

FPPA

**Fire & Police Pension Association
of Colorado**

Model FPPA Deferred Compensation Plan (As of April 1, 2005)

For more information please also refer to the
FPPA Member Handbook as well as the
FPPA Rules and Regulations. The Member
Handbook and Rules and Regulations may be viewed
and/or downloaded from our web site at www.fppaco.org
or by requesting copies from the address below.

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Section 1. Definitions

The following terms when used herein shall have the following meaning, unless a different meaning is clearly required by the context.

1.01 **Administrator:** "Administrator" means the FPPA or the entity designated by the FPPA to carry out certain nondiscretionary administrative functions of the Plan pursuant to Section 9.02 of the Plan.

1.02 **Adoption Agreement:** "Adoption Agreement" means the agreement between the Employer and the FPPA whereby the Employer adopts and establishes this Plan. Upon execution, this document, along with the Adoption Agreement, constitutes the Plan.

1.03 **Aggregate Account:** The value of all sub-accounts maintained on behalf of a Participant, whether attributable to Employer or Participant contributions.

1.04 **Beneficiary:** "Beneficiary" means the person(s) or estate entitled to receive benefits under this Plan after the death of a Participant.

1.05 **Code:** "Code" means the Internal Revenue Code of 1986, as amended.

1.06 **Compensation:** "Compensation" means the total remuneration earned by an employee for personal services rendered to the Employer for the calendar year, including amounts deferred under this Plan and any other deferred compensation plan.

1.07 **Deferral:** "Deferral" means the annual amount of Compensation that a Participant elects to defer receipt of, including employer contributions, pursuant to a properly executed Voluntary Salary Deferral Agreement.

1.08 **Deferral Account:** A sub-account maintained for a participant to hold and account for the contributions which are the proceeds of deferral of compensation from the Employer including any adjustment for earnings and expenses.

1.09 **Earnings:** The net gain or loss from investments, as reflected by interest payments, dividends, realized and unrealized gains and losses on securities, and other investment transactions of the Plan. In determining Earnings for any period, assets shall be valued on the basis of their fair market value.

1.10 **Effective Date:** "Effective Date" means the date specified by the Employer in the Adoption Agreement on which the Employer adopts the Plan.

1.11 **Eligible Employee:** "Eligible Employee" means any person employed by the Employer as a common law employee whose duties are directly involved with the provision of police or fire protection or any other person employed by the Employer who provides direct support to the employer's public safety department.

1.12 **Eligible Plan:** "Eligible Plan" means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b) (other than endowment contract), a qualified trust described in Code section 401(a), an annuity plan described in Code section 403(a), an eligible deferred compensation plan described in Code section 457(b) which is maintained by an eligible employer described in Code section 457(e)(1)(A), or an annuity contract described in Code section 403(b). The definition of Eligible Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse, who is the alternate payee under a Qualified Domestic Relations Order as defined in Code section 414(p), including a domestic relations order as allowed by Colorado law.

1.13 **Employer:** "Employer" means the entity specified in the Adoption Agreement which adopts the Plan for the benefit of its Eligible Employees. Any municipality, fire protection district, county improvement district, or fire authority in the State of Colorado which are instrumentalities of the State of Colorado and are eligible employers described in Code section 457(e)(1)(A) may become an Employer by executing an Adoption Agreement.

1.14 **Expenses:** The administrative, legal, investment, banking and consulting fees and expenses of the Plan.

1.15 **FPPA:** "FPPA" means the Fire and Police Pension Association, a corporate body and political instrumentality of the State of Colorado, which acts as Trustee, custodian, and Administrator of the Plan.

1.16 **Includible Compensation:** "Includable Compensation" means compensation for services performed for the Employer which (taking into account the provisions of Section 457 of the Code and applicable provisions of the Code) is currently includable in gross income as properly reportable on the employee's federal tax form relating to his or her wage and tax statement.

1.17 **Normal Retirement Age:** "Normal Retirement Age" means age 70 1/2 or some other earlier age specified in writing by the Participant. In no event shall Normal Retirement Age be earlier than the earliest date at which one may retire under the Employer's basic pension plan without the Employer's consent and receive immediate retirement benefits, without incurring an actuarial or similar reduction in benefits.

