AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Retirement Plan and Trust Agreement Participation

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Colorado Retirement Association (CRA) Participant Agreements and Gunnison County, Colorado

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Updates to existing 401(A) and 457(b) Participant Agreements

Fiscal Impact:

Submitted by: Cheryl Seling **Submitter's Email Address:** cseling@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

Reviewed by: GUNCOUNTY1\kweak Discharge Date: 10/16/2020

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 10/15/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 10/15/2020 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 10/16/2020

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 10/20/2020

Revised April 2015

COLORADO RETIREMENT ASSOCIATION
RETIREMENT PLAN AND TRUST AGREEMENT

PARTICIPATION AGREEMENT

Association Member / Participating Employer: Gunnison County, Colorado

Association Member Original Participation Date: January 1, 1969

Participation Agreement Effective Date: October 1, 2020

Prior Participation Agreement Date: July 1, 2009
Please indicate the effective date of the last Participation Agreement

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PREAMBLE

I. **AGREEMENT**. By this Agreement, by and between Colorado Retirement Association ("Association") and the Association Member specified in this Participation Agreement ("Agreement"), the Association Member adopts as a Participating Employer the Colorado Retirement Association Retirement Plan and Trust Agreement (the "Plan"), as amended and restated effective January 1, 2020, and as further amended or supplemented from time to time, subject to the modifications set forth in this Agreement. This Agreement amends and supersedes any previous Participation Agreement made by and between the Association Member and the Association.

II. **ADOPTION OF THE PLAN**. The Association Member adopts the Plan as a Participating Employer pursuant to the terms of the Plan and this Participation Agreement, effective as of the Participation Agreement Effective Date. The Participating Employer's participation in the Plan is conditioned on the timely payment by the Participating Employer of its proportional share of contributions under the Plan, and in the case of contributions deducted from a Participant's Compensation, payment will be transmitted to the Trust as soon as practicable after such amounts would otherwise have been paid to the Participant.

III. **REVIEW OF THE PLAN**. The Participating Employer has reviewed the Plan, and in particular Article 13 of the Plan, addressing Participating Employers. The Participating Employer has consulted, or had opportunity to consult, with its legal and tax advisors with reference to the Plan and this Participation Agreement.

IV. **APPROVAL OF PLAN TRUSTEE AND ADMINISTRATOR**. The Participating Employer approves and confirms the Trustee and Administrator designated by the Association in the Plan to serve in each such capacities.

V. **ASSOCIATION AS AGENT**. The Participating Employer irrevocably designates the Association as its agent as set forth in Article 13 of the Plan addressing Participating Employers for all purposes of the Plan, and authorizes the Association, on behalf of the Participating Employer, to perform

the specific act or acts and to exercise the specific powers granted under the Plan. The Association or its designee has authority to make any and all necessary rules or regulations, binding upon the Participating Employer and its Employees and Officials and their Beneficiaries, to effectuate the purpose of the Plan.

VI. **PARTICIPATING EMPLOYER'S CONTRIBUTIONS**. All contributions made by the Participating Employer under the Plan and this Participation Agreement will be determined separately by each Participating Employer and allocated only among the eligible Participants of the Participating Employer making the contribution in accordance with Section 3.1 of the Plan.

PARTICIPATING EMPLOYER ELECTIONS

(Section numbers below correspond to sections of the Plan.)

Note: Officials may opt out of Plan participation; however, if Officials do participate in the Plan, they do not have to satisfy any minimum eligibility requirements. Accordingly, Sections 2.2 and 2.5(a) below only pertain to Eligible Employees. Additionally, Officials are always fully vested in Employer Contributions and Prior Service Benefit Contributions. Accordingly, Sections 5.1(b)(1), 5.1(c), 5.1(d), 5.1(e) and 5.1(g) below only pertain to Eligible Employees.

1.16 **ELIGIBLE EMPLOYEE**. "Eligible Employee" means the following:

[Specify one option only.]

☐ ***All Employees***. Every Employee of the Participating Employer.

☒ ***All Benefitted Positions***. Every Employee in a benefitted position of the Participating Employer, in accordance with the Participating Employer's standard personnel practices.

☐ Every Employee of the Participating Employer who works at least _____ months per year and at least _____ hours per week.

☐ Every Employee of the Participating Employer who works at least _____ hours per year.

2.2 **COMMENCEMENT OF PARTICIPATION**. An Eligible Employee will commence participation in the Plan and begin making and receiving contributions:

[Specify one option only with appropriate sub-option, as applicable.]

