have the power to terminate the appointment of the Administrator upon written notice with or without cause.
- (e) **Appointment of Investment Committee.** To appoint as the Investment Committee such person, committee or entity as the Trust Committee shall determine to make and effect investment decisions under the Plan and Trust; provided, however, that the Trust Committee may appoint itself as the Investment Committee.

ARTICLE V INVESTMENT OF TRUST ASSETS

5.1 **General Investment Power/Investment Funds.**

- (a) **Authority of Investment Committee.** Except as provided in Sections 5.2 and 5.3,

the Investment Committee shall have all authority and responsibility for the management, disposition and investment of the Trust Fund, and the Trust Committee shall comply with directions of the Investment Committee. The Investment Committee shall not issue any directions that are in violation of the terms of the Plan or this Agreement.

- (b) **Investment Funds.** The Trust may be divided into one or more separate Investment Funds, the number, makeup, and description of which shall be determined from time to time by the Investment Committee. The Trust Committee shall implement, terminate, value, transfer to and from and allocate the gains, losses, and expenses among the Investment Funds in accordance with the proper directions of the Investment Committee, the Administrator, or their delegates, and, to the extent applicable under the terms of this Agreement, the directions of Investment Managers.
- (c) **Funding Policy.** The Trust Committee shall have responsibility for selecting or establishing and carrying out a funding policy and method, consistent with the objectives of the Plan. The Trust Committee shall be responsible for the proper diversification of the Trust Fund, for the prudence of any investment of Trust assets consistent with State law, for compliance with statutory limitations on the amount of investment in securities, and for assuring that any such investments meet the requirements of State law.

5.2 **Investment Managers.**

- (a) **Appointment.** The Investment Committee may, but shall not be required to, appoint one or more Investment Managers to manage the assets of all or any one or more of the Investment Funds.

Each such Investment Manager must be one of the following: (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) a bank, as defined in such Act; or (iii) an insurance company qualified to perform the services of Investment Manager under the laws of more than one state.

The Investment Committee shall obtain from any Investment Manager so appointed by it a written statement acknowledging all of the following: (i) that such Investment Manager is or on the effective date of its appointment will become a fiduciary with respect to the Trust assets under its management; (ii) certifying that such Investment Manager has the power to manage, acquire or dispose of Trust assets in the manner contemplated by the contract or other written instrument by which its appointment is or will be effected; and (iii) certifying that it is either an investment adviser, a bank, or an insurance company which is qualified to be appointed as an Investment Manager under this Agreement.

- (b) **Contractual Arrangement.** The Investment Committee shall enter into a written contract or agreement with each such Investment Manager in connection with its appointment as such, and such contract shall be subject to such terms and conditions

and shall grant to the Investment Manager such authority and responsibilities in the management of the applicable Investment Fund assets as the Investment Committee deems appropriate under the circumstances. Without limiting the generality of the foregoing, such contract may establish investment objectives for the assets of the Investment Fund(s) under the management of the Investment Manager and may limit the types of assets that may be acquired or held by such Investment Fund(s).

- (c) **Trust Committee's Duties.** With respect to each Investment Fund the management of which has been delegated to an Investment Manager, the Trust Committee shall follow and carry out the instructions of the appointed Investment Manager with respect to the acquisition, disposition, and reinvestment of assets of such Investment Fund, including instructions relating to the exercise of all ownership rights in such assets.
- (d) **Failure to Direct.** In the event that an appointed Investment Manager shall fail to direct the Trust Committee with respect to investment of all or any portion of the cash held in an Investment Fund under its management, the Trust Committee shall invest such cash only when and as directed by the Investment Committee.
- (e) **Termination of Appointment.** The Investment Committee shall have the power to terminate the appointment of an Investment Manager upon written notice with or without cause. Upon the termination of the appointment of an Investment Manager, the Investment Committee shall (i) appoint a successor Investment Manager with respect to the Investment Fund(s) formerly under the management of the terminated Investment Manager, (ii) direct the Trust Committee to merge or combine such Investment Fund(s) with other Investment Fund(s) or Trust assets, or (iii) direct the Trust Committee to invest the assets of such Investment Fund as the Investment Committee deems appropriate in accordance with the existing funding policy.