1.18 **Participant:** "Participant" means an Eligible Employee or former Eligible Employee who is or has been enrolled in the Plan and who retains the right to benefits under the Plan.

1.19 **Plan:** "Plan" means the Model FPPA Deferred Compensation Plan (as of January 1, 1991), as amended and restated April 26, 1995, January 1, 1997, September 1, 2002, and April 1, 2005, either in its previous or present form or as amended from time to time.

1.20 **Plan Year:** "Plan Year" means the twelve-month period beginning January 1 and ending December 31, from and after the Effective Date.

1.21 **Retirement Committee:** A committee of not less than three persons selected by the Employer to carry out the discretionary functions of administering the Plan.

1.22 **Rollover Account:** The sub-account maintained for a Participant to hold and account for the contributions rolled over or directly transferred by a Participant from any other qualified rollover from an Eligible Plan and including any adjustment for earnings and expenses.

1.23 **Trustee:** "Trustee" means the FPPA as set forth in the Model FPPA Deferred Compensation Trust Agreement.

1.24 **Voluntary Salary Deferral Agreement:** "Voluntary Salary Deferral Agreement" means the agreement between a Participant and the Employer to defer receipt by the Participant of Compensation not yet earned. Such agreement shall state the Deferral amount to be withheld from a Participant's paycheck and shall become effective the first day of the calendar month following the month in which the Agreement is executed by the Participant and acceptance by the Retirement Committee.

Section 2. Participation

2.01 **Eligibility for Participants:** Each Eligible Employee may become a Participant in this Plan on the first day of the calendar month following the month in which employment commenced as an Eligible Employee and enrollment pursuant to Section 2.02.

2.02 **Enrollment:** Eligible Employees may enroll in the Plan by completing a Voluntary Salary Deferral Agreement. Enrollment shall be effective on the first day of the calendar month following the month in which the Voluntary Salary Deferral Agreement is completed or at such later date as designated by the Participant.

2.03 **Cessation of Participation:** Participation in the Plan will cease upon distribution of a Participant's entire Aggregate Account balance.

Section 3. Deferral of Compensation and Rollovers from other Eligible Plans

3.01 **Individual Accounts:** The FPPA Board of Directors shall create and maintain adequate records to disclose the interest of each Participant or Beneficiary of the Plan. Such records shall be in the form of individual accounts, and credits and charges shall be made to such accounts in the manner herein described. A Participant shall have multiple separate sub-accounts, namely a Deferral Account and one or more Rollover Accounts, as necessary. The maintenance of individual accounts is only for accounting purposes, and a segregation of the assets of the Fund to each account shall not be required. Distribution and withdrawals made from an account shall be charged to the accounts as of the date payment is made.

3.02 **Account Adjustments:** The accounts of Participants and Beneficiaries shall be adjusted in accordance with the following:

(a) **Allocation of Earnings:** The Earnings will be determined on the fair market value of the assets in the Plan. The Earnings will be allocated according to the Participant's time-weighted pro-rata share of the investment option.

(b) **Contributions:** Deferred Compensation contributions shall be allocated to the Deferral Account of each Participant not less than monthly, according to the amount that is actually contributed on behalf of each Participant in accordance with Section 3.04.

(c) **Expenses:** The Expenses of the Plan shall be allocated to and deducted from the Participant Deferral Accounts. Expenses which are incurred as a direct result of the investments held in the Fund shall be deducted from the interest, dividends and net income of the appropriate investment prior to allocating each month's Earnings to

Participants. General Expenses shall be deducted from the accounts of all Participants according to the Participant's time-weighted pro-rata share of the Plan. FPPA may also assess a quarterly record keeping fee.

3.03 **Investments:**

(a) **Investments:** The Board may create and is authorized to offer to each Participant of the Plan, various investment options, including at least three alternatives, each of which is diversified in itself, that allow a Participant a broad range of investments and a meaningful choice between risk and return in the investment of the Participant's Aggregate Account.