☒ Immediately as of:

- ☐ The Eligible Employee's Date of Hire.
- ☒ The first day of the Eligible Employee's first full payroll period.

☐ Immediately after _____ Plan Months. (Not to exceed twelve (12) months).

☐ Upon the first day of the payroll period following a _____ month period. (Not to exceed twelve (12) months).

If an Official has not waived participation in the Plan, such Official will commence participation in the Plan and begin making and receiving contributions as of the first day of the month coincident with or immediately succeeding such Official's commencement of term of office.

2.5(a) **REEMPLOYMENT DATE MORE THAN THIRTY (30) DAYS AFTER TERMINATION DATE**.

☒ Immediate commencement of participation, in accordance with the Participating Employer's election per Section 2.2.

If this option is selected, skip the remaining options in this Section 2.5(a) and move on to Section 2.6(a). If this option is not selected, specify one option in each of the below categories.

Prior Employment with Participating Employer.

☐ In accordance with the **default** provisions of Section 2.5(a) of the Plan, in the event an Employee terminates employment with the Participating Employer more than thirty (30) days before his or her Reemployment Date with the Participating Employer, the Participating Employer will not grant prior service credit for purposes of **eligibility**.

☐ In the event an Employee terminates employment with the Participating Employer more than thirty (30) days before his or her Reemployment Date with the Participating Employer, the Participating Employer will grant service credit for purposes of **eligibility** provided the Employee has a Reemployment Date within _____ Plan Months (not to exceed twelve (12) Plan Months) of his or her Termination Date.

Prior Employment with any Association Member (other than Participating Employer).

☐ In accordance with the **default** provisions of Section 2.5(a) of the Plan, in the event an Employee terminates employment with an Association Member more than thirty (30) days before his or her Reemployment Date with a different Participating Employer, the Participating Employer will not grant prior service credit for purposes of **eligibility**.

☐ In the event an Employee terminates employment with an Association Member more than thirty (30) days before his or her Reemployment Date with another Participating Employer, the Participating Employer will grant service credit for purposes of **eligibility** provided the Employee has a Reemployment Date within _____ Plan Months (not to exceed twelve (12) Plan Months) of his or her Termination Date.

2.6(a) **CHANGE IN STATUS**.

[Specify one option only.]

☐ Status of Employee is not applicable. All Employees are ***Eligible Employees***, per Section 1.16.

☒ In accordance with the **default** provisions of Section 2.6(a) of the Plan, a Participant who continues in the employ of the Participating Employer but ceases to be employed as an ***Eligible Employee*** is not eligible to make Mandatory Participant Contributions to the Plan under Section 3.3, is not entitled to Employer Contributions under Plan Section 3.1 and is not entitled to Prior Service Benefit Contributions (if any) under Plan Section 3.2.

[If this option is chosen, select one of the following sub-options, as applicable.]

☒ Upon return to an employment status meeting the eligibility criteria, the Eligible Employee will recommence participation immediately, in accordance with the Participating Employer's election above in Section 2.2.

☐ Upon return to an employment status meeting the eligibility criteria, the Eligible Employee must complete the applicable commencement of participation period elected above in Section 2.2 before recommencing participation in the Plan. Such applicable commencement period will begin as of the date the Employee returns to such employment status.

☐ A Participant who continues in the employ of the Participating Employer but ceases to be employed as an ***Eligible Employee*** will be deemed to satisfy the eligibility provisions and will continue to be eligible to make Mandatory Participant Contributions to the Plan under Section 3.3, will continue to receive Employer Contributions under Plan Section 3.1, and will continue to receive Prior Service Benefit Contributions (if any) under Plan Section 3.2, despite the change in status.

3.1(a) **EMPLOYER CONTRIBUTIONS**. The Participating Employer will make an Employer Contribution for each Participant **(no less than three percent (3%))** for each Plan Month as specified below.

[Specify one option only.]

☒ The Participating Employer will contribute 3 % of the Compensation of such Participant for the Plan Month.

☐ The Participating Employer's contribution for each Participant will equal an amount directed by each Participant, with a minimum of ____% and a maximum of ____% of the Compensation of such Participant.