5.3 **Manner and Effect of Directions.**

- (a) **Delegation of Authority to Custodian.** The Custodian is delegated the authority and responsibility for receiving and carrying out the directions of the Trust Committee, the Administrator, the Investment Committee, any Investment Manager, or their designees. With respect to any assets held by a party other than Trust Committee, the Trust Committee is authorized and directed to delegate to the Custodian the authority and responsibility for receiving and carrying out the directions of the Investment Committee, any Investment Manager, or their designees. The Trust Committee is authorized and directed to enter into such agreements with another Custodian as are deemed necessary or appropriate to effect such delegation.

5.4 **Authorization of Designee(s).** The Administrator and the Investment Committee may each appoint one or more designees to act on their behalf. If a designee (or designees) is appointed, the appropriate committee shall furnish the Trust Committee with written documentation of the appointment and a specimen signature of each designee. The Trust Committee shall be entitled to rely upon such documentation until the Trust Committee is

otherwise notified in writing.

ARTICLE VI POWERS OF TRUST COMMITTEE

- 61 **General Authority.** In accordance with the directions of the Investment Committee and any Investment Managers as provided in Article V, the Trust Committee shall receive, hold, manage, convert, sell, exchange, invest, reinvest, disburse and otherwise deal with the assets of the Trust, including contributions to the Trust and the income and profits therefrom, without distinction between principal and income and in the manner and for the uses and purposes set forth in the Plan and as hereinafter provided.
- 62 **Specific Powers.** In the management of the Trust, the Trust Committee shall have the following powers in addition to the powers customarily vested in trustees by law and in no way in derogation thereof; provided, all such powers shall be exercised only upon and in accordance with the directions of the Investment Committee and, to the extent applicable, any duly appointed Investment Managers:
- (a) **Purchase of Property.** With any cash at any time held by it, to purchase or subscribe for any Authorized Investment (as defined in Section 6.3) and to retain the same in trust.
 - (b) **Disposition of Property.** To sell, exchange, transfer or otherwise dispose of any property at any time held by it.
 - (c) **Retention of Cash.** To hold cash without interest in administrative accounts for contribution and distribution processing in such amounts as may be reasonable and necessary for the proper operation of the Plan and the Trust.
 - (d) **Exercise of Owner's Rights.** The Members acknowledge and agree that the Trust Committee shall have the right or power to vote proxies appurtenant to securities that it holds. The Members acknowledge and agree that the Trust Committee shall have the power to make any review of, or consider the propriety of, holding or selling any assets held in the Trust Fund in response to any tender offer, conversion privilege, rights offering, merger, exchange, public offering and/or any proxy action for any of such assets.
 - (e) **Registration of Investments.** To cause any stock, bond, other security or other property held as part of the Trust to be registered in its own name or in the name of one or more of its nominees; provided, the books and records of the Trust Committee shall at all times show that all such investments are part of the Trust.
 - (f) **Borrowing.** To the extent permitted by State law and at the direction of the Investment Committee, to borrow or raise money for the purposes of the Trust in such amounts, and upon such terms and conditions, as determined by the Investment Committee; and, for any sum so borrowed, to issue its promissory note as Trust Committee and to secure the repayment thereof by pledging all or any part

of the Trust Fund to the extent permitted by State law; and no person lending money to the Trust Committee shall be bound to see to the application of the money lent or to inquire into the validity, expediency or propriety of any such borrowing.