(b) **Contributions:** One hundred percent (100%) of each Aggregate Account may be invested as directed by the Participant in any one or a combination of the designated investment options. If no investment election is made by the Participant or Beneficiary, all monies will be invested in a balanced fund option designated by the FPPA Board.

(c) **Timing of Investment Reallocation:** Participants may redirect the investment of his or her Aggregate Account at any time and may reallocate monies in existing funds as may be allowed by the Administrator.

3.04 **Deferral Procedure:** Pursuant to a Voluntary Salary Deferral Agreement, each Participant's Deferral amount shall be deducted from his or her paychecks in approximately equal increments throughout the year. The Deferral amount shall not be included as gross income of the Participant for purposes of federal income tax. Amounts deferred shall be segregated in a Deferral Account.

3.05 **Maximum Deferral**

(a) **Primary Limitation:** The Deferral amount in any taxable year may not exceed the lesser of:

1. \$11,000 (as indexed pursuant to Code § 457(e)(15)) or
2. 100% of the Participant's Includable Compensation.

(b) **Catch-Up Limitation Contributions:**

1. A Participant may trigger the Catch-up Limitation Contributions by electing a Normal Retirement Age pursuant to Section 1.17. The maximum Deferral amount for each of a Participant's last three (3) taxable years ending before he or she attains Normal Retirement Age, is the lesser of:

(i) twice the otherwise Maximum Deferral Amount of §3.05(a)(1), or

(ii) the Participant's Underutilized Limitation amounts as determined by the Retirement Committee pursuant to Treas, Reg. Section 1.457-4(c)(3).

2. The Catch-Up Limitation Contribution is available to a Participant only during one three-year period. If a Participant uses the Catch-Up Limitation Contribution and then postpones Normal Retirement Age or returns to work after retiring, the limitation shall not be available again before a subsequent retirement.

(c) **Catch-Up Contributions:** All Employees who are eligible to make Deferral contributions under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make Catch-up Contributions in accordance with, and subject to the limitations of, Code § 414(v), including indexing for inflation. Such Catch-up Contributions shall not be taken into account for purposes of the provisions of the plan implementing the required limitations of Code §§ 402(g) and 415. The Plan shall not be treated as failing to satisfy the provisions of Code §§ 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416, as applicable, by reason of the making of such Catch-up Contributions. Catch-up Contributions shall not be made during a Participant's last three years before Normal Retirement Age if the Participant has elected to make a Catch-up Limitation Contribution pursuant to §3.05(b).

(d) **Multiple Plan Deferral Limitation.** If a Participant is or has been a participant in one or more eligible plans within the meaning of Code section 457(b), then this Plan and all such other plans shall be considered as one plan for the purposes of applying the foregoing limitations of this Section. For this purpose, the Administrator shall take into account any other such eligible plan maintained by an Employer and shall also take into account any other such eligible Plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

3.06 Minimum Deferral: A Participant must comply with any minimum monthly deferral requirements which may be set by the Employer from time to time on a nondiscriminatory basis.

3.07 Changing Deferrals: A Participant may change Deferrals with respect to Compensation not yet earned by executing a new Voluntary Salary Deferral Agreement. The change shall be effective the first day of the calendar month following the receipt of the new Voluntary Salary Deferral Agreement by the Retirement Committee or at such later time as designated by the Participant.

3.08 **Suspension of Deferrals:**

(a) **Voluntary:** A Participant may suspend Deferrals by giving the Retirement Committee written notice. Following suspension, a Participant may reinstate Deferrals by executing a new Voluntary Salary Deferral Agreement and delivering it to the Retirement Committee. Reinstatement is effective the first day of the calendar month following completion of the new Agreement or at such later time as designated by the Participant. Deferral suspensions and resumptions can be made at any time.

(b) **Automatic:** Deferrals shall automatically be suspended for any month in which there are insufficient monies available to make the entire deduction agreed upon.

(c) The Trustee may make corrective distributions of annual deferrals in excess of the applicable limits. The corrective distribution shall be made, with allocable net income, as soon as administratively practicable after it is determined that the amount would be an excess deferral.

3.09 **Rollovers from Eligible Plan:** A participant who is an Employee and who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code section 402(c)(8)(B).

Section 4. Rollovers and Transfers out of the Plan

4.01 **Plan-to-Plan Rollovers:**

(a) Upon the election of a Participant, distribution of all or a portion of the amounts held in the Participant's Aggregate Account upon separation from service may be rolled over to another Eligible Plan, if the Eligible Plan receiving such amounts provides for their acceptance.

(b) For purposes of this Section, an eligible rollover distribution means any distribution of all or any portion of a Participant's Aggregate Account, except that an eligible rollover distribution does not include (1) any installment payment for a period of ten (10) years or more, (2) any distribution made as a result of an unforeseeable emergency, or (3) for any other distribution, the portion, if any, of the distribution that is a required

minimum distribution under Code section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a qualified trust described in Code section 401(a), an annuity plan described in Code section 403(a) or 403(b), or an eligible governmental plan described in Code section 457(b), that accepts the eligible rollover distribution.

4.02 **Special Rule for Certain In-Service Transfers:**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Aggregate Account Balance transferred to the defined benefit governmental plan. A transfer under this Section may be made before the Participant has had a separation from service (as defined in Code section 402(e)(4)(B)(i)(III)).

(b) A transfer may be made under this Section only if the transfer is either for purchase of permissive service credit (as defined in Code section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code section 415 does not apply by reason of Code section 415(k)(3).

4.03 **Domestic Relations Order:** Benefits under this Plan may be subject to Domestic Relations Orders as defined by Code section 414(p), provided they are in compliance with the requirements set forth in C.R.S. § 14-10-113 (6) and are in a form approved by the FPPA. Any distributions made to alternate payees under a Domestic Relations Order shall be made within 120 days of receipt of the Domestic Relations Order by FPPA. An alternate payee must withdraw his or her share of all funds from the Plan either as a fixed lump sum or as a percentage of the Participant's account as of the date of the decree. Amounts paid are taxable to an alternate payee or may be rolled over to an Eligible Plan held by an Alternate Payee.

4.04 **Loans:** The Participant shall not be allowed to borrow any sum from the Plan.

Section 5. Time of Benefit Payment

5.01 **Eligibility for Payment:** Payments from the Plan shall not be made until the calendar year in which the Participant attains age 70-1/2, incurs a Separation from Service, or suffers an approved financial hardship that results from an unforeseeable emergency.

(a) **Separation from Service:** "Separation from Service" means the termination of a Participant's employment with the Employer, due to death, retirement, or other cause, within the meaning of Code Section 402(e)(4)(D)(i)(III).

(b) **Unforeseeable Emergency:**

1. **Procedure:** A Participant may request a withdrawal for an Unforeseeable Emergency by submitting a written request to the Retirement Committee, accompanied by evidence that his or her financial condition warrants an advance release of funds and results from an unforeseeable emergency which is beyond the Participant's control. The Retirement Committee shall review the request and determine whether payment of any amount is justified. If payment is justified, the amount shall be limited to an amount reasonably needed to meet the emergency. The Retirement Committee shall determine the amount and form of payment. Any money remaining in the account after an Unforeseeable Emergency shall be distributed in accordance with the provisions of this Plan.

2. **Unforeseeable Emergency Defined:** "Unforeseeable Emergency" means a severe financial setback to the Participant resulting from a sudden and unexpected illness or accident of the Participant or a dependent of the Participant, loss of the Participant's property due to casualty, imminent foreclosure of, or eviction from, a Participant's primary residence, the need to pay for medical expenses (including non-refundable deductibles and prescription medicine), and the need to pay funeral expenses for a family member, or other similar extraordinary and unforeseeable circumstances, arising from events beyond the Participant's control. Whether circumstances constitute an unforeseeable emergency depends on the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

(i) through reimbursement or compensation by insurance or otherwise;

(ii) by liquidation of the Participant's assets, to the extent that liquidation itself would not cause severe financial hardship; or

(iii) by cessation of Deferrals under the Plan.

Unforeseeable Emergencies shall not include the payment of college tuition or the purchase of a residence.

5.02 **Latest Commencement Date:** Notwithstanding any other Plan provision to the contrary, benefits for a Participant or Beneficiary shall commence no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2.

Section 6. Benefit Payments

6.01 **Forms of Payment:** A Participant or Beneficiary may elect payment in one of the following forms:

(a) **Lump Sum:** A single payment of the entire balance in a Participant's account.

(b) **Installments:** Subject to the limitations of Section 6.02, monthly payments over a specified period of time in substantially equal dollar amounts. An election to receive installment payments may be changed by the direction of the Participant, to be effective as soon as administratively practicable after receipt by the Trustee of such written direction.

(c) **Combination:** A lump sum cash payment of a portion of the balance in a Participant's account, with the remainder of the account to be paid in substantially equivalent monthly installments as specified by the Participant. The election of a schedule of installment payments may be changed by the direction of the Participant as provided in paragraph (c) of this Section 6.01.

6.02 **Minimum Distribution Requirements.**

(a) General Rules.

(1) **Effective Date.** The provisions of this Section 6.02 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year.

(2) **Coordination with Minimum Distribution Requirements Previously in Effect.** If the total amount of 2002 required minimum distributions under the plan made to the distributees prior to the effective date of this Section 6.02 equals or exceeds the required minimum distributions determined under this article, then no additional distributions will be required to be made for 2002 on or after such date to the distributees. If the total amount of 2002 required minimum distributions under the plan made to the distributees prior to the effective date of this Section 6.02 is less than the amount determined under this Section 6.02, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributees will be the amount determined under this Section 6.02.

(3) **Precedence.** The requirements of this Section 6.02 will take precedence over any inconsistent provisions of the plan.

(4) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section 6.02 will be determined and made in accordance with the Treasury Regulations under Code § 401(a)(9).

(5) **TEFRA § 242(b)(2) Elections.** Notwithstanding the other provisions of this Section 6.02, distributions may be made under a designation made before January 1, 1984, in accordance with § 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to § 242(b)(2) of TEFRA.

(b) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(2) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 6.02(b), other than Section 6.02(b)(1), will apply as if the surviving spouse were the Participant.

(5) For purposes of this Section 6.02(b) and Section 6.02(d), unless Section 6.02(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 6.02(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 6.02(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 6.02(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

(c) Required Minimum Distributions During Participant's Lifetime.

(1) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(A) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in § 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(B) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in § 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and

spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this Section 6.02(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(d) Required Minimum Distributions After Participant's Death.

(1) Death On or After Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

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

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

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

(B) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's

remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 6.02(d)(1).

(B) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 6.02(b)(1), this Section 6.02(d)(2) will apply as if the surviving spouse were the Participant.

(e) Definitions. The following definitions apply to this Section 6.02.

(1) Designated beneficiary. The Beneficiary under Section 7.01 of the Plan who is the designated beneficiary under Code § 401(a)(9) and § 1.401(a)(9)-4, Q&A-4, of the Treasury Regulations.

(2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 6.02(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution

for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) Life expectancy. Life expectancy as computed by use of the joint and survivor annuity Table in § 1.401(a)(9)-9 of the Treasury Regulations.

(4) Participant's account balance. The balance of the Participant's Account as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) Required beginning date. The latest date for commencement of distributions for a Participant, as determined under Section 5.02 of the Plan.

Section 7. Beneficiaries

7.01 **Designation:** A Participant shall have the right to designate a Beneficiary, and amend or revoke such designation at any time, in writing. Such designation, amendment or revocation shall be effective upon receipt by the Retirement Committee.

7.02 **Failure to Designate a Beneficiary:** If no designated Beneficiary survives the Participant and benefits are payable following the Participant's death, the Retirement Committee may direct that payment of benefits be made to the person or persons in the first of the following classes of successive preference Beneficiaries. The Participant's:

- (a) spouse,
- (b) descendants, per stirpes,
- (c) parents, in equal shares,
- (d) brothers and sisters, in equal shares,
- (e) estate.

Section 8. Amendment and Termination

8.01 **Amendment:** (a) An Employer may not amend this Plan.

(b) No amendment shall divest any Participant of any rights to Deferrals prior to the date of any amendment or amend the Plan so that it is no longer in compliance with the requirements of Code section 457.

(c) The Trustee may propose an amendment to the Plan at any time by written notice to the Employer at least 30 days before the effective date of the amendment. If the Trustee approves an amendment to the Plan, such amendment shall automatically be effective with respect to the Employer unless the Employer notifies the Trustee in writing within 60 days after the date of approval of the amendment that the Employer objects to the amendment. The Trustee shall be under no obligation to continue to act as Trustee or Administrator with respect to any Employer that disapproves of any amendment.

8.02 **Termination:** Although the Employer has established this Plan with a *bona fide* intention and expectation to maintain the Plan indefinitely, the Employer may terminate the Plan in whole or in part at any time without any liability for such termination or discontinuance. Upon termination of the Plan, the Employer shall notify the Trustee in writing of the effective date of termination of the Plan. Upon Plan termination, all Deferrals shall cease. The Trustee shall retain all Deferrals until each Participant attains age 70½, incurs a Separation from Service or incurs an Unforeseeable Emergency and benefits commence under Sections 5.01 and 5.02, in the form determined under Section 6.

Section 9. Miscellaneous

9.01 **General Duty of the Employer:** The Employer shall make regular periodic payments to the Trustee equal to the amount of its participating Employees' total Deferrals. The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants under this Plan. The Employer shall appoint at least three persons to serve on the Retirement Committee, which shall carry out the discretionary functions of administering the Plan as set forth in this Plan.

9.02 **Duties of the Administrator:** The Administrator shall perform all nondiscretionary administrative functions in connection with the Plan, including the maintenance of accounts on behalf of each Participant, the provision of periodic reports on the status of each account and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan. The Administrator shall establish a default

investment option and shall direct the investment of any sums held in said option which have not otherwise been invested at the direction of the Participant.

The FPPA shall be the Administrator of the Plan, provided, that the FPPA may appoint a third party administrator to perform certain administrative functions. The duties and compensation of any such third party administrator shall be by agreement between the FPPA and third party administrator.

9.03 Investments: A Participant or Beneficiary of the Plan may request that Deferrals under the Plan be allocated among available investment options established by the Trustee. The initial allocation request may be made at the time of enrollment. Investment allocation requests shall remain effective with regard to all subsequent Deferrals, until changed in accordance with the provision of this section. A Participant or Beneficiary may change his or her allocation request as allowed by the record keeper after earnings have been allocated, by notifying the record keeper. Such changes shall become effective as soon as administratively feasible. While the Trustee intends to invest Deferrals according to the Participant requests, it reserves the right to invest Deferrals without regard to such requests.

9.04 Ownership of Assets: All amounts deferred under the Plan and contributed to the fire and police members' deferred compensation fund under the Trust, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held for the exclusive purposes of providing benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan and Trust. The FPPA Board of Directors shall be the trustee of the fire and police members deferred compensation fund and shall have fiduciary duties as determined by applicable law.

All amounts contributed to the Trust shall be held as a separate and distinct trust for each Employer. However, Trust funds of several Employers may be commingled for investment purposes, provided that the Trustee maintains an accounting reflecting the Trust funds held on behalf of each Employer.

9.05 Limitations of Rights; Employment Relationship: Neither the establishment of this Plan nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving a Participant or other person any legal or equitable right against the Employer except as provided in the Plan. In no event shall the terms of employment of any employee be modified or in any way be affected by the Plan.

9.06 Alienation of Benefits Prohibited. Except for distributions made to alternate payees pursuant to Domestic Relations Orders which comply with the provisions of § 14-10-113(6), C.R.S., and applicable provisions of Code section 414(p),

benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

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

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

9.09 **Applicable Law:** This Plan shall be construed in accordance with applicable federal law and, to the extent otherwise applicable, the laws of the State of Colorado.