☐ The Participating Employer will contribute for each Participant:

- ____% of Compensation based on ____ attained Years of Service
- ____% of Compensation based on ____ attained Years of Service
- ____% of Compensation based on ____ attained Years of Service
- ____% of Compensation based on ____ attained Years of Service
- ____% of Compensation based on ____ attained Years of Service

☐ For Participants hired after March 31, 1986, the Participating Employer will contribute the percentage of Compensation of such Participant for the Plan Month corresponding to the rate required of the employer share portion of Social Security (Old Age, Survivors, and Disability) under the Federal Insurance Contributions Act, as defined in C.R.S. Section 24-53-101 for that Plan Month. Employer Contributions will stop once the Participant's earnings have reached the social security annual maximum taxable earnings limit. For Participants hired on or before March 31, 1986, the Participating Employer will contribute the percentage of Compensation of the Participant for the Plan Month corresponding to the rate required for the employer share of both the Social Security and Medicare components of the Federal Insurance Contributions Act, as defined in C.R.S. Section 24-53-101 for that Plan Month. For Participants hired on or before March 31, 1986, the Social Security component of the Employer Contribution will stop once such Participant's earnings have reached the Social Security annual maximum taxable earnings limit.

Note if this option is selected, it must also be selected below in Section 3.3.

3.2 **PRIOR SERVICE BENEFIT CONTRIBUTIONS**. The Participating Employer may elect to make a Prior Service Benefit Contribution to each Participant. The Participating Employer will contribute to each Participant the percentage (elected below) of such Participant's annual Compensation for the elected ***Prior Service Period***. The Prior Service Benefits will be contributed to the Plan in equal monthly installments during the ***Pay Out Period*** provided the Participant does not have a Termination Date during the Pay Out Period.

[Specify one option only.]

☒ Not Applicable. Employer is an existing Participating Employer.

☐ The Participating Employer elects not to make Prior Service Benefit Contributions.

☐ The Participating Employer will contribute to each Participant ____% *(no less than three percent (3%))* of the annual Compensation of each Participant during the ***Prior Service Period***.

[Complete both A and B.]

A. The ***Prior Service Period*** is _____ (*number from one to five)* twelve (12) month period(s) of continuous employment of such Participant ending on the Effective Date of this Participation Agreement with the Participating Employer.

B. Prior Service Benefit Contributions will be made to the Plan in equal monthly installments over _____ (*number from one (1) to thirty-six (36))* continuous calendar month(s)) (the "***Pay Out Period***"). If the Participant has a Termination Date during the Pay Out Period, he or she forfeits his or her right to additional Prior Service Benefit Contributions.

3.3(a) **MANDATORY PARTICIPANT CONTRIBUTIONS**. Each Participant will make a contribution **(no less than three percent (3%))** for each Plan Month as specified below.

[Specify one option only.]

☒ The Mandatory Participant Contribution will equal __3__% of the Compensation of such Participant for the Plan Month.

☐ The Mandatory Participant Contribution will equal an amount directed by each Participant, with a minimum of _____% and a maximum of _____% of the Compensation of such Participant for the Plan Month. **Once an election is made, it is an irrevocable election.**

☐ The Mandatory Participant Contribution will equal:

- ____% of Compensation based on ____ attained of Service
- ____% of Compensation based on ____ attained Years of Service
- ____% of Compensation based on ____ attained Years of Service
- ____% of Compensation based on ____ attained Years of Service
- ____% of Compensation based on ____ attained Years of Service

☐ For Participants hired after March 31, 1986, the Mandatory Participant Contribution will equal the percentage of Compensation of such Participant for the Plan Month corresponding to the rate required of the employer share portion of Social Security (Old Age, Survivors, and Disability) under the Federal Insurance Contributions Act, as defined in C.R.S. Section 24-53-101 for that Plan Month. Mandatory Participant Contributions for a Participant will stop once such Participant's earnings have reached the social security annual maximum taxable earnings limit. For Participants hired on or before March 31, 1986, the Participating Employer will contribute the percentage of Compensation of the Participant for the Plan Month corresponding to the rate required for the employer share of both the Social Security and Medicare components of the Federal Insurance Contributions Act, as defined in C.R.S. Section 24-53-101 for that Plan Month. For Participants hired on or before March 31, 1986, the Social Security component of the Mandatory Participant Contribution will stop once such Participant's earnings have reached the Social Security annual maximum taxable earnings limit.

Note if this option is selected, it must also be selected below in Section 3.1.

3.3(a) **MANDATORY PARTICIPANT CONTRIBUTIONS**. Mandatory Participant Contributions will be:

[Specify one option only.]

☒ Pre-tax in accordance with C.R.S. Section 24-54-104(4) and Internal Revenue Code Section 414(h)(2).*

☐ After-tax.

3.8 **DISCRETIONARY EMPLOYER MATCHING CONTRIBUTIONS**. The Participating Employer will make an Employer Matching Contribution in accordance with its Employer 457 Contribution Policy for each Participant who defers compensation into:

[Specify one option only.]