- (g) **Purchase of Contracts.** To apply for, purchase, hold, transfer, surrender and exercise all incidents of ownership of any insurance, re-insurance, excess or stop loss insurance or annuity contract that the Trust Committee determines or the Investment Committee directs it to purchase or that is necessary or appropriate to carrying out the purposes of the Plan. The Trust Committee shall endeavor to obtain stop loss insurance to provide coverage for payment of benefits under the Plan above specified per claim and aggregate limits, provided such stop loss coverage can be obtained at a reasonable cost as determined by the Trust Committee.
- (h) **Execution of Instruments.** To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments, which may be necessary or appropriate to carry out the powers herein granted.
- (i) **Settlement of Claims and Debts.** To settle, compromise or submit to arbitration any claims, debts, or damages due or owing to or from the Trust, to commence or defend suits or legal or administrative proceedings and to represent the Trust in all suits and legal and administrative proceedings.
- (j) **Establish Rules and Polices.** To establish, to the extent consistent with this Agreement and the Plan, rules, and policies necessary or appropriate to the administration of the Trust or the carrying out of the powers herein granted.
- (k) **Trustee Insurance.** To purchase on behalf of the Trust Committee and the Investment Committee, trustees' errors and omissions insurance or similar coverage in such amounts as are recommended by a licensed insurance broker for benefit plans and a trust of similar size and purpose.
- (l) **Risk Management.** To establish reasonable risk management policies and procedures.
- (m) **Delegation.** To delegate in writing fiduciary responsibilities or ministerial powers and duties to such officers, agents, representatives, and independent contractors as determined desirable, provide such delegation does not conflict with the provisions of this Agreement or the Plan.
- (n) **Employment of Agents, Advisers and Counsel.** To employ suitable agents, actuaries, auditors, accountants, investment advisers, brokers, and counsel, and to pay their reasonable expenses and compensation.
- (o) **Appointment of Custodian.** The Trust Committee shall designate a custodian to hold Trust assets. The Trust Committee may change the custodian upon an affirmative vote of five (5) Trustees.

- (p) **Statutory Provisions.** To exercise powers and carry out obligations provided for in Part 3, Part 4, and Part 5 of Article 5 of Title 29, C.R.S., in matters relating to the administration of the Plan and Trust, upon such terms and conditions as it may deem in the best interest of the Trust.
- (q) **Power to do any Necessary Act.** To do all acts which it may deem necessary or proper and to exercise any and all powers under the Plan and this Agreement upon such terms and conditions as it may deem in the best interests of the Trust.

63 **Authorized Investments.**

- (a) **General Definition.** “Authorized Investment” as used in this Article VI means the legal investments of public funds as set forth in C.R.S. § 24-75-601.1, as amended, and further governed by § 24-75-601, et seq., as amended.
- (b) **Responsibility for Compliance.** The responsibility for determining whether any investment of Trust assets complies with the terms of this Agreement and applicable law shall lie solely with the Trust Committee.

ARTICLE VII CONTRIBUTIONS TO THE TRUST FUND

7.1 **Member Contributions.** Subject to the limitations of this Agreement, each Member shall pay or cause to be paid contributions to the Trust at such times and in the amounts determined by the Trust Committee as are necessary to ensure funding of the Trust is sufficient, that operation of the Trust is not hazardous to the public or Participants or which the Trust Committee otherwise deems beneficial to protect the financial condition of the Trust. The Trust Committee shall establish Member contributions consistent with this Agreement, the Plan and any guidelines consistent with this Agreement and the Plan as established by the Trust Committee from time-to-time. The amount of state funding provided to the Trust as a reimbursement for the direct costs of the program as required by C.R.S. § 29-5-502(3) is the statutorily required base contribution for the operation of the behavioral health benefit program; however, a Member may consent, but is not required, to make a contribution for additional or supplementary behavioral health services, in excess of the amount of state funding for the program.

7.2. **Contributions on Annual Basis; Rate Structure.** The contribution rate structure for Member contributions shall provide for contributions to be made on an annual basis. Contributions shall be sufficient to fund the projected benefits and applicable expenses for the Participants receiving benefits under the Plan.

7.3 **Failure to Make Contributions.**

- (a) If any Member fails to make its Member contribution to the Trust within thirty (30) business days after the date on which they are due, such contributions shall bear interest from the date due at the rate of return for the three (3) month SOFR rate set on the date when such contribution was first due plus one percent (1%), compounded monthly.

- (b) The Trust Committee has the right, upon an affirmative vote of five (5) Trustees, with any Trustees from a Member in default excluded from the vote, should the delinquent Member not cure the delinquency within thirty (30) calendar days after the Administrator provides written notice to the Member of its delinquency, to terminate:
 - (1) Such Member's participation in the Plan and Trust at the end of an additional thirty (30) calendar day notice period or the end of the Plan year of the Member's delinquency, if earlier, if such delinquency is not cured; and
 - (2) Upon such termination, no claims submitted by Participants of the delinquent Member for benefits subsequent to the date of the termination, shall be paid by the Trust.
- (c) The Trust Committee also has the right, upon an affirmative vote of five (5) Trustees, with any Trustees from the Member in default excluded from the vote, to notify the Participants of such delinquent Member that such Member's participation in the Plan and Trust has been or will be terminated.
- (d) Nothing herein, however, shall relieve the delinquent Member of its responsibility for benefits payable to its Participants.

7.4 **Taxpayer Bill of Rights (TABOR) Compliance.** This Agreement does not create a multiple fiscal year direct or indirect debt or other financial obligation. Notwithstanding any term to the contrary, all financial obligations of a Member under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. No Member's contribution for any Fiscal Year shall exceed the annual contribution billed for such Fiscal Year unless additional funds for payment thereof have been appropriated by the Member.

7.5 **State Funding.** For benefits required by C.R.S. § 29-5-302, no Member shall be required without its consent to make a contribution for a Fiscal Year in excess of the amount of state funding paid or payable to the Member under C.R.S. § 29-5-302(11) for that Fiscal Year. For the program required by C.R.S. § 29-5-502, no Member shall be required to make a contribution without its consent for a Fiscal Year in excess of the amount of state funding under C.R.S. §§ 29-5-502(1) and (3) for that Fiscal Year. There is reserved to the Members and to the Trust the rights set forth in C.R.S. § 29-5-302(12) and C.R.S. § 29-5-502(1), providing that if, at any time, the state funding provided for the benefit or program required by C.R.S. § 29-5-302 and C.R.S. § 29-5-502 are insufficient to cover the cost of the benefit or program, then the requirements of C.R.S. § 29-5-302 and C.R.S. § 29-5-502 to maintain the benefit shall become optional pursuant to C.R.S. § 29-1-304.5. An Enrolled Employer must become a Member under this Trust pursuant to Article VIII, below, to participate in an optional program under C.R.S. § 29-5-502 and consent to make a contribution. The Trust Committee may establish guidelines consistent with this Agreement governing any exercise of the right under said C.R.S. § 29-5-302(12) and C.R.S. § 29-5-502(1).

7.6 **Reports.** The Trust Committee shall provide reports needed for purposes of administration

of this Agreement and the Plan.

ARTICLE VIII

PARTICIPATION, WITHDRAWAL AND OBLIGATIONS OF MEMBERS

81 **Participation in Trust by Members.** New Members may participate in the Trust, subject to the approval of the Trust Committee, and their participation shall be effective as of the beginning of the next Fiscal Year or such other date as determined by the Trust Committee. Participation in the Trust is limited to those employers who are governmental entities participating for the public purposes set forth in Part 3, Part 4, and Part 5 of Article 5 of Title 29, C.R.S., and a Member may participate in the Trust for any or all such programs. The Trust Committee reserves the right to require a new participating Member at the time of joining the Trust to contribute to the reserves of the Trust or to make such other appropriate financial contribution as determined by the Trust Committee. The Trust Committee may reject requested participation by any additional Member for any reason.

To participate in the Trust, a Member must properly adopt and enter into this Trust Agreement, which shall be evidenced by providing to the Trust Committee: (i) a certified copy of the resolution or ordinance or other official action of the governing body of the Member approving and entering into this Trust Agreement, and (ii) a signed counterpart original of this Trust Agreement duly executed by presiding officer of the governing body or other authorized officer of the Member.

To participate in the Trust for behavioral health pursuant to Part 5 of Article 5 of Title 29, C.R.S. as non-Member, an Enrolled Employer must properly enroll its Participant employees, using forms and procedures developed by the Trust Administrator, and with the formal acknowledgment of enrollment by the Trust Committee thereafter. However, this paragraph is not intended to exclude any Participant from accessing behavioral health program services; therefore, if the employer, as defined by C.R.S. § 29-5-501(a) has not yet enrolled before a Participant seeks behavioral health program services, the Trust Administrator may provide services subject to later verification and proper enrollment.

82 **Withdrawal by Member or Enrolled Employer.** A Member may withdraw from participation in the entire Trust on the following terms and conditions:

- (a) Except as provided in this Section, any Member or Enrolled Employer which intends to withdraw from participation in the Trust must give at least ninety (90) days advance written notice to the Trust Committee. Upon a Member's withdrawal from the Trust, any Trustees who are employees of such Member shall no longer serve as Trustees.
- (b) Upon withdrawal, the Member or Enrolled Employer shall be deemed to have withdrawn from participation in the entire Trust. Upon the effective date of withdrawal, the Member or Enrolled Employer's Participants shall cease to participate in the Plan, provided, that if required by law, a Participant's benefits or program utilization may be extended pursuant to, if and to the extent applicable, the terms and provisions of the Plan, including those Participants who have filed a

claim for or are receiving benefits or program utilization under the terms of the Plan prior to the effective date of the Member or Enrolled Employer's withdrawal, in which case benefits shall continue subject to the withdrawing Member's payment of required contributions or the effective withdrawal date of an Enrolled Employer.

- (c) Upon withdrawal, the Trust Committee also has the right to notify the Participants of such withdrawing Member or Enrolled Employer that participation in the Plan and Trust has ceased or will cease.
- (d) In the event of a withdrawal pursuant to this Section, such withdrawing Member or Enrolled Employer shall have no right to any of the assets, income or reserves of the Trust at any time, nor shall such Member have any right to a refund or rebate of any of its contributions to the Trust.

83 **Successors and Assigns.** Upon approval of the Trust Committee, a participating Member may transfer or assign its participation in the Trust to any successor in interest, whether by merger, consolidation, reorganization, restructuring, transfer of employees, or dissolution, creation or consolidation of Member entities or governing boards or otherwise.

84 **Powers of Members.** In addition to powers herein vested in the Members, the Members shall have the power to:

- (a) Amend the Trust Agreement by a two-thirds (2/3) vote of the Members present at a meeting. Written notice of any proposed amendment shall be provided to each Member at least forty-five (45) days in advance of any vote on the amendment.
- (b) Terminate the Plan and disburse its assets by a two-thirds (2/3) vote of all Members, pursuant to such notice and in keeping with such procedure as shall be established by the Trust Committee. In the case of such a vote, termination of the Plan shall be pursuant to provisions of Article X.

85 **Meetings of the Members.** Meetings of the Members shall be held as follows:

- (a) Members shall meet at least once annually at a time and place to be set by the Trust Committee, with notice mailed to each Member and a courtesy notice to each Enrolled Employer at least thirty (30) days in advance.
- (b) Special meetings of the Members may be called by the Trust Committee upon its own motion and shall be called by the Trust Committee upon written request of thirty (30) percent of the Members, with notice mailed to each Member and a courtesy notice to each Enrolled Employer at least thirty (30) days in advance.
- (c) The chair of the Trust Committee shall preside at the meetings; the vice chair shall preside in the absence of the chair.
- (d) Thirty percent (30%) percent of the Members shall constitute a quorum to conduct business.

- (e) Except for action to terminate the Plan, proxy voting shall be allowed, pursuant to such procedures as the Trust Committee may determine. Each Member shall be entitled to one vote on each issue, to be cast by its Member Representative.

86 **Member and Enrolled Employer Obligations.** In addition to the other provisions, hereof, each Member, and any Enrolled Employer specified in a subsection, shall have the obligation to:

- (a) Pay all contributions or other payments to the Trust at such times and in such amounts as shall be established by the Trust Committee. Any delinquent payments shall be paid with interest pursuant to a policy established by the Trust Committee and uniformly applied.
- (b) Designate in writing a Member Representative and one or more alternates for the Members' meetings. The Representative and any alternate shall be an employee of the Member, except as provided in Section 3.1, and may be changed from time to time. Any alternate may exercise all the powers of the Representative during a Member meeting in the absence of the Member Representative.
- (c) Allow the Trust Committee and Administrator and their agents reasonable access to records of the Member or Enrolled Employer as required for the administration of Plan and Trust.
- (d) Cooperate fully, both Members and Enrolled Employers, with the Trust Committee and Administrator and their agents in matters relating to the administration of the Plan and Trust and the administration and coordination of benefits under the Plan.
- (e) Allow the Trust Committee to make decisions regarding, and to designate attorneys to represent the Member or Enrolled Employer in, the investigation, settlement and litigation of any claim within the scope of benefits or program furnished through the Plan.
- (f) Comply, both Members and Enrolled Employers, with the benefits or program administration, claims handling and related policies established by the Trust Committee.

ARTICLE IX ADMINISTRATION

9.1 **Accounting.**

- (a) **Books and Records.** The Administrator generally shall be responsible for keeping accurate and detailed records of all investments, receipts and disbursements and other transactions hereunder, including such specific records as shall be required by law and such additional records as may be agreed upon in writing between the Administrator and the Trust Committee. The Trust shall financially account separately for the following, but separate audits or financial statements are not

required: contributions made for heart and circulatory malfunction benefits pursuant to Part 3 of Article 5 of Title 29, C.R.S.; contributions made for benefits for cancer benefits pursuant to Part 4 of Article 5 of Title 29, C.R.S.; and any contributions, available deposits, and estimated funding needs from state funds made for the benefits program for behavioral health pursuant to Part 5 of Article 5 of Title 29, C.R.S. All books and records relating thereto shall be open to inspection and audit at all reasonable times by any person or persons designated by the Administrator, the Member, or the Investment Committee. The Trust Committee shall promptly provide copies of such books or records to any persons designated by the Administrator.

- (b) **Accounting.** Following the close of each Plan year of the Plan, or more frequently as the Trust Committee and the Administrator may agree, the Trust Committee, with the assistance of the Administrator, shall cause to be prepared a written statement setting forth all investments, receipts, disbursements, and other transactions effected during such year or during the period beginning as of the close of the last preceding year. Except as may be required by statute or by regulations published by State or federal government agencies with respect to reporting and disclosure, as may be required pursuant to the terms of the Plan or this Agreement or as reasonably may be requested by a majority of the Members or the Investment Committee, no person shall have the right to demand or to be entitled to any further or different accounting by the Trust Committee.
- (c) **Release.** Except with regard to claims of breach of fiduciary duty, upon the expiration of 90 days from the date of presentation to the Members of such annual or other statement, the Trust Committee shall forever be released and discharged from any liability or accountability to anyone as respects the propriety of its acts or transactions shown in such account, except with respect to any acts or transactions as to which, within such 90-day period, a Member whose interest is affected by such act or transaction shall file with the Trust Committee its written disapproval. In the event such a disapproval is filed, and unless the matter is compromised by agreement of the Trust Committee, the Trust Committee shall file its statement covering the period from the date of the last annual statement to which no objection was made in any court of competent jurisdiction for audit or adjudication. The applicable statutes of limitation shall be available to the Trust Committee in the event of a claim of breach of fiduciary duty.
- (d) **Valuations.** The Trust Committee shall designate a party to be responsible for valuations of assets of the Trust for which prices are not readily available on a nationally recognized securities exchange.
- (e) **Reliance on Administrator.** The Trust Committee shall be entitled to rely on the Administrator and any Custodian, other than Trust Committee, for the maintenance and provision of all records specified in this Section.

9.2 **Expenses.** The expenses incurred by the Trust Committee in the performance of its duties hereunder, including fees for legal and other services rendered and all other proper charges

and disbursements of the Trust Committee, that may be levied or assessed under existing or future laws upon or in respect of the Trust or any money, property or security forming a part of the Trust Fund, shall be paid by the Trust Committee from the Trust Fund, and the same shall constitute a charge upon the Trust Fund. To the extent the Member pays any expenses that are properly payable from the Trust Fund, the Trust Committee shall reimburse the Member that has made payment from the Trust Fund if requested to do so by the Member.

ARTICLE X

AMENDMENT OF TRUST; TERMINATION OF PLAN

10.1 Amendment of Trust.

- (a) **Right to Amend.** The Members may amend this Agreement at any time or from time to time by the affirmative vote of two-thirds (2/3) of all Members, and any such amendment by its terms may be retroactive. An amendment shall require compliance with the terms of Section 8.4(a). An adopted amendment shall become effective upon the date specified in the ballot approved by the Members, without necessity of further written consent or signatures by the Members. Upon adoption of any amendment, the Trust Committee shall cause a current copy of this Agreement to be sent to each Member.
- (b) **Exclusive Benefit.** Notwithstanding the foregoing, no amendment shall be made which would authorize or permit any assets of the Trust Fund, other than such assets as are required to pay administration expenses, to be used for or diverted to purposes other than the exclusive benefit of Participants or Beneficiaries.

10.2 Termination of Plan. The Trust shall continue for such time as may be necessary to accomplish the purposes for which it was created and shall terminate only upon the complete distribution of the Trust. The Trust may be terminated as of any date (and shall in fact terminate upon the complete distribution of the funds of this Trust on such date or thereafter) by unanimous vote of the Trust Committee and approval by a two-thirds (2/3) vote of all Members. Upon termination of the Trust, provided that the Trust Committee has not received instructions to the contrary, the Trust Committee shall liquidate the Trust and, after paying the reasonable expenses of the Trust, including expenses involved in the termination, distribute the balance thereof according to the written directions of each Member for the provision of benefits similar to those provided under the Plan for the benefit of each such Member's Participants and Beneficiaries covered thereunder; provided, however, that the Trust Committee shall not be required to make any distribution until the Trust Committee is reasonably satisfied that adequate provision has been made for other outstanding payment obligations; and provided, further, that in no event shall any distribution be made by the Trust Committee until the Trust Committee is reasonably satisfied that the distribution will not be contrary to the applicable provisions of the Plan dealing with termination of the Plan and the Trust.

10.3 Final Accounting. At such time as the Trust is terminated, the Trust Committee shall render a final accounting of the affairs of the Trust to each participating Member, and

thereafter there shall be no claim or action against the Trust Committee or any Trustee, and they shall have no further responsibilities or duties and shall be discharged.

ARTICLE XI MISCELLANEOUS

- 11.1 **Nonalienation of Benefits.** Neither the benefits payable from the Trust Fund nor any interest in any of the assets of the Trust Fund shall be subject in any manner to the claim of any creditor of a Participant, or Beneficiary or to any legal process by any creditor of such Participant, or Beneficiary; and neither a Participant nor any Beneficiary shall have any right to alienate, commute, anticipate or assign any right to benefits payable from or any interest in the Trust, except as provided in the Plan.
- 11.2 **Benefit.** Except as otherwise provided in the Plan and this Agreement, no part of the Trust hereunder shall be used for or diverted to any purpose other than for the benefit of Participants and Beneficiaries or the payment of expenses as herein provided.
- 11.3 **Effect of Plan.** The Trust Committee is not a party to the Plan, and in no event shall the terms of the Plan, either expressly or by implication, be deemed to impose upon the Trust Committee any power or responsibility other than as set forth in this Agreement. In the event of any conflict between the provisions of the Plan and this Agreement, this Agreement shall be deemed to be incorporated into and be a part of the Plan, and the terms of this Agreement shall control over any inconsistent terms of the Plan not contrary to State law.
- 11.4 **Dispute Resolution.**
- (a) Disputes arising in relation to benefits under the Plan shall be resolved in accordance with the procedures established in the Plan.
 - (b) The parties to this Agreement (each, a “party”) are mutually committed to collaborative problem solving for resolving issues that may arise among or between them concerning this Agreement. In the event of a dispute, the complaining party may notify the other party of the dispute in writing and each party to the dispute will each appoint a representative to negotiate in good faith to resolve the dispute. These negotiations between representatives of the parties shall continue until the earliest of: (a) the time the dispute has been resolved; (b) the designated representatives have concluded that continued negotiation does not appear likely to resolve the dispute; or (c) thirty (30) days from the date of written notice of the dispute. If the dispute is not resolved through direct negotiations, the parties may, with the consent of all parties, attempt to settle any dispute arising out of or related to this Agreement through mediation. Unless otherwise agreed by the parties, mediation shall proceed as follows: The parties may agree on a mediator. If they are unable to agree on a mediator within thirty (30) days of the agreement to mediate, the parties shall contact an agreed upon dispute resolution organization or service and shall use its selection process to select a mediator. Each party shall bear

its own costs of the mediation and the parties shall share the costs of the mediator. The mediation shall be scheduled within sixty (60) days of the agreement to mediate. If the direct negotiation process is unsuccessful and the parties do not consent to mediation or the agreed-upon mediation process does not successfully resolve the dispute within ninety (90) days of the agreement to mediate, the parties shall be entitled to pursue any other remedy allowed by law or this Agreement. However, no party shall pursue such a remedy without first exhausting the direct negotiation process.

- 11.5 **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto with regard to the subject matter hereof, and there are no other agreements or understandings between the parties relating to the subject matter hereof other than those set forth or provided for herein. In no event shall the dispute resolution set forth in this paragraph include binding arbitration in violation of C.R.S. § 24-106-109.
- 11.6 **Approval of the Members.** The Members shall have the right, on behalf of all individuals at any time having any interest in the Trust, to approve any action taken or omitted by the Trust Committee.
- 11.7 **Liability for Predecessor or Successor.** No successor Trustee hereunder in any way shall be liable or responsible for any actions or omissions of any prior Trustee in the administration of the Trust or the Trust Fund prior to the date such successor Trustee assumes its obligations hereunder, nor shall any prior Trustee in any way be liable or responsible for any actions or omissions of any successor Trustee.
- 11.8 **Liability for Acts of Others.** No Trustee shall be liable for the acts or omissions of a Member, the Custodian, the Administrator, the Investment Committee or any Investment Manager except with respect to any acts or omissions of any such party in which the Trustee participates knowingly or which the Trustee knowingly undertakes to conceal, and which the Trustee knows constitutes a breach of fiduciary responsibility of such party.
- 11.9 **Governmental Immunity.** It is specifically understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by the Trust, the Trust Committee, the individual Trustees, or the Members of governmental immunity or of the sovereign immunity of the State of Colorado or its instrumentalities or any provision of the Colorado Governmental Immunity Act (CGIA), C.R.S. § 24-10-101, et seq. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, boards, commissions, committees, bureaus, offices, employees, and officials shall be controlled and limited by the CGIA, C.R.S. § 24-10-101, et seq., the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State risk management statutes, C.R.S. § 24-30-1501, et seq.
- 11.10 **Controlling Law.** This Agreement shall be construed according to the laws of the State of Colorado. Jurisdiction and venue shall be proper in the City and County of Denver.
- 11.11 **Effective Date.** This Agreement shall be effective on and after November 24, 2014. Any amendment to this Agreement shall become effective upon the date specified in the ballot

approved by the Members to adopt such amendment.

11.12 **Execution in Counterpart**. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Member has caused this Agreement to be signed by its duly authorized officers or representatives as of the day set forth its signature.

**CITY OF COLORADO SPRINGS
MEMBER**

Sign: _____

By: Blessing A. Mobolade

Title: Mayor

Attest:

Sign: _____

By: Sarah Johnson

Title: City Clerk

Date of Member Adoption of Agreement:
