



Board of Directors Regular Meeting
 2000 E. Horsetooth Road, Fort Collins, CO 80525
 Thursday, December 6, 2018, 9:00 a.m.

Call to Order

- | | |
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| 1) Consent Agenda | <i>Motion to Approve</i> |
| • Minutes of the Regular Meeting of October 26, 2018 | |
| • 2019 Proposed Board of Directors Regular Meeting Schedule | <i>Resolution 22-18</i> |

Public Comment

Committee Reports

- 2) Retirement Committee Report

Board Action Items

- | | |
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| 3) 2018 Board Contingency Appropriation Transfer – Capital Additions | <i>Resolution 23-18</i> |
| 4) 2019 Annual Budget Review and Adoption | <i>Resolution 24-18</i> |
| 5) Retirement Plan Update | |
| • DB Plan Approval | <i>Resolution 25-18</i> |
| • DC Plan Approval | <i>Resolution 26-18</i> |
| 6) Fiber Management IGA | <i>Resolution 27-18</i> |
| 7) Resource Diversification Policy | <i>Resolution 28-18</i> |

Management Presentations

- 8) Rates Framework Update
 9) 75 MW Wind Option Status
 10) Organic Contract/Power Supply Agreement Renewal Process
 11) IRP Update
 12) HQ Campus Update

Executive Session

- | | |
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| 13) Executive Session | <i>Motion (2/3 vote required)</i> |
| • Personnel Matter | |
| 14) Reconvene Regular Session | |

Monthly Informational Reports

- 15) Legal & Governmental Affairs Report
 16) October 2018 Operating Report
 17) October 2018 Financial Report
 18) General Management Report

Strategic Discussions

Adjournment

2019 BOARD MEETING PLANNING CALENDAR

February 28, 2019 Retirement Committee Meeting	Board Action Items	Management Presentations	Management Reports	Monthly Informational Reports
	Transfer of 2018 Capital Budget Carryover to 2019 Budget	2018 Year in Review	Rate Framework Document	Legal & Governmental Affairs Report
	Incorporation into the Record of Resolution (2019 Regular Meeting Schedule)	HQ Campus		January 2019 Operating Report
	Election of Officers			January 2019 Financial Report
	Appointment of Retirement Committee Members			General Management Report

March 28, 2019	Board Action Items	Management Presentations	Management Reports	Monthly Informational Reports
	Retirement Committee Report	HQ Campus	Safety Program Review	Legal & Governmental Affairs Report
	GM/GC Annual Review	Wholesale Rate Projections	Water Policy and Windy Gap Firming Project Recap	February 2019 Operating Report
				February 2019 Financial Report
				General Management Report

April 25, 2019	Board Action Items	Management Presentations	Management Reports	Monthly Informational Reports
	Acceptance of 2018 Annual Report	Windy Gap Unit Sales Update/Recap	Water Resources Reference Document (updated version)	Legal & Governmental Affairs Report
	2018 BKD Audit Report	HQ Campus		March 2019 Operating Report
		Safety Program Review		March 2019 Financial Report
		2020 Rate Projections		General Management Report

May 30, 2019 Retirement Committee Meeting	Board Action Items	Management Presentations	Management Reports	Monthly Informational Reports
	Revision to TARIFF— SCHEDULE 4: Wholesale Transmission Service	Synopsis of State Legislation of Interest		Legal & Governmental Affairs Report
	2020 Rate Tariffs	HQ Campus		April 2019 Operating Report
				April 2019 Financial Report
				General Management Report

June 7-12, 2019	APPA National Conference Austin, Texas 			
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July 25, 2019	Board Action Items	Management Presentations	Management Reports	Monthly Informational Reports
	Retirement Committee Report	HQ Campus	Wholesale Rate Forecast	Legal & Governmental Affairs Report
			Cyber Security Review	May and June 2019 Operating Report – Mid-Year Review
			Energy Efficiency Programs Update	May and June 2019 Financial Report – Mid-Year Review
				General Management Report

August 29, 2019 Retirement Committee Meeting	Board Action Items	Management Presentations	Management Reports	Monthly Informational Reports
		Cyber Security Review		Legal & Governmental Affairs Report
		Energy Efficiency Programs Update		July 2019 Operating Report
		HQ Campus		July 2019 Financial Report
				General Management Report

September 26, 2019	Board Action Items	Management Presentations	Management Reports	Monthly Informational Reports
	Retirement Committee Report	2020 Proposed Annual Budget Work Session	Demand Response Pilot Update	Legal & Governmental Affairs Report
		HQ Campus	Staffing Update (MEMO only)	August 2019 Operating Report
				August 2019 Financial Report
				General Management Report

October 31, 2019	Board Action Items	Management Presentations	Management Reports	Monthly Informational Reports
	2019 BKD Audit Plan	2020 Proposed Annual Budget Update – Public Hearing	Workforce Updates	Legal & Governmental Affairs Report
		HQ Campus		September 2019 Operating Report
		Demand Response Pilot Update		September 2019 Financial Report
				General Management Report

November, 2019 Retirement Committee Meeting	No Board of Directors Meeting			
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December 5, 2019	Board Action Items	Management Presentations	Management Reports	Monthly Informational Reports
	Retirement Committee Report	2020 Annual Budget Update and Review		Legal & Governmental Affairs Report
	2020 Annual Budget Adoption	HQ Campus		October 2019 Operating Report (November 2019 Report, if available)
	2019 Board Contingency Appropriation Transfer – Capital Additions (if required)	Workforce Updates		October 2019 Financial Report (November 2019, if available)
	2020 Proposed Board of Directors Regular Meeting Schedule			



Topics to be scheduled:

- Debt financing update

*** This calendar is for planning purposes only and may change at management's discretion ***



2018 Board of Directors

Term Expiration

Town of Estes Park

P.O. Box 1200, Estes Park, Colorado 80517

Mayor Todd Jirsa—Chairman, Board of Directors	April 2020
Reuben Bergsten—Vice Chair, Board of Directors	December 2019

City of Fort Collins

P.O. Box 580, Fort Collins, Colorado 80522

Mayor Wade Troxell	April 2019
Mayor Pro Tem Gerry Horak	December 2020

City of Longmont

350 Kimbark Street, Longmont, Colorado 80501

Mayor Brian Bagley	November 2019
Susan Wisecup	October 2019

City of Loveland

500 East Third Street, Suite 330, Loveland, Colorado 80537

Mayor Jacki Marsh	November 2019
Joseph Bernosky	December 2022



Regular Meeting Minutes of the Board of Directors
Rawhide Energy Station, Wellington, CO
Thursday, October 25, 2018

ATTENDANCE

Board Members

Representing Estes Park: Mayor Todd Jirsa and Reuben Bergsten
Representing Fort Collins: Mayor Wade Troxell¹ and Mayor Pro Tem Gerry Horak²
Representing Longmont: Mayor Brian Bagley and Susan Wisecup
Representing Loveland: Mayor Jacki Marsh and Joe Bernosky

Platte River Staff

Jason Frisbie (General Manager/CEO)
Joe Wilson (General Counsel)
Dave Smalley (Chief Financial Officer and Deputy GM)
Karin Hollohan (Chief Administrative Services Officer)
Andy Butcher (Chief Operating Officer)
Alyssa Clemens Roberts (Chief Strategy Officer)
Angela Walsh (Executive Assistant/Board Secretary)
Steve Roalstad (Communications and Marketing Manager)
Craig Johnson (Deputy General Counsel)
Wade Hancock (Financial Planning Manager)
Paul Davis (Customer Services Manager)
Pat Connors (Vice President of Power Supply)
Heather Banks (Fuels and Water Manager)
Shelley Nywall (Controller)
Andy Cofas (Plant Manager)
Courtney Stewart (Senior Environmental Engineer)
Libby Clark (HR Manager)
Matt Tribby (Senior Environmental Analyst)
Joel Danforth (Customer Services Program Manager)

Guests

Jodie Cates (BKD)
Anna Thigpen (BKD)
Tim McCollough (City of Fort Collins)
John Phalen (City of Fort Collins)
Kevin Jones (Fort Collins Chamber of Commerce)
Ken Reggelson (Boulder resident)
Gordan MacAlphine (Estes Park resident)
Jeff Thompson (Longmont resident)
Alan Braslau (Loveland resident)

¹ Arrived at 9:17

² Called in at 11:00

Regular Board Meeting Minutes: October 25, 2018

CALL TO ORDER

Chairman Jirsa called the meeting to order at 9:00 a.m. A quorum of board members was present and the meeting, having been duly convened, was ready to proceed with business. Director Bagley introduced Susan Wisecup, interim general manager for Longmont Power and Communications, as the newly appointed board member representing Longmont. Director Wisecup introduced Jess Aills with Longmont Power and Communication. Platte River staff introduced Libby Clark, HR manager, Matt Tribby, senior environmental analyst, and Dave Smalley, chief financial officer and deputy general manager, introduced representatives from BKD, Jodie Cates and Anna Thigpen.

ACTION ITEMS**(1) Consent Agenda****a. Approval of the Regular Meeting Minutes of September 27, 2018**

Director Bergsten moved to approve the Consent Agenda as presented. Director Bernosky seconded, and the motion carried 6-0.

PUBLIC COMMENT

Three members of the public addressed the board regarding the resource diversification policy, renewable energy and the 75 MW wind option.

BOARD ACTION ITEMS**(2) 2018 BKD Audit Plan and Engagement Letter (presenter: Dave Smalley)**

Mr. Smalley introduced BKD representatives Jodie Cates and Anna Thigpen who presented the audit plan and the engagement letter provided within the board packet starting on page 15. Ms. Cates indicated that the changes from GASB 84 enables the typical two engagement letters to be combined. Ms. Cates continued by noting lower fees for the 2018 audit as a result of combining the audits. Ms. Thigpen outlined the audit plan for 2018 and mentioned the incorporation of the pension audit will cause the timing of reporting to the board to be pushed to April instead of March. Jason Frisbie, general manager/ceo, mentioned another change in the schedule regarding Tariff 4 (transmission rate) which will come before the board in May of 2019 due to timing of when the audited financials are completed in order to calculate the tariff 4 transmission rate.

a. Approval of engagement letter

Director Bagley moved to authorize execution of the 2018 BKD audit plan and engagement letter as presented. Director Bergsten seconded, and the motion carried 7-0.

(3) 2019 Proposed Rate Tariffs (presenter: Wade Hancock)

Wade Hancock, financial planning manager, referred to the documents provided in the board packet starting on page 29 and highlighted four items related to the proposed tariffs for 2019. Mr. Hancock noted the memo covers the changes within the Tariffs. Staff recommends adoption of the resolution with the rates to become effective January 1, 2019.

Regular Board Meeting Minutes: October 25, 2018

Director Troxell asked for an update on the rate restructuring project Platte River has been pursuing. Mr. Hancock discussed the owner community engagement meetings and rates discussions that have occurred thus far, noting that the rate structure options that are being evaluated will come to the board for discussion in December. Director Troxell discussed capacity charges and recognizing contributions from distributed energy resources. Discussion ensued among directors and staff regarding the various tariffs and rate structure options being considered. Director Bernosky complimented Platte River staffs' ongoing engagement with city staffs.

Director Bagley moved to approve Resolution 21-18; 2019 proposed rate tariff(s) as presented. Director Bergsten seconded, and the motion carried 7-0.

MANAGEMENT PRESENTATIONS

(4) 2019 Proposed Annual Budget – Public Hearing (presenter: Shelley Nywall)

Shelley Nywall, controller, reviewed the changes to the budget since the work session, the financial results and the budget highlights.

Director Bergsten asked about the unrestricted cash on hand item increasing. Mr. Smalley responded that the unrestricted cash on hand increase is a combination of rate smoothing and the additional revenue from Windy Gap sales completed to date.

Mr. Frisbie complimented the staffs' hard work on the budget process change, the budget document and the budget at a glance document.

Chairman Jirsa asked if there were any additional comments or questions regarding the proposed budget from the board. Hearing none, he stated the 2019 Proposed Annual Budget for Platte River Power Authority had been delivered to the board of directors in accordance with applicable law. Legal notices have been published announcing that the proposed budget was made available to the public for inspection and that the public hearing will be held today, October 25, in order for the board to receive public comment on the proposed budget prior to final adoption of the budget by the end of the year.

Chairman Jirsa declared the public hearing on the 2019 Proposed Annual Budget for Platte River Power Authority open.

Two members of the public provided comments regarding the 2019 Proposed Annual Budget. Jeff Thompson, a Longmont resident, inquired about Platte River's involvement with selling Windy Gap water units and a water channel flows issue, and Ken Reggelson, a Boulder resident, discussed the costs of Rawhide.

The Chair closed the public hearing.

Director Troxell requested a memo from staff regarding the water channel flows topic brought up by one of the members of the public.

Director Bagley addressed the public comment regarding the Windy Gap sales, and asked about the change in the budget for the Windy Gap project. Joe Wilson, general counsel, noted that a lawsuit challenging the project is still in process. Heather Banks, fuels and water manager, responded that due to timing for the start of construction the budget reflects a reduction of those

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construction costs in 2019. Mr. Wilson responded to the public comment regarding whether a separate enterprise would be necessary for Platte River's participation in the Windy Gap Firming project noting that a separate enterprise was unnecessary.

(5) Demand Response Pilot update

(presenter: Paul Davis)

Paul Davis, customer services manager, provided an overview of the demand response (DR) pilot's goals, benefits, and pilot structure. Director Troxell asked if reliability is considered as a distribution benefit. Mr. Davis responded that it would be if the distribution utility would acknowledge it that way.

Discussion ensued among directors and staff regarding the savings represented within the 1 percent voltage reduction, expenses and the benefits of the pilot to the four cities and Platte River, and the education gained from conducting the pilot. Director Troxell commented on the potential for active demand side management to help offset intermittent renewable resources and DR targets.

Director Troxell asked how electric vehicles (EVs) are being documented as off-takers of energy or storage options for energy. Mr. Davis responded that the pilot sees EVs as a new load that we have potential to control and future direction is to use them to store energy. Discussion ensued among directors and staff regarding the difference between DR, distributed energy resources (DER) and adding a management aspect to the programs. Director Bergsten asked how many EV charging devices are being produced in the industry that Platte River could control today. Joel Danforth, customer services program manager, responded that there are a few pilots with devices but nothing commercial yet. Platte River will continue to work with vendors to develop the ability to proactively send signals to EV charging stations to provide system benefits. Discussion ensued among directors and staff on using charging devices for potential management of load with DER/DR.

10:48 – 11:00: Break

(6) Resource Diversification Policy – Draft options

(presenter: Alyssa Clemens Roberts)

Alyssa Clemens Roberts, chief strategy officer, presented the two language options for the proposed board policy; option one includes 100 percent carbon free resources by 2030 and option two includes language to meet collective owner communities' goals. Both versions include identical language regarding the three pillars including definitions for each as well as the nine caveats. Ms. Clemens Roberts requested feedback on the following definitions:

- Definition for reliability

Director Wisecup asked how the 99.9 percent was derived or if it was industry standard. Mr. Butcher responded that it is a Platte River standard for transmission and is higher than the industry standard.

Director Troxell noted different perspectives on what constitutes reliability, between, for example, a customer outage or a substation outage. He asked what was meant by the Platte River definition. Mr. Butcher and Mr. Frisbie responded that it is looked at as an overall system perspective and currently it's looked at from the supply side and does not include distribution data. Discussion ensued among directors and staff regarding modifying the definition of reliability as

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technology evolves.

- Definition for environmentally responsible

No comments.

- Definition for financially sustainable

No comments.

Ms. Clemesen Roberts requested feedback from the board regarding the two language options; option 1 states *“working toward a goal of reaching 100 percent non-carbon resource mix by 2030”* and option 2 states *“continue to diversify Platte River Power Authority’s resource mix to meet its owner communities’ energy goals”*. Ms. Clemesen Roberts requested direction for the purpose of the policy – is it carbon reduction, is it resource diversification, or both?

Director Bagley commented on the importance of setting goals and creating and executing a plan and supported option one. Director Marsh echoed achieving success in setting a goal with a date and supported option one. Director Bernosky supported option 2. Director Bergsten commented on a flexible strategy to accomplishing goals successfully and will support option one.

Director Bagley asked about the ZNC study results showing a path and being reflected in the policy. Ms. Clemesen Roberts responded that the ZNC study provided a zero-net carbon option and the policy being considered is a 100 percent non-carbon and does not correspond with the ZNC study model.

Director Wisecup commented on reviewing the policy in its entirety and supported option one knowing that all other aspects are recognized. Director Troxell commented on having bold goals and working together is how Platte River started, and supported option one. Director Horak supported option one and stated the board’s responsibility of working together, creating goals and supports working with the communities to build reliability at the granular level. Chair Jirsa commented that the board is here for the important reasons stated by others and supported option one also. Ms. Clemesen Roberts clarified that draft option one will return to the board for adoption at the December board meeting.

Director Bergsten complimented the staff at Rawhide Energy Station and wants everyone to know that it is a very valuable asset to Northern Colorado. Director Horak noted that Rawhide is not mentioned within the policy and that is a different discussion topic and echoed that it is a valuable unit for the region.

Director Bagley moved to have draft option one return to the December board meeting for adoption. Director Bergsten seconded. Motion passed 8-0.

(7) Rawhide Planned Major Outage Update

(presenter: Andy Cofas)

Andy Cofas, plant manager, thanked the board for having the meeting up at Rawhide and provided an update to the current planned outage and major project status.

Director Bergsten asked about the use of cooling water and the importance of using water to its extinction. Ms. Banks commented that it is critical to use water to extinction. Director Troxell asked about the work outside by the lake and intake from the lake. Mr. Cofas responded that the intake

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from the cooling water reservoir had one of the two circulating water pumps removed for repairs and noted that the lake water is separate from the process water.

MANAGEMENT REPORTS

(8) IRP Process **(presenter: Andy Butcher)**

Andy Butcher provided a quick introduction for the whitepaper discussing the overall process for the 2021 IRP. Director Wisecup added appreciation to the staff for including city staff in the IRP process.

(9) Organic Contract/Power Supply Agreement Renewal Process **(presenter: Joe Wilson)**

Mr. Wilson provided a preview to the whitepaper in preparation for greater discussion at the December board meeting and noted additional scheduling information.

Director Troxell asked about next steps meeting with staffs and how the organic contract reflects distributed generation and the changing landscapes within the industry. Mr. Wilson stated that the organic contract is the agreement between the four owner communities and Platte River. Details regarding providing power and resources are stated within the power supply agreements. Changes are being suggested to the power supply agreements to address future market initiatives and new solar business models.

Discussion ensued among directors and staff regarding inclusions within the organic contract, year extension and the purchase power agreements.

MONTHLY INFORMATIONAL REPORTS

(10) Legal & Governmental Affairs Report **(presenter: Joe Wilson)**

Mr. Wilson offered to answer any questions the board may have. No questions were raised.

(11) September Operating Report **(presenter: Andy Butcher)**

Chairman Jirsa asked the board if there were any questions or comments regarding the September operating report contained within the board materials. No questions were raised.

(12) September Financial Report **(presenter: Dave Smalley)**

Chairman Jirsa asked the board if there were any questions or comments regarding the September financial report contained within the board materials. No questions were raised. Mr. Smalley mentioned having a conference call with Moody's Credit Rating and expected a report by the end of the month.

(13) General Management Report **(presenter: Jason Frisbie)**

Mr. Frisbie referred to the operating report and the favorable results. Mr. Frisbie then highlighted the budget process with the contingency transfer recommendation and the economic development funding including inflation adjustments starting with 2019. Director Troxell commented on the increase and asked to tie it to investments towards development of DER in

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the communities and tie it to an outcome that would be beneficial to the direction we are going. Director Troxell requested a report reflecting how funds have been utilized in each community. Mr. Frisbie continued with his highlights mentioning the status of the community solar project. Mr. Butcher added a few challenges on bidders' fluctuating terms, credit evaluations and currently looking at four bidders for the solar project.

Roundtable and Strategic Discussion Topics

Board members shared the latest news from the municipalities and discussion topics for future meetings.

ADJOURNMENT

With no further business, the meeting adjourned at 12:12 p.m. The next regular board meeting is scheduled for Thursday, December 6, at 9:00 a.m. at the Platte River Power Authority, 2000 E. Horsetooth Road, Fort Collins, Colorado.

AS WITNESS, I have executed my name as Secretary and have affixed the corporate seal of the Platte River Power Authority this _____ day of _____, 2018.

Secretary

RESOLUTION NO. __-18

BE IT RESOLVED by the Board of Directors of Platte River Power Authority that:

- (1) Unless otherwise directed by the Board, the Annual Meeting and Regular Meetings of the Platte River Power Authority Board of Directors during calendar year 2019 shall be held at 9:00 a.m. local time in Platte River's Board Room, 2000 East Horsetooth Road, Fort Collins, Colorado, according to the following schedule:

February 28—Annual Meeting	August 29
March 28	September 26
April 25	October 31
May 30	December 5
July 25	

- (2) Meetings of the Platte River Power Authority Board of Directors are open to the public. The Secretary is authorized and directed to post at the place designated below and to publish in newspapers of general circulation in Estes Park, Fort Collins, Longmont, and Loveland full and timely notice of this meeting schedule.
- (3) The designated place for posting of notices of meetings of the Platte River Power Authority Board of Directors shall be the main lobby, Platte River Power Authority headquarters, 2000 East Horsetooth Road, Fort Collins, Colorado. For purposes of C.R.S. §24-6-402(2)(c), this action shall be deemed to have occurred at the first Regular Meeting of the Board of Directors in calendar year 2019 and shall be incorporated into the record of that meeting.

AS WITNESS, I have executed my name as Secretary and have affixed the corporate seal of the Platte River Power Authority this ____ day of _____, 2018.

Secretary



Platte River

Power Authority

Estes Park • Fort Collins • Longmont • Loveland

Memorandum

Date: November 28, 2018
To: Board of Directors
From: Jason Frisbie, General Manager and CEO
Subject: Retirement Committee Report

The Retirement Committee held its quarterly meeting on November 16, 2018. The minutes of that meeting are included in the board packet.

At the board meeting, the Committee Chairman will provide a summary of the November meeting. No action of the board will be required.

Attachment



Meeting Minutes of the Defined Benefit Plan Committee
2000 East Horsetooth Road, Fort Collins, Colorado
Friday, November 16, 2018

ATTENDANCE

Committee Members

Jason Frisbie (Plan Administrator)
Gerry Horak (Chairman) ¹
Joseph Bernosky
Todd Jirsa
Dave Smalley

Absent: Brian Bagley

Platte River Staff

Julie Depperman (Treasury Manager)
Libby Clark (HR Manager)
Caroline Schmiedt (Deputy General Counsel)
Tracy Thompson (Executive Administrative Assistant)

Guests

Wendy Dominguez and Gordon Tewell of Innovest Portfolio Solutions, LLC ("Innovest")

CALL TO ORDER

The meeting was called to order at 1:00 p.m. A quorum was present and the meeting, having been duly convened, was ready to proceed with business. Chairman Gerry Horak delegated Dave Smalley to lead the meeting.

ACTION ITEMS

(1) Review Minutes of August 30, 2018, Meeting. Mr. Smalley asked for a motion to approve the minutes from the August 30, 2018, meeting. Mr. Jirsa moved to approve the minutes as submitted. Mr. Bernosky seconded, and the motion carried 5-0.

(2) Review Third Quarter Investment Performance. Wendy Dominguez and Gordon Tewell from Innovest reviewed the third quarter investment performance and highlighted the Plan's performance relative to its benchmarks (included in the Retirement Committee materials).

During the review of current economic conditions, Chairman Horak inquired about data showing the drivers of U.S. GDP growth, specifically related to net exports and the impact of the tariffs imposed by the Trump Administration. Innovest indicated they would conduct further research and provide a follow up response.

¹ Attended the meeting via phone.

Defined Benefit Plan Committee Meeting Minutes: November 16, 2018

As of September 30, 2018, Plan assets totaled \$107.4 million compared to \$105.4 million on June 30, 2018. For the quarter, the portfolio gained 2.3%, below the Custom Index benchmark of 2.4%. The portfolio allocation as of September 30, 2018, was 20% U.S. equities, 16% non-U.S. equities, 8% fixed income, 7% floating rate corporate loans, 3% commodities, 15% real estate, 14% hedge fund-of-funds, 6% MLPs, 5% reinsurance, 5% private equity, and 1% money market accounts.

For the quarter, the portfolio increased \$1.9 million, which includes an investment gain of \$2.2 million and outflows of \$0.3 million consisting of payments to retirees partially offset by contributions.

Innovest noted the addition of new sections in the Portfolio Review booklet on pages 16 through 19. In the new sections, the funds are categorized by their role in maximizing the portfolio's return while achieving an appropriate level of risk. The roles used to categorize each fund include growth engines, diversifiers and inflation sensitive funds. A strategy description and assessment are also provided for each fund. Mr. Smalley provided positive feedback on the new sections.

Innovest reviewed the Table of Returns beginning on page 22 of the Portfolio Review booklet which details the funds' performance relative to their benchmarks and noted trends for the quarter. Overall, Innovest believes the performance was reasonable, with the portfolio return for the quarter being above the IPS target of 7.5%. Ms. Depperman asked for clarification on this statement. Innovest clarified that the Plan must achieve a return of more than 1.8% per quarter to achieve the 7.5% annual goal; the investment return for the third quarter was 2.3%.

Innovest reviewed the Manager Score Card on page 20. Ms. Depperman asked for Innovest to confirm that the fees associated with Stone Ridge have not changed since the fund was added. Innovest confirmed the fees have not changed.

Innovest reviewed the Watchlist on page 27 noting that there are no major concerns. Aberdeen Emerging Markets Instl remains on the watchlist due to underperformance, although Innovest does not recommend any changes at this time. Innovest referenced the analysis and review of the fund which was presented at the previous Committee meeting. Tortoise MLP is on the watchlist for a third quarter because it underwent changes to its ownership structure; however, Innovest does not believe this will result in a negative impact. They will continue to monitor the funds.

In discussion, Mr. Bernosky asked how the Plan's demographics are monitored, analyzed, and considered in the decision-making process. Mr. Smalley explained that Platte River engages an actuary, currently Towers Watson, to monitor and analyze the Plan demographics. Annually, the Plan actuary provides a thorough report to the Committee and makes recommendations in line with the findings of the report. Gordon Tewell of Innovest added that the Plan still has a long timeframe and the portfolio is appropriate for the current demographic. However, a changing demographic is expected in the future due to the Plan having been closed to new participants in 2010. The Plan, including the demographics, will continue to be monitored and adjustments will be considered as deemed appropriate by the Committee, investment consultant and Plan actuary.

(3) Advisor/Consultant Fee Comparison Report. Innovest presented their advisor/consultant fee comparison report. The report was prepared using a database accessible to Innovest through Ann Schleck & Co., an Fi360 Company, and compares the Plan to 32 other private and public pension plans of similar size. In comparison, Innovest's fee is slightly above the lowest cost plan and significantly less than the median. Ms. Depperman asked if only defined benefit plans are

Defined Benefit Plan Committee Meeting Minutes: November 16, 2018

used in the comparison. Innovest replied the report includes both defined benefit and defined contribution plans.

(4) Investment Policy Statement. Innovest reviewed changes to the Investment Policy Statement that were also reviewed at the August Committee meeting. Changes are primarily “house-keeping” items, including updates to asset allocations, dates, Committee member names, and formatting. Additionally, the small- and mid-cap asset allocation categories were combined into one to align with investments managers’ current strategies. Also captured are changes that were requested by the Committee at the August meeting, including a change to the way Mr. Bernosky’s name is displayed as well as an update to reflect recent changes in Committee membership.

Mr. Smalley asked for a motion to approve the Investment Policy Statement. Mr. Bernosky moved, Mr. Jirsa seconded, and the motion passed 5-0.

Ms. Depperman asked Chairman Horak if he is willing to sign the Investment Policy Statement and August minutes via DocuSign. Chairman Horak said that he will sign via DocuSign.

(5) Proposed 2019 Retirement Committee Meeting Schedule. The Committee reviewed the proposed meeting schedule for 2019. Under the proposed schedule, all meetings will be held in Platte River’s Board Room.

Meeting Date	Start Time
February 28, 2019	12:30 p.m.
May 30, 2019	12:30 p.m.
August 29, 2019	12:30 p.m.
November 15, 2019	1:00 p.m.

Mr. Smalley asked for a motion to accept the 2019 Retirement Committee meeting schedule as presented. Mr. Jirsa moved, Mr. Bernosky seconded, and the motion passed 5-0.

(6) Other business. No other business.

The next regular Committee meeting is scheduled for February 28, 2019, at 12:30 p.m. in the Platte River Power Authority Board Room.

The meeting adjourned at 1:30 p.m.

Chairman Horak



Platte River Power Authority

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Memorandum

Date: November 28, 2018
To: Board of Directors
From: Jason Frisbie, General Manager and CEO
 Dave Smalley, Chief Financial Officer and Deputy General Manager
 Shelley Nywall, Controller
Subject: 2018 Budget Contingency Appropriation Transfer – Capital Additions

As mentioned in past management reports, staff has noted a need to move contingency funds to cover unbudgeted project work in addition to projects in the original 2018 capital budget. This is not uncommon; typically, there are several requests for out-of-budget projects and/or projects that require additional funds. These requests go through a formal submission, review and approval process, with final approval by the general manager. Frequently, the new requests can be managed and absorbed in the current budget due to the cancelation of other projects or the completion of projects under budget.

During 2018, the largest project that arose which cannot be fully absorbed into the current budget is listed below.

- \$2.7 Million – The bottom ash project, a significant outage project, requires additional funds. Due to high groundwater levels in the vicinity of the present bottom ash ponds, it was determined that a concrete tank is the preferred option to house liquid waste streams rather than the alternative of lining the existing earthen ponds. This decision was made subsequent to the approval of the 2018 budget. A concrete tank will better prevent leakage into the ground water and has the added benefit of not being subject to waste impoundment regulations.

At this time, the capital expenses contained in the 2018 budget are projected to be approximately \$3.8 million below budget at year end. However, several projects will not be completed during 2018 and the remaining funds for those projects, approximately \$5.5 million, will need to be carried over into 2019 to complete those projects. The majority of these projects are listed and highlighted in the financial report beginning on page 3.

As a result of the need to carry over funds to 2019, a budget contingency appropriation is required to cover additional capital project expenses. The amount of the transfer would not exceed \$1.9 million. Once year end closes, only the required amount needed will be transferred to the project. This eliminates moving funds that are not needed and the actual amount transferred will be reported to the board at the February meeting. Please refer to the tables below.

Capital Summary	\$ million
2018 capital budget	\$ 73.5
Estimated capital expenses at 12/31/18	69.7
Under budget variance	\$ 3.8
Estimated capital carryovers from 2018 to 2019	(5.5)
Estimated contingency transfer required	\$ (1.7)
10% adder for unknowns	(0.2)
Contingency transfer not to exceed amount	\$ (1.9)

Contingency Summary	\$ million
2018 contingency budget	\$ 23.0
Estimated transfer request for capital expense	(1.9)
Contingency balance	\$ 21.1



Resolution No. 15-17 adopting the annual budget for fiscal year 2018 included a Contingency Appropriation of \$23 million. Through the attached resolution, management staff is requesting an amount not to exceed \$1.9 million be re-appropriated to capital addition expenditures to cover the additional project expenses. Attached is a description of the budget contingency with a 10-year history of the amount budgeted each year and the purpose of the transfer, when applicable.

Staff will be available to answer any questions you may have at the board meeting.

Attachments

Budget contingency

The budget contingency can be used to meet unexpected expenditures that could not be foreseen at the time the budget was prepared. Events that may require the use of the contingency include unplanned generation or transmission outages, significant increases in power market or natural gas prices, unplanned expenses to maintain power supply to the owner communities, or the adoption of an accounting policy which impacts expenditures. It may also be used for existing capital projects that require expenditures above those budgeted as the result of scheduling changes, payment timing differences, changes in work scope, price fluctuations or new projects the board of directors deem important to start before the next budget year. The contingency has been used five out of the last nine years and a contingency transfer is not unusual for capital projects. Prior to transferring contingency to an expense category, staff must notify the board of directors of the need for the transfer and present a resolution proposed for adoption. The budget contingency appropriation amount represents approximately 10 percent of the budgeted operating expenses and capital additions to align with fluctuations in the budget. Prior to 2018, the budgeted contingency was a fixed amount.

Year	Contingency appropriation budget (\$000)	Appropriated amount (\$000)	%	Purpose
2009	\$20,000	-	-	
2010	\$20,000	\$6,000	30%	Additional expenditures for timing changes related to the 230kV transmission expansion capital projects.
2011	\$20,000	\$5,407	27%	Cost overruns for the 230kV transmission capital projects.
2012	\$20,000	-	-	
2013	\$20,000	-	-	
2014	\$20,000	-	-	
2015	\$20,000	\$6,640	33%	Additional expenditures for several capital projects including the Craig Unit 2 NOx removal, the fiber route to Estes Park, and the control room for the digital control system, as well as ancillary services related to additional wind generation.
2016	\$20,000	\$1,200	6%	Additional expenditures for the initial progress payments for the generator rotor replacement project and the generator stator rewind project to be completed during the 2018 planned maintenance outage.
2017	\$20,000	\$1,100	6%	Additional expenditures for the initial progress payments for the bottom ash and reclaim pond project to be completed during the 2018 planned maintenance outage.
2018	\$23,000	\$1,900 ⁽¹⁾	8%	Additional expenditures for the bottom ash and reclaim pond project to for a concrete tank to house liquid waste streams to better prevent leakage in the ground water. The project is to be completed during the 2018 planned maintenance outage.

(1) Estimate of contingency transfer request for capital projects.

RESOLUTION NO. __-18

WHEREAS, the 2018 Budget contains a Budget Contingency Appropriation in an amount of \$23,000,000; and

WHEREAS, the capital improvement projects listed and described in the memorandum dated November 28, 2018, cannot be fully accommodated in the existing 2018 capital budget and require the appropriation of additional funds during 2018; and

WHEREAS, a transfer of funds not to exceed \$1,900,000 from the Budget Contingency Appropriation category to the Capital Additions category will fund projects commenced in 2018 that span future fiscal periods; and

WHEREAS, management recommends that funds in an amount not to exceed \$1,900,000 be re-appropriated from the Budget Contingency Appropriation category to the Capital Additions category in order to fully fund these capital projects for 2018.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Platte River Power Authority that an amount not to exceed One Million, Nine Hundred Thousand Dollars (\$1,900,000) be transferred to the Capital Additions category from the Budget Contingency Appropriation category in the 2018 Budget.

AS WITNESS, I have executed my name as Secretary and have affixed the corporate seal of the Platte River Power Authority this _____ day of _____, 2018.

Secretary



Platte River

Power Authority

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Memorandum

Date: November 28, 2018
To: Board of Directors
From: Jason Frisbie, General Manager and CEO
Dave Smalley, Chief Financial Officer and Deputy General Manager
Shelley Nywall, Controller
Subject: 2019 Annual Budget Review and Adoption

Thank you for your engagement and support through the budget process. The steps in the budget process included a budget work session on September 27, 2018. A public hearing with review of the proposed budget was held on October 25, 2018, and there have been no changes to the budget since the October update. The budget is now in final form and ready for adoption.

The final budget includes total revenues of \$231.3 million and total expenditures of \$268.9 million, including a board contingency appropriation of \$23 million. Net income is projected to be \$23 million with debt service coverage at 2.60 times.

Attached is the proposed resolution to adopt the 2019 Annual Budget and appropriate funds for 2019 expenditures. Copies of the 2019 Annual Budget document and 2019 budget at a glance are provided with your board materials and are available on Platte River's website. At the December board meeting, staff will provide a brief budget overview.

Staff recommends adoption of the 2019 Annual Budget as submitted and will be available at the board meeting to answer any questions.

Attachment

RESOLUTION NO. __- 18

WHEREAS, Platte River Power Authority (“Platte River”) is a municipally owned utility and political subdivision of the State of Colorado, subject to the Local Government Budget Law of Colorado, Colorado Revised Statutes, Section 29-1-101, *et seq.*; and

WHEREAS, a proposed Annual Budget for Platte River for the fiscal year commencing January 1, 2019, and ending December 31, 2019, (“2019 Annual Budget”) has been prepared, submitted, and, following public notice, has been made available for public inspection in accordance with C.R.S. § 29-1-101 and the Platte River Fiscal Resolution (Resolution No. 25-16); and

WHEREAS, the Platte River Board of Directors received the proposed 2019 Annual Budget and held a public hearing to consider any public comments on or objections to the budget in accordance with the Local Government Budget Law; and

WHEREAS, the Board has reviewed the proposed 2019 Annual Budget and determined that the anticipated revenues, prior period reserves and debt financing are sufficient to meet Platte River’s costs of operation and maintenance, debt expense, capital additions, and contingencies and will provide an adequate earnings margin, in accordance with the Power Supply Agreements with the Municipalities, the covenants set forth in the General Power Bond Resolution (Resolution No. 5-87), and the Strategic Financial Plan (Resolution No. 03-18).

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Platte River Power Authority that:

- (1) The 2019 Annual Budget, in the form submitted, is hereby approved and adopted.
- (2) This Resolution shall constitute the "Platte River Power Authority Budget and Appropriation Resolution of 2019." This Resolution, together with the 2019 Annual Budget, represents a complete financial plan and makes total expenditure appropriations for the fiscal year 2019 of Two Hundred Sixty-Eight Million, Nine Hundred Seventeen Thousand, Fifty-Seven Dollars (\$268,917,057).

- (3) There is hereby budgeted and appropriated, from funds available to Platte River and not otherwise restricted as to purpose by the General Power Bond Resolution, the unexpended balance of funds authorized for expenditure by the Platte River Power Authority Budget and Appropriation Resolution of 2018 for the purposes specified in said resolution or in this Resolution.

AS WITNESS, I have executed my name as Secretary and have affixed the corporate seal of the Platte River Power Authority this _____ day of _____, 2018.

Secretary



Platte River

Power Authority

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Memorandum

Date: November 28, 2018
To: Board of Directors
From: Jason Frisbie, General Manager and CEO
Caroline Schmiedt, Deputy General Counsel
Subject: Retirement Plan Update Defined Benefit and Defined Contribution Plan Approvals

Platte River maintains two separate pension plans for the benefit of its employees. The Defined Benefit Plan is available for employees who were hired before September 1, 2010. The Defined Contribution Plan is available for employees who were hired on or after September 1, 2010.

Platte River is required to periodically review the pension Plans to ensure that they remain compliant with current IRS regulations. This review is required to meet Platte River's fiduciary duty and to ensure that the Plans remain "qualified" as determined by the IRS.

In the past the IRS issued "determination letters" after it reviewed plan modifications and determined that a plan remained a "qualified plan" under the IRS rules. Recently the IRS discontinued issuing determination letters, and Platte River's current determination letter for each Plan expires on January 31, 2019. Notwithstanding the fact that there is no longer a determination letter process, it is incumbent upon Platte River to keep the Plan documents up-to-date.

The proposed Plan changes in the redline documents have been made by consulting legal counsel for the Plan, Rachel James with Davis Graham & Stubbs. She has prepared memos summarizing the changes made to each Plan. The Plan changes have also been reviewed and approved by the Trustee for each Plan. In addition, Platte River staff and legal counsel have reviewed and participated in drafting the changes to each Plan document.

It is important to note that the changes proposed to the Defined Benefit Plan do not impact or modify the way that benefits are calculated under the Plan. Similarly, the changes proposed to the Defined Contribution Plan do not impact or modify the way that contributions or distributions are managed under the Plan. Instead, the changes to each Plan are legally required to keep the Plans in compliance with current IRS regulations. To ensure compliance, the proposed changes incorporate model plan provisions issued by the IRS.

Changes to the Defined Contribution Plan include incorporating updates to clarify the duties of the Plan Administrator and Plan Committee and incorporating updates to the appeal process. Both Plans include updates to the definition of "Spouse" to comply with current State and Federal law and minor formatting edits.



The Retirement Committee for the Defined Benefit Plan and the Defined Contribution Plan Committee have each voted to recommend amendments to the Defined Benefit Plan and Defined Contribution Plan respectively.

Staff recommends approval of the attached Resolutions adopting amended and restated versions of the Defined Benefit Plan and Defined Contribution Plan incorporating these changes.

Attachments

DAVIS GRAHAM & STUBBS

MEMORANDUM

TO: Platte River Power Authority
 FROM: Davis Graham & Stubbs LLP
 DATE: August 22, 2018
 SUBJECT: Platte River Power Authority Defined Benefit Plan ("Plan")
 Summary of Changes

Attached, for your review, is a redline highlighting the changes that will be made to the Platte River Power Authority Defined Benefit Plan, as amended and restated effective January 1, 2016 ("2016 Document") by the adoption of the proposed version of the Platte River Power Authority Defined Benefit Plan, as amended and restated effective January 1, 2019 ("Proposed Document"). These changes do not impact the way benefits are calculated under the Plan. Instead, such changes will clarify the Plan's terms, bring the Plan into compliance with the current trustee arrangement with Wells Fargo Bank, N.A., the Plan's Trustee ("Wells Fargo"), modify the Plan to include current model provisions, as issued by the Internal Revenue Service ("IRS") in its March, 2013 Defined Benefit Listing of Required Modifications and Information Package ("LRMs") and provide minor formatting edits.

Following is a list of the changes made pursuant to the Proposed Document, excluding minor wording and formatting changes (all page references are to the attached redline document):

1. Page 1. The language is modified to clarify that the Plan was amended and restated several times and that all employees whose initial date of hire is on or after September 1, 2010 are not eligible to participate in the Plan.
2. Page 13 through 14, Section 1.45. The definition of Spouse is revised to comply with current State and Federal law, as well as related guidance issued by the IRS regarding the recognition of marriages between people of the same gender.
3. Page 16, Section 2.1. The language is modified to clarify that the Plan was amended and restated several times and that all employees whose initial date of hire is on or after September 1, 2010 are not eligible to participate in the Plan.
4. Page 17, Section 3.1(c). This paragraph is deleted because it defines "potential months" for purposes of Section 3.1, but "potential months" is not used in this Section.
5. Page 21, Section 3.7 and Page 23, Section 3.8. These paragraphs are modified to clarify that the Disabled Participant will receive Credited Service for each year because he or she will be treated as if he or she had performed at least 1,000 Hours of Service in such year.
6. Page 25, Section 3.11. The section is modified to clarify that the Cost of Living Adjustment is based on the changes in the U.S. Consumer Price Index and not the index itself.
7. Page 26, Section 4.2(a). The language referencing employee and rollover contributions is deleted because there are no employee or rollover contributions to the Plan.
8. Page 28, Section 4.2(a)(ii)(B)(2). The language is modified for consistency with LRM 40, as provided for purposes of compliance with Section 415 of the Internal Revenue Code of 1986, as amended, ("Code") and the Treasury Regulations issued thereunder. This modification will clarify which interest rate and mortality table will be used for purposes calculating the 415 Defined Benefit Dollar Limitation for distributions in 2004 and 2005.

9. Page 28 through 29, Section 4.2(b). The language is modified for consistency with the LRM 40. The changes to the first paragraph will not change the definition of Compensation as set forth in Section 1.10 of the Plan. This Section clarifies how compensation is defined for the purpose of calculating a maximum allowable benefit. The current reference to Section 1.9 (which should refer to 1.10) and the proposed language, both of which are included in the first paragraph, use the definition of wages for income tax withholding under Section 3401(a) of the Code without reduction for the dollar limitations under Section 401(a)(17) of the Code.
Additional LRM 40 language is added to this section to incorporate the current practice of limiting compensation to that which is paid during the year, as opposed to accrued, and adding language related to post-severance compensation, consistent with the Treasury Regulations issued in 2007 under Section 415 of the Code ("2007 415 Regulations"). The 2007 415 Regulations addressed post-severance compensation to ensure that it would no longer be treated inconsistently due to the lack of related guidance. Similarly, LRM 40 language is added to clarify that back-pay and pre-tax amounts (such as pre-tax contributions for insurance) are included in compensation for purposes of calculating the 415 Defined Benefit Dollar Limitation. Such amounts may not otherwise be considered compensation due to the focus on "currently taxable income" under Section 415 of the Code.
10. Page 29, Section 4.2(c). The language is modified for consistency with LRM 40 and to clarify the timing of when the Defined Benefit Dollar Limitation, as adjusted by the IRS for inflation, is updated.
11. Page 29, Section 4.2(d)(i). The language is modified for consistency with LRM 40 and to clarify that when calculating the Maximum Permissible Benefit for participants with fewer than 10 years of participation, the numerator cannot be less than one year, as required under the 2007 415 Regulations.
12. Page 29, Section 4.2(d)(ii) and (iii). The language is modified for consistency with LRM 40 to incorporate the rules for adjusting the 415 Dollar Benefit Limitation for participants whose benefits commence prior to age 62 both before and after the adoption of the 2007 415 Regulations. The current language only addresses benefit commencement dates prior to July 1, 2007. The Plan's actuaries have confirmed that adding this language will not require any changes in the current method of calculating limits on the benefits paid to Plan participants.
13. Page 30, Section 4.2(d)(iv) and (v). The language is modified for consistency with LRM 40 to incorporate the rules for adjusting the 415 Dollar Benefit Limitation for participants whose benefits commence after age 65 both before and after the adoption of the 2007 415 Regulations. The current language only addresses benefit commencement dates prior to July 1, 2007. The Plan's actuaries have confirmed that adding this language will not require any changes in the current method of calculating limits on the benefits paid to Plan participants.
14. Page 31, Section 4.2(e). This language is deleted because "Year of Participation" is not used in the Plan.
15. Page 32, Section 5.1. The change removes any reference to the "Annuity Starting Date" because the payment is a lump sum payment.
16. Page 47 through 48, Section 6.10. This language is modified to clarify the Plan Administrator's role and clearly establish the Plan Administrator's power as limited by the power reserved by the Employer, Retirement Committee and Trustee. Additionally, the revisions clarify that the Plan Administrator has the authority to make benefit determination corrections and adjustments.
17. Page 57, Section 8.4(f). The paragraph is deleted because it provides that the Committee will review all direction given to the Trustee before the Trustee can act upon the direction. As an administrative function, the Committee has delegated authority to the Plan Administrator to provide direction to the Trustee.
18. Pages 59 through 64, Article 9. These changes modify the Plan's Trust Agreement for consistency with the Plan's current arrangement with Wells Fargo. The 2016 Document indicates that Wells Fargo is acting as a "discretionary trustee" with full authority regarding the investment and management of the

trust fund. However, Wells Fargo is currently acting as a “directed trustee” who will invest and manage the trust fund based on the directions of the Committee, or any Investment Manager appointed in connection with the Plan. Wells Fargo confirmed that these revisions will result in consistency between the Plan document and operations.

Exhibit A

DGS Draft 7/31/18

**PLATTE RIVER POWER AUTHORITY
DEFINED BENEFIT PLAN**

As Amended and Restated Effective
January 1, ~~2019~~2016

**PLATTE RIVER POWER AUTHORITY
FORT COLLINS, COLORADO**

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PLATTE RIVER POWER AUTHORITY

DEFINED BENEFIT PLAN

The Platte River Power Authority Defined Benefit Plan (formerly known as the Platte River Power Authority Employees' Pension Plan) and the Platte River Power Authority Defined Benefit Trust were adopted by the Employer effective as of June 1, 1973, in order to facilitate the retirement of its eligible employees in an orderly and equitable manner. The Plan was previously amended and restated in its entirety ~~multiple times, effective January 1, 2011 and January 1, 2014.~~ Except as otherwise stated herein, the Plan is amended and restated in its entirety effective January 1, ~~2019~~2016. The existing Trust shall remain unchanged. By adopting this restated Plan, the Employer is continuing the Plan for the purpose of providing retirement benefits to Employees. The Employer intends that this Plan conform to and qualify under Code §§ 401 and 501.

The Plan was closed with respect to new hires. As a result, an Employee whose initial date of hire with the Employer is on or after September 1, 2010 shall not be eligible to participate in the Plan.

~~Any Employee who retired or whose service terminated on or before December 31, 2010, and who is not on an approved leave of absence as of December 31, 2010, shall receive only those benefits, if any, to which he or she is entitled under the provisions of the Plan as in effect prior to January 1, 2011. Notwithstanding the preceding sentence, if an earlier or later effective date applies to a provision in this restated Plan, the provision shall be effective as of the earlier or later effective date.~~

ARTICLE 1.

DEFINITIONS

- 1.1 **Accounting Date** shall mean the last day of the Plan Year.
- 1.2 **Accrued Benefit** shall have the meaning assigned to it by Section 3.1.
- 1.3 **Actuarial Equivalent or Actuarially Equivalent** shall mean equality in value of the aggregate amounts expected to be received under different forms of payments and determined on the basis of using interest compounded annually, mortality according to the Projected Annuity Mortality Table, unadjusted for females, and an assumption of no future cost of living adjustments:
- (a) Interest Rate Assumption for Single Sum Distributions and for Sections 3.3, 3.9, and 3.10
 - (i) for distributions commencing after December 31, 2015~~2013~~, the Plan Stated Interest Rate; and
 - (ii) for distributions commencing before January 1, 2016~~2014~~, the interest rate assumption in effect under the Plan provisions in effect as of the date distribution commenced.
 - (b) Mortality Assumptions for Single Sum Distributions and for Sections 3.3, 3.9, and 3.10
 - (i) for distributions commencing after December 31, 2015, the Male RP-2014 healthy annuitant rates, without collar or quartile adjustments, but with improvements beyond 2007 backed out, and projected generationally from 2007 using the Society of Actuaries Retirement Plan Experience Committee model with 10 year convergence to a 1% long term improvement rate through age 85 and long term improvement rates declining to 0% linearly between ages 85 and 95;
 - (ii) for distributions commencing after December 31, 2013 and before January 1, 2016, the Male RP-2000 Combined Healthy Mortality Table; and
 - (iii) for distributions commencing before January 1, 2014, the Mortality Assumption in effect under the Plan provisions in effect as of the date distributions commenced.
 - (c) Cost of Living Adjustment Assumption for Single Sum Distributions and for Sections 3.3, 3.9, and 3.10
 - (i) for distributions commencing after December 31, 2015, 1.5%;
 - (ii) for distributions commencing after December 31, 2013 and before January 1, 2016, 2.0%; and
 - (iii) for distributions commencing before January 1, 2014, the Cost of Living Adjustment Assumption in effect under the Plan provision in effect as of the date the distribution commenced.

- (d) **Applicable Mortality Table** — effective for Plan Years beginning after December 31, 2007, notwithstanding any other Plan provisions to the contrary and except as provided by the Internal Revenue Service, the applicable mortality table used for purposes of adjusting any benefit or limitation under Code § 415(b)(2)(B), (C) or (D) and Article 4 is the mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the Plan Year under subparagraph (A) of Code § 430(h)(3) (without regard to subparagraphs (C) or (D) of that Section).
 - (e) **Applicable Interest Rate** — effective for Plan Years beginning after December 31, 2007 and except as provided by the Internal Revenue Service, for purposes of determining the Actuarial Equivalent single sum value of the maximum benefit defined under Article 4, any provision requiring the use of the annual rate of interest in 30-year U.S. Treasury securities shall be implemented by using the rate of interest determined by the applicable interest rate described in Code § 417(e) after its amendment by the Pension Protection Act of 2006. The applicable interest rate shall be the adjusted first, second and third segment rates applied under rules similar to the rules of Code § 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe. For this purpose, the adjusted first, second and third segment rates are the first, second and third segment rates which would be determined under Code § 430(h)(2)(C) if:
 - (i) Code § 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding sentence for the average yields for the 24 month period described in such Section;
 - (ii) Code § 430(h)(2)(G)(i)(II) were applied by substituting “§ 417(e)(3)(A)(ii)(II) as worded prior to its amendment by the Pension Protection Act of 2006” for “§ 412(b)(5)(B)(ii)(II);” and
 - (iii) The applicable percentage under Code § 430(h)(2)(G) were treated as being 20 percent for the 2008 Plan Year, 40 percent for the 2009 Plan Year, 60 percent for the 2010 Plan Year, 80 percent for the 2011 Plan Year, and 100 percent for Plan Years 2012 and later.
 - (f) **Applicable Interest Rate** – effective for Plan Years beginning after December 31, 2013, and except as provided by the Internal Revenue Service, for purposes of determining the Actuarial Equivalent single sum value of the maximum benefit defined under Article 4, the interest rate is the greater of the Plan ~~Stated~~State Interest Rate or the rate determined under Code § 415(b)(2)(E)(i) and the regulations thereunder.
- 1.4 **Annuity Starting Date** shall mean the first day of the first period for which the Plan pays an amount as an annuity or in any other form.
- 1.5 **Beneficiary** shall mean the person or persons (natural or otherwise) determined in accordance with Section 6.2, who is entitled to receive benefits under the Plan after a Participant’s death.
- 1.6 **Break in Service** shall mean a Plan Year in which the Employee does not complete more than 500 Hours of Service with the Employer.
- 1.7 **Code** shall mean the Internal Revenue Code of 1986, as amended from time-to-time.

- 1.8 **Colorado Civil Union Act** shall mean the Colorado Civil Union Act, as set forth in Colorado Senate Bill 13-011, signed by governor of the State of Colorado on March 21, 2013, and codified at Section 14-15-101 et. Seq. of the Colorado Revised Statutes.
- 1.9 **Committee** shall mean the Retirement Committee appointed to administer the Plan pursuant to the provisions of Article 8.
- 1.10 **Compensation** shall mean, subject to the limitations in Subsections (d), (e), (f), (g), and (h):
- (a) for Plan Years beginning on or after January 1, 2000, wages paid by the Employer for which the Employer is required to furnish the Participant a written statement under Code §§6041(d), 6051(a)(3), and 6052 adjusted as follows:
 - (i) any amounts contributed by an Employer on the Participant's behalf under a salary reduction agreement or designated as an employee contribution and not includable in the gross income of the Employee under Code §§125, 132(f), 402(g), 402(h), 414(h), 457, or 403(b) will be included;
 - ~~(ii)~~ accumulated personal leave and sick pay amounts paid upon termination of employment or upon commencement of an ~~In Service~~~~Inservice~~ Distribution will be included only for Participants whose Employment Commencement Date occurred prior to January 1, 2004;
 - (ii)
 - (iii) all of the following will be excluded:
 - (A) expense reimbursements and allowances;
 - (B) all taxable fringe benefits except group term life insurance premiums;
 - (C) moving expenses;
 - (D) short-term disability payments;
 - (E) long-term disability payments;
 - (F) non-qualified deferred compensation;
 - (G) severance pay; and
 - (H) wellness initiatives.
 - (iv) for Participants whose Employment Commencement Date occurred on or after January 1, 2004, all of the following shall be excluded in addition to items excluded under (iii) above:
 - (A) overtime other than regularly scheduled overtime;
 - (B) payouts at termination or upon commencement of an ~~In Service~~~~Inservice~~ Distribution for Compensatory Time Off (CTO).

- (v) for Participants whose Employment Commencement Date occurred on or after January 1, 2008, all of the following shall be excluded in addition to items excluded under (iii) and (iv) above:
 - (A) payouts at termination or upon commencement of an ~~In Service~~~~Inservice~~ Distribution for Wellness Leave;
 - (B) payouts at termination or upon commencement of an ~~In Service~~~~Inservice~~ Distribution for Recognition Leave.
- (b) for Plan Years beginning on or after January 1, 1995, and ending on or before December 31, 1999, wages paid by the Employer that constitute wages within the meaning of Code §3401 or qualify as a payment of compensation for which the Employer is required to furnish the Participant a written statement under Code §§6041(d), 6051(a)(3), and 6052 adjusted as follows:
 - (i) any amounts contributed by an Employer on the Participant's behalf under a salary reduction agreement or designated as an Employee contribution and not includable in the gross income of the Employee under Code §§125, 402(g), 402(h), 414(h), 457, or 403(b) will be included;
 - (ii) all of the following will be excluded:
 - (A) reimbursements and other expense allowances;
 - (B) all taxable fringe benefits except group term life insurance premiums;
 - (C) moving expenses; and
 - (D) currently taxable deferred compensation and welfare benefits included as wages within the meaning of Code §3401.
- (c) for Plan Years prior to January 1, 1995, the compensation paid to a Participant by the Employer, for the applicable calendar year that would be subject to tax (for the purpose of the Federal Insurance Contribution Act) under Code § 3101(a), without the dollar limitation of §3121(a)(1).
- (d) for any Participant who became a Participant on or before December 31, 1995, the annual compensation taken into account under this Plan for any calendar year will not exceed the adjusted annual compensation limit under Code § 401(a)(17) as of July 1, 1993, which shall not be less than \$235,840 as adjusted annually by the Secretary of the Treasury to reflect cost of living changes.
- (e) subject to (d) above, for calendar years beginning after December 31, 1998, the annual compensation taken into account under this Plan for any calendar year shall not include amounts in excess of \$200,000, as adjusted annually by the Secretary of the Treasury to reflect cost of living changes.
- (f) subject to (d) above, for calendar years beginning on or after January 1, 1996 and for Participants who became a Participant on or after January 1, 1996, annual compensation

taken into account under this Plan for any calendar year shall not exceed \$150,000 as adjusted annually by the Secretary of the Treasury to reflect cost of living changes.

- (g) **Increase in limit.** The annual compensation of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001, shall not exceed \$200,000. Annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). If a determination period consists of fewer than 12 months, the \$200,000 limitation will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, compensation for any prior determination period shall be \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.
 - (h) **Cost-of-living adjustment.** The \$200,000 limit on annual compensation in (g) above shall be adjusted for cost-of-living increases in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.
- 1.11 **Compensatory Time Off (CTO)** shall mean paid time off for work hours that exceed the normal work schedule.
- 1.12 **Covered Compensation** means, in all years, the annual average divided by 12 (calculated without indexing) of the Taxable Wage Bases in effect for each calendar year during the 35 year period ending with the last day of the calendar year in which the Participant attains (or will attain) the Social Security retirement age (as defined in Code § 415(b)(8)). In determining a Participant's Covered Compensation for a Plan Year, the Taxable Wage Base for the current Plan Year and any subsequent Plan Year is assumed to be the same as the Taxable Wage Base in effect at the beginning of the Plan Year for which the determination is being made. A Participant's Covered Compensation for a Plan Year after the 35 year period is the Participant's Covered Compensation for the Plan Year during which the Participant attained the Social Security retirement age. A Participant's Covered Compensation for a Plan Year before the 35 year period is determined using the Taxable Wage Base in effect as of the beginning of the Plan Year. A Participant's Covered Compensation shall be adjusted for each Plan Year.
- 1.13 **Credited Service** means the total period of an Employee's service computed in full calendar months, counting the month during which the Employment Commencement Date occurs and the month during which the Employee terminates service with the Employer and all of the calendar months in between not otherwise excluded under the Plan.
- (a) Any absence due to the Employee's qualified military service will be included in Credited Service.
 - (b) Notwithstanding any provision herein, no Credited Service shall accrue for any Participant who has less than 1,000 Hours of Service in a Plan Year, unless it is (i) the Plan Year in which the Participant terminates employment with the Employer for any reason, (ii) the Plan Year in which the Participant works less than 1,000 Hours of Service but has an In Service Distribution commencement date, in which case Credited Service shall accrue only up to the In Service Distribution commencement date, or (iii) the

partial Plan Year following the Participant's Employment Commencement Date, in which case the actual number of Hours of Service shall be annualized by dividing the actual number of hours by the number of Credited Service months and multiplying by 12 to determine if Credited Service should be given for the partial year following the Employment Commencement Date.

- (c) If a Participant terminates employment and is reemployed, Credited Service shall be calculated as follows:
- (i) Except as provided below, all Credited Service with the Employer will be included for the purposes of determining the Participant's vested Accrued Benefit.
 - (ii) If a Participant returns to service with the Employer within the same Plan Year in which he terminated service, and receives a partial year of Credited Service pursuant to (b)(i) above, but does not complete 1,000 Hours of Service during that Plan Year, the Employee will continue to be credited with the partial year of Credited Service under (b)(i) above.
 - (iii) If a Participant returns to service with the Employer and the Employee's number of One-Year Periods of Severance between the date of termination of service and the Reemployment Date is less than 5, the Employee will retain prior Credited Service accrued as of the date of termination of service.
 - (iv) If the Participant returns to service with the Employer and the Employee's number of One-Year Periods of Severance between the date of termination of service and the Reemployment Date equals or exceeds 5, the Employee's Credited Service as of the date of termination of service will be disregarded if both of the following conditions exist:
 - (A) The Employee did not have a vested interest as of the date of termination; and
 - (B) The Employee's Vesting Service as of the date of termination of service ~~is are~~ less than or equal to the number of consecutive One-Year Periods of Severance between the date of termination and the Reemployment Date.
 - (v) If a Participant returns to service with the Employer prior to the date distribution of his vested Accrued Benefit commences and had terminated service on or after his or her Initial Vesting Date, Normal Retirement Date, Early Retirement Date, or Disability, all Credited Service earned as of the date of termination of service will be taken into account.
 - (vi) If a Participant has begun to receive his distribution of his vested Accrued Benefit prior to returning as a Participant, Credited Service earned prior to the distribution will be included, but the Participant's Accrued Benefit shall be adjusted as provided in ~~Sections~~Section 3.9 and 3.10.
- (d) If a Participant receives an ~~In Service~~In Service Distribution, service worked after the ~~In Service~~In Service Distribution commencement date shall be counted for purposes of determining whether the Participant has earned any additional Accrued Benefit at the time the Employee subsequently terminates service, provided, however, that the Participant

shall not receive more than one year of Credited Service for the Plan Year in which the Participant's ~~In Service~~Inservice Distribution commencement date occurs.

- 1.14 **Disability or Disabled** means a physical or mental condition that renders a Participant incapable of continuing in the employment of the Employer and incapable of engaging in any substantial gainful employment. A Participant will not be Disabled unless a Participant qualifies for Social Security disability benefits effective as of the month in which the Participant terminates employment with the Employer.
- 1.15 **Domestic Partner** shall mean a Party to a Civil Union as that term is defined in Section 103(5) of the Colorado Civil Union Act and any other person treated as Party to a Civil Union pursuant to C.R.S. Section 14-15-116.
- 1.16 **Domestic Partner Joint and 50% Survivor Annuity** shall mean an annuity for the life of the Participant with a survivor annuity for the life of the Participant's Domestic Partner which (1) subject to the requirements of Code Section 401(a)(9) is 50% of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and (2) which is the normal form of payment for Participants with Domestic Partners described in Section 5.1.
- 1.17 **Earliest Retirement Age** shall mean the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- 1.18 **Early Retirement Date** shall have the meaning specified under Section 3.4(a)(iii). 7
- 1.19 **Effective Date** shall mean June 1, 1973. The provisions of this restated Plan shall be effective as of the date of the latest restatement, except that for each Plan provision required by statute or regulation to be effective as of an earlier or later date, or by its terms effective as of an earlier or later date, the Effective Date is the date as of which the provision is required to be effective.
- 1.20 **Employee** shall mean any person on the payroll of the Employer whose wages from the Employer are subject to withholding for the purposes of Federal income taxes and for the purposes of the Federal Insurance Contributions Act. Employee shall not include a Leased Employee. Leased Employee shall mean an individual (other than a common law employee of the Employer) who, pursuant to an agreement between the Employer and a leasing organization, has performed services for the Employer on a substantially full time basis for a period of at least one year, and the individual's service is performed under the primary direction or control by the recipient. The Employer shall treat contributions or benefits provided to the Leased Employee by the leasing organization as contributions or benefits provided by the Employer to the extent attributable to services the Leased Employee performed for the Employer. Notwithstanding the preceding provisions of this paragraph, an individual is not a Leased Employee if the Leased Employee is covered by a safe harbor plan under Code § 414(n) and Leased Employees do not constitute more than 20% of Employees. Effective for years beginning on or after January 1, 2009, an individual receiving a differential wage payment, as defined in Code § 3401(h)(2), shall be treated as an Employee of the Employer making the payment.
- 1.21 **Employer** shall mean the Platte River Power Authority, a separate governmental entity and a political subdivision of the State of Colorado, and its successors or assigns.
- 1.22 **Employment Commencement Date** shall mean the date on which an Employee is first credited with performing an Hour of Service, as modified in Section 2.2 for reemployed Employees.

- 1.23 **Final Average Monthly Compensation** shall mean, for Plan Years ending on or before December 31, 1994, the Participant's average monthly rate of Compensation from the Employer for the 36 consecutive months out of the 120 months immediately preceding (1) the first day of the month coincident with or next following the date on which the Participant's service terminates for any reason, or (2) the Participant's Normal Retirement Date, whichever is earlier, which gives the highest average monthly rate of Compensation for the Participant. The Participant's average monthly rate of Compensation will be determined by dividing the total Compensation received during the 36 consecutive month period by 36. Prior to January 1, 1993, the number of months for which the Employee received Compensation from the Employer will be computed to the extent the Employee was paid on other than a monthly basis, by determining the number of bi-weekly pay periods ending within the 36 consecutive month period for which the Employee received Compensation from the Employer and converting such pay periods into months by dividing the number thereof by 2-1/6. In computing Final Average Monthly Compensation for a Participant who has returned to the active service of the Employer following a full calendar year or calendar years during which the Employee did not receive regular Compensation from the Employer because of a Leave of Absence without pay granted by the Employer, or because of such Participant's reemployment with a reinstatement of the Employee's prior Vesting Service and Credited Service, the period during which the Employee did not receive regular Compensation from the Employer shall be excluded in determining the 120 months and the 36 consecutive months to be used in determining the Participant's Final Average Monthly Compensation.

Effective for Plan Years beginning on or after January 1, 1995 for Participants who terminate service with the Employer on or after January 1, 1995, Final Average Monthly Compensation shall mean the greater of (1) Final Average Monthly Compensation as of December 31, 1994, or (2) the Participant's average annual Compensation from the Employer for three consecutive Plan Years out of the 10 Plan Years immediately preceding (i) the Participant's termination of service for any reason or (ii) the Participant's Normal Retirement Date, whichever is earlier, which gives the highest average annual Compensation for the Participant, divided by 12.

Effective for Plan Years beginning on or after January 1, 2001, for Participants who terminate service with the Employer on or after January 1, 2001, Final Average Monthly Compensation shall mean the greater of (1) Final Average Monthly Compensation as of December 31, 1994, or (2) the Participant's total Compensation from the Employer for three consecutive Plan Years out of the 10 Plan Years immediately preceding (i) the Participant's termination of service for any reason or (ii) the Participant's Normal Retirement Date, whichever is earlier, which gives the highest total Compensation for the Participant, plus any amounts received at termination for accrued personal leave, up to a maximum of 440 hours, and any amounts received at termination for accrued sick leave, up to a maximum of 400 hours, divided by 36, provided, however, that no amounts paid to a Participant shall be counted more than once for purposes of calculating Final Average Monthly Compensation.

Effective for Plan Years beginning on or after January 1, 2004, for Participants who terminate service with the Employer on or after January 1, 2004, Final Average Monthly Compensation shall mean the greater of (1) Final Average Monthly Compensation as of December 31, 1994, or (2) the Participant's total Compensation from the Employer for three consecutive Plan Years out of the 10 Plan Years in which the Participant was employed immediately preceding (i) the Participant's termination of service for any reason or (ii) the Participant's Normal Retirement Date, whichever is earlier, which gives the highest total Compensation for the Participant, plus, for Participants hired before January 1, 2004, any amounts received at termination for accrued personal leave, up to a maximum of 440 hours, and any amounts received at termination for accrued sick leave, up to a maximum of 400 hours, divided by 36, provided, however, that no amounts paid to a Participant

shall be counted more than once for purposes of calculating Final Average Monthly Compensation. For purposes of determining consecutive Plan Years, Plan Years for which the Participant is not credited with at least 1,000 hours shall be ignored, and the Plan Year first preceding such year and the Plan Year first following such year for which the Participant is credited with at least 1,000 hours shall be considered consecutive Plan Years.

For Participants who take an ~~In Service~~~~Inservice~~ Distribution permitted under Section 5.7(b), for purposes of calculating that distribution, Final Average Monthly Compensation shall mean the greater of (1) Final Average Monthly Compensation as of December 31, 1994, or (2) the Participant's total Compensation from the Employer for three consecutive Plan Years out of the 10 Plan Years in which the Participant was employed immediately preceding (i) the Participant's ~~In Service~~~~Inservice~~ Distribution commencement date or (ii) the Participant's Normal Retirement Date, whichever is earlier, which gives the highest total Compensation for the Participant, plus, for Participants hired before January 1, 2004, any amounts received as of the ~~In Service~~~~Inservice~~ Distribution commencement date for accrued personal leave, up to a maximum of 440 hours, and any amounts received as of the ~~In Service~~~~Inservice~~ Distribution commencement date for accrued sick leave, up to a maximum of 400 hours, divided by 36, provided, however, that no amounts paid to a Participant shall be counted more than once for purposes of calculating Final Average Monthly Compensation. For purposes of determining consecutive Plan Years, Plan Years for which the Participant is not credited with at least 1,000 hours shall be ignored, and the Plan Year first preceding such year and the Plan Year first following such year for which the Participant is credited with at least 1,000 hours shall be considered consecutive Plan Years.

1.24 **Hour of Service** means:

- (a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. The Plan Administrator shall credit Hours of Service under this paragraph (a) to the Employee for the period during which the Employee is paid, irrespective of when the services were performed.
- (b) Each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (regardless of whether the employment relationship has terminated) due to vacation, holiday, illness, Disability, layoff, jury duty, military duty, or Leave of Absence, provided that no Hours of Service shall be credited to an Employee:
 - (i) for a period during which no duties are performed, but payment is made or due under a Plan maintained solely for purpose of complying with applicable workers' compensation, unemployment compensation or disability insurance laws;
 - (ii) on account of any payment made or due an Employee solely as reimbursement for medical or medically related expenses incurred by the Employee;
 - (iii) And provided, that no Hours of Service shall be credited to a Participant for accumulated personal leave in excess of 440 hours; and for accumulated sick pay in excess of 400 hours.
- (c) Each hour not otherwise credited under the Plan for which back pay, irrespective of mitigation of damages, has either been awarded or agreed to by the Employer. The Plan Administrator shall credit Hours of Service under this paragraph (c) to the period or periods to which the award or agreement pertains.

- (d) Each hour for any period during which an Employee is not paid but is on an authorized Leave of Absence, or is temporarily laid off, provided that the Employee:
- (i) returns to the employ of the Employer immediately after the expiration of the leave or layoff, and
 - (ii) remains in the employ of the Employer for at least 30 days after such return, or
 - (iii) fails to return or remain employed as provided above by reasons of death, Disability or attainment of the Normal Retirement Date.

If the Employee fails to return to the employ of the Employer or to remain in the employ of the Employer for at least 30 days after his return for reasons other than death, Disability or attainment of the Normal Retirement Date, then the Employee's original leave date shall be deemed to be the date the Employee terminates from service with the Employer.

- (e) If an individual is absent from work as a result of a qualified maternity or paternity leave, the 12 consecutive month period beginning on the first anniversary of the first date of the absence shall not constitute a One-Year Period of Severance. "Qualified maternity or paternity leave" means an absence from work commencing on or after the first day of the Plan Year beginning after December 31, 1984, by reason of (a) the pregnancy of the Employee, (b) the birth of a child of the Employee, (c) the placement of a child with the Employee in connection with the adoption of the child, or (d) caring for a child immediately following the birth or placement of the child.
- (f) Qualified military service will be credited for all purposes of the Plan as required under Code §414(u).

The Plan Administrator shall not credit an Hour of Service under more than one of the above paragraphs. The Plan Administrator shall credit Hours of Service in accordance with the rules set forth in paragraphs (b) and (c) of the DOL Reg. § 2530.200b-2, which is incorporated herein by reference.

- 1.25 **~~In Service~~Inservive Distribution** shall mean a distribution commenced by a Participant prior to termination of employment as described in Section 5.7(b).
- 1.26 **Initial Vesting Date** shall mean the date the Employee completes five Years of Vesting Service.
- 1.27 **Leave of Absence** shall mean an absence from active employment with the Employer by reason of an approved absence granted by the Employer. In the event that the Employee's service with the Employer is interrupted because of any absence including, but not limited to, discharge or resignation, which is not deemed a Leave of Absence, the Employee's employment with the Employer will be considered terminated for the purposes of the Plan as of the date of the beginning of the interruption.
- 1.28 **Limitation Year** shall mean the 12 month period commencing on January 1 and ending on the following December 31.

- 1.29 **Normal Retirement Date** shall mean the later of the date on which the Participant attains age 65 or the date which is the fifth anniversary of the first day of the first Plan Year in which the Employee became a Participant in the Plan.
- 1.30 **One-Year Period of Severance** shall mean each Period of Severance of 12 months, measured from the Employee's date of termination of service and from each one year anniversary of such date of termination of service, that precedes the Employee's subsequent performance of an Hour of Service.
- 1.31 **Participant** shall mean (1) any active Employee who has met the requirements of Section 2.1, (2) any former Employee who has met the requirements of Section 2.1 and whose service has not been terminated and (3) any retired or terminated Employee who has vested rights to benefits under the provisions of the Plan.
- 1.32 **Period of Service** means the period beginning on the Employee's Employment Commencement Date or Reemployment Date and ending on the date a One-Year Period of Severance begins.
- 1.33 **Period of Severance** shall mean the period measured from the Employee's date of termination of service and from each one year anniversary of such date of termination of service, that precedes the Employee's subsequent performance of an Hour of Service. A Period of Severance begins on the date the Employee retires, quits, is discharged or dies, or, if earlier, the twelve month anniversary of the date on which the Employee was first absent from service with the Employer for any other reason; provided, however, that if an Employee is absent from work for any other reason and retires, quits, is discharged or dies within twelve months, the Period of Severance begins on the date the Employee quits, retires, is discharged or dies.
- 1.34 **Plan** shall mean the Platte River Power Authority Defined Benefit Plan, as amended and restated.
- 1.35 **Plan Administrator** shall mean the Employer's General Manager or such other person or entity as designated from time to time by the Employer's Board of Directors.
- 1.36 **Plan Stated Interest Rate** shall mean, for Plan Years commencing after December 31, 2015, 7.5% per annum, ~~and for Plan Years commencing after December 31, 2013 and prior to January 1, 2016, 8% per annum.~~
- 1.37 **Plan Year** shall mean the calendar year.
- 1.38 **Qualified Joint and Contingent Annuity** shall mean an annuity for the life of the Participant with a survivor annuity for the life of the Spouse (1) which is 50% of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and (2) which is the normal form of payment for married Participants described in Section 5.1.
- 1.39 **Reemployment Date** shall mean the date the Employee first performs an Hour of Service subsequent to incurring a Break in Service.
- 1.40 **Regulations or Treasury Regulations** shall mean those regulations interpreting and applying the Code published by the United States Treasury and Located in ~~Title~~Titled 26 of the Code of Federal Regulations.

- 1.41 **Required Beginning Date** shall mean April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires.
- 1.42 **Retire or Retirement** shall mean termination of employment eligible for immediate payment of Late, Normal, or Early or Special Early Retirement Benefit.
- 1.43 **Special Early Retirement Date** shall mean the date before the Participant's Normal Retirement Date on which the Special Early Retirement Benefit commences pursuant to Section 3.5.
- 1.44 **Special Unreduced Early Retirement Date** for purposes of determining whether a Participant qualifies for a Special Early Retirement Benefit under Section 3.5, shall mean the 7th anniversary of the date which is the later of (1) the date the Participant attains age 55 or (2) the date the Participant completes 13 years of Credited Service.
- 1.45 **~~"Spouse"~~** shall mean:

- (i) With respect to administration of the Plan for periods prior to ~~June 26~~September 16, 2013, the Spouse or surviving Spouse of the Participant, as determined in accordance with the Colorado Uniform Marriage Act.
- (ii) With respect to administration of the Plan for periods on and after ~~June 26~~September 16, 2013, ~~the Spouse or surviving Spouse of the Participant, provided that such any individuals who~~ are lawfully married under any state law or the law of any foreign country, including, ~~but not limited to individuals married to, a person of the same-sex marriage that is~~ who were legally recognized as married in a marriage under any state law or foreign country that recognizes such marriages, but who are domiciled in a state that does not recognize such marriages; and similarly
 - (A) ~~"marriage" will be read to include a same sex marriage that is legally recognized as a marriage under any state law; however~~
 - (B) ~~neither term includes persons of the same or opposite sex who are in a formal relationship recognized by a state that is not deemed a marriage under state law (e.g., domestic partnership or civil union), regardless of whether persons in those relationships have the same rights and obligations as persons who are married under state law.~~

A former Spouse and a former Domestic Partner will be treated as the Spouse or the surviving Spouse to the extent required under a qualified domestic relations order as defined in Code § 414(p).

~~Except as provided herein, the term "Spouse" shall, for all purposes under this Plan, include the Domestic Partner or surviving Domestic Partner of the Participant if:~~

- ~~(a) The Employer obtains a determination from the Internal Revenue Service that the treatment of a Domestic Partner as a Spouse shall not cause the Plan to fail to constitute a plan satisfying the qualification requirements of Code section 401(a), provided that a Domestic Partner shall be treated as a Spouse hereunder only from and after the effective date of such Internal Revenue Service determination;~~

- ~~(b) The Internal Revenue Service issues a ruling or regulation providing that treatment of a Domestic Partner as a Spouse shall not cause the Plan to fail to constitute a plan satisfying the qualification requirements of Code section 401(a), provided that a Domestic Partner shall be treated as a Spouse hereunder only from and after the effective date of such Internal Revenue Service ruling or regulation;~~
- ~~(c) A final non appealable order of the Colorado Supreme Court, the Colorado Court of Appeals, or a Federal Court is entered, which order is binding against the State of Colorado, holding that Domestic Partners should be treated for all purposes under the laws of the State of Colorado as married for purposes of the Colorado Uniform Marriage Act; or~~
- ~~(d) The State of Colorado, whether through legislative act or by way of constitutional amendment, recognizes Domestic Partners for all purposes under the laws of the State of Colorado as married for purposes of the Colorado Uniform Marriage Act.~~

- 1.46 **Taxable Wage Base** shall mean the contribution and benefit base in effect under § 230 of the Social Security Act at the beginning of the Plan Year.
- 1.47 **Trust and Trust Fund** shall mean the Trust Fund established pursuant to the terms of the Trust Agreement.
- 1.48 **Trust Agreement** shall mean the Platte River Power Authority Defined Benefit Trust as amended and restated in Article 9 of the Plan, effective as of November 1, 1994.
- 1.49 **Trustee** shall mean the Trustee appointed from time to time pursuant to the Trust Agreement to administer the Trust Fund maintained for the purposes of the Plan.
- 1.50 **Vesting Service** shall mean the total period of the Employee's service computed in years and months beginning with the Employee's Employment Commencement Date and ending on the date a Period of Severance begins.
 - (a) Any absence due to the Employee's qualified military service will be included in Vesting Service.
 - (b) If a Participant is reemployed, Vesting Service will be calculated as follows:
 - (i) Except as provided below, all Vesting Service with the Employer will be included for the purposes of determining the Participant's vested Accrued Benefit.
 - (ii) If a Participant returns to service with the Employer and the Employee's number of One-Year Periods of Severance between the date of termination of service and the Reemployment Date is less than 5, the Employee will retain prior Vesting Service accrued as of the date of termination of service.
 - (iii) If the Participant returns to service with the Employer and the Employee's number of One-Year Periods of Severance between the date of termination of service and the Reemployment Date equals or exceeds 5, the Employee's Vesting Service as of the date of termination of service will be disregarded if both of the following conditions exist:

- (A) The Employee did not have a vested interest as of the date of termination;
and
- (B) The Employee's Vesting Service as of the date of termination of service are less than or equal to the number of consecutive One-Year Periods of Severance between the date of termination and the Reemployment Date.

ARTICLE 2.

PARTICIPATION

- 2.1 **Participation.** ~~The Plan Each person who~~ was closed with respect to new hires ~~a Participant in the Plan~~ on August 31, 2010. ~~As a result, an, will continue to be a Participant in the Plan. No~~ Employee whose initial date of hire with the Employer is ~~first hired~~ on or after September 1, 2010; shall not be eligible to participate in the Plan. Each ~~other~~ Employee whose initial date of hire ~~within~~ the ~~service of the~~ Employer is prior to September 1, 2010 and who is not a Participant will become a Participant in the Plan on the earlier of the following dates:
- (a) the first anniversary of the Employment Commencement Date, provided the Employee completes at least 1,000 Hours of Service during the 12 consecutive month period immediately following the Employee's Employment Commencement Date; or
 - (b) the January 1st next following the first Plan Year during which the Employee completes at least 1,000 Hours of Service provided the Employee does not complete at least 1,000 Hours of Service during the first 12 consecutive month period immediately following the Employee's Employment Commencement Date.
- 2.2 **Reemployment by the Employer.** An Employee hired before September 1, 2010, whose employment is terminated shall be subject to the following rules:
- (a) If the Employee was not a Participant in the Plan prior to terminating employment with the Employer, and the Employee subsequently returns to employment with the Employer, any prior service will be disregarded for purposes of Plan participation, and the Employee must meet the requirements of Section 2.1 after reemployment in order to become a Participant in the Plan. If this Section 2.2(a) applies, the Participant's Employment Commencement Date will be the date on which the Employee is credited with performing an Hour of Service after returning to employment with the Employer.
 - (b) If the Employee became a Participant in the Plan prior to terminating employment with the Employer, and the Employee subsequently returns to employment with the Employer, the Employee will be reinstated as a Participant on the date on which the Employee is credited with an Hour of Service after returning to employment with the Employer.

Payment or suspension of payment of benefits for reemployed Participants shall be governed by the provisions of Section 3.9.

ARTICLE 3.

BENEFIT TO BE RECEIVED UNDER THE PLAN

- 3.1 **Accrued Benefit.** A Participant's Accrued Benefit under the Plan shall not be less than the Participant's Accrued Benefit under the Plan