☒ Not Applicable. The Participating Employer elects not to make Discretionary Employer Matching Contributions to the Plan.

☐ The Colorado Retirement Association Deferred Compensation Plan and Trust Agreement.

☐ _____ [Name of 457(b) plan].

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* *Note if contributions are being picked up and paid by the Employer in lieu of employee contributions, the contributions will be treated as "picked-up" and paid by the Employer on a prospective basis only, from the date this Participation Agreement is formally adopted. Participants may not opt out of the "pick-up" nor may they receive the contributed amounts directly instead of having them paid by the Participating Employer to the Plan.*

5.1(b)(1) **VESTING OF PARTICIPANT'S ACCOUNTS**. In accordance with Section 5.1 of the Plan, an Employee-Participant becomes vested in Employer Contributions and Prior Service Benefit Contributions as follows.[†]

[Specify one option only.]

☐ ***Immediate Vesting***. A Participant is 100% vested upon Plan participation.

☒ ***Graded Vesting***. A Participant will vest pro rata monthly at 20 % annual rate. (must be more than 10%).

☐ ***Specified Vesting***. A Participant will vest pro rata monthly according to the following schedule (select the vesting percentage at the completion of the Participant's Years of Service):

1st Year of Service: _____%

2nd Year of Service: _____%

3rd Year of Service: _____%

4th Year of Service: _____%

5th Year of Service: _____%

6th Year of Service: _____%

[†] *Employee-Participants who reach Normal Retirement Age, Disability, or who die or are presumed deceased will be 100% vested in accordance with the terms of the Plan.*

5.1(c) **REEMPLOYMENT DATE MORE THAN THIRTY (30) DAYS AFTER TERMINATION DATE**.

☐ Service credit for vesting is not applicable, Employer elected Immediate Vesting, per Section 5.1(b)(1).

If this option is selected, skip the remaining options in this Section 5.1(c) and move on to Section 5.1(e). If this option is not selected, specify one option in each of the below sub-options.

Prior Employment with Participating Employer.

☒ In accordance with the **default** provisions of Section 5.1 (c) of the Plan, in the event an Employee terminates employment with the Participating Employer more than thirty (30) days before his or her Reemployment Date with the Participating Employer, the Participating Employer will not grant prior service credit for purposes of **vesting**.

☐ In the event an Employee terminates employment with the Participating Employer more than thirty (30) days before his or her Reemployment Date with the Participating Employer, the Participating Employer will grant service credit for purposes of **vesting** provided the Employee has a Reemployment Date within _____ Plan Months (not to exceed twelve (12) Plan Months) of his or her Termination Date.

Prior Employment with any Association Member (other than Participating Employer).

☒ In accordance with the **default** provisions of Section 2.5(a) of the Plan, in the event an Employee terminates employment with an Association Member more than thirty (30) days before his or her Reemployment Date with a different Participating Employer, the Participating Employer will not grant prior service credit for purposes of **vesting**.

☐ In the event an Employee terminates employment with an Association Member more than thirty (30) days before his or her Reemployment Date with another Participating Employer, the Participating Employer will grant service credit for purposes of **vesting** provided the Employee has a Reemployment Date within _____ Plan Months (not to exceed twelve (12) Plan Months) of his or her Termination Date.

5.1(e) **SERVICE WITH PARTICIPATING EMPLOYER PRIOR TO ADOPTION OF PLAN**.

[Specify one option only.]

☒ Not Applicable. Employer is an existing Participating Employer.

☐ ***Past Service Credit***. At the time this Participation Agreement is executed, all Employees presently employed by the Participating Employer will have all periods of employment credited towards the vesting schedule referenced above in Section 5.1(b)(1).

5.3 **FORFEITURES ACCOUNT**.

[Specify one option only.]

☐ Not Applicable. Participants are 100% vested in their Accounts.

☒ In accordance with the **default** provisions of Section 11.6 of the Plan, forfeitures will be utilized to reduce future Employer Contributions.

☐ Forfeitures will be allocated among the Accounts of active Participants in the Plan.

8.1 **LOANS TO ELIGIBLE BORROWERS**.

[Specify one option only.]

☐ Participant loans are *not* allowed.

☒ Participant loans are allowed in accordance with Article 8 of the Plan and loan procedures adopted by the Plan Administrator.

1.9 **DEFINITION OF COMPENSATION**. For purposes of calculating contributions, the Participating Employer **excludes** the following from the definition of Compensation (as defined in Section 1.9 of the Plan):

[Select as many EXCLUSIONS as applicable.]

☒ Bonuses.

☒ Overtime pay.

☐ Premiums for shift differential.

☒ Fringe benefits, expense reimbursements, deferred compensation, and welfare benefits.

☐ Holiday pay.

☐ Vacation pay.

☐ Sick pay.

☐ Paid Time Off (PTO).

☒ All post-severance compensation.

☐ Other *[please specify]*:_____.

* * * * * * * *

The Participating Employer and the Colorado Retirement Association have executed this Participation Agreement and have accepted its terms.

Dated this _____ day of _____, 20_____.

Gunnison County
Participating Employer

By:_____

Title: _____

Dated this _____ day of _____, 20_____.

COLORADO RETIREMENT ASSOCIATION
Plan Sponsor

By:_____

Title: CRA Executive Director

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COLORADO RETIREMENT ASSOCIATION
DEFERRED COMPENSATION PLAN

PARTICIPATION AGREEMENT

Association Member / Participating Employer: Gunnison County, Colorado

Association Member Original Participation Date: January 1, 1969

Participation Agreement Effective Date: October 1, 2020

Prior Participation Agreement Date: July 1, 2011
Please indicate the effective date of the last Participation Agreement

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PREAMBLE

I. **AGREEMENT**. By this Agreement, by and between Colorado Retirement Association ("Association") and the Association Member specified in this Participation Agreement ("Agreement"), the Association Member adopts as a Participating Employer the Colorado Retirement Association Deferred Compensation Plan and Trust Agreement (the "Plan"), as amended and restated effective January 1, 2020, and as further amended or supplemented from time to time, subject to the modifications set forth in this Agreement. This Agreement amends and supersedes any previous Participation Agreement made by and between the Association Member and the Association.

II. **ADOPTION OF THE PLAN**. The Association Member adopts the Plan as a Participating Employer pursuant to the terms of the Plan and this Participation Agreement, effective as of the Participation Agreement Effective Date. The Participating Employer's participation in the Plan is conditioned on the timely payment by the Participating Employer of its proportional share of contributions under the Plan, and in the case of contributions deducted from a Participant's Compensation, payment will be transmitted to the Trust as soon as practicable after such amounts would otherwise have been paid to the Participant.

III. **REVIEW OF THE PLAN**. The Participating Employer has reviewed the Plan, and in particular Article 12 of the Plan. The Participating Employer has consulted, or had opportunity to consult, with its legal and tax advisors with reference to the Plan and this Participation Agreement.

IV. **APPROVAL OF PLAN TRUSTEE AND ADMINISTRATOR**. The Participating Employer approves and confirms the Trustee and Administrator designated by the Association to serve in each such capacities.

V. **ASSOCIATION AS AGENT**. The Participating Employer irrevocably designates the Association as its agent as set forth in Article 12 of the Plan addressing Participating Employers for all purposes of the Plan, and authorizes the Association, on behalf of the Participating Employer, to perform the specific acts and to exercise the specific powers granted under the Plan. The Association

or its designee shall have authority to make any and all necessary rules or regulations, binding upon the Participating Employer and its Employees, to effectuate the purpose of the Plan.

VI. **PARTICIPANT AND PARTICIPATING EMPLOYER CONTRIBUTIONS**. All contributions made by the Participants and Participating Employer under the Plan and this Participation Agreement shall be determined separately by each Participating Employer and shall be allocated only among the eligible Participants of the Participating Employer making the contribution.

* * * * * * * *

PARTICIPATING EMPLOYER ELECTIONS

(Section numbers below correspond to sections of the Plan.)

2.2(d) **DESIGNATED ROTH DEFERRALS**.

[Specify one option only.]

☒ Designated Roth Deferrals are permitted.

☐ Designated Roth Deferrals are *not* permitted.

2.11 **EMPLOYER CONTRIBUTIONS**.

[Specify one option only.]

☐ The Participating Employer elects not to make Employer Contributions.

☒ The Participating Employer elects to make Employer Contributions for Eligible Employees, per the Employer 457 Contribution Policy.

6.1 **LOANS TO ELIGIBLE BORROWERS**.

[Specify one option only.]

☐ Participant loans are *not* permitted.

☒ Participant loans are permitted in accordance with Article 6 of the Plan and loan procedures adopted by the Association.

* * * * * * * *

The Participating Employer and the Colorado Retirement Association have executed this Participation Agreement and have accepted its terms.

Dated this _____ day of _____, 20_____.

Gunnison County, Colorado
Participating Employer

By:_____

Title: _____

Dated this _____ day of _____, 20_____.

COLORADO RETIREMENT ASSOCIATION
Plan Sponsor

By:_____

Title: CRA Executive Director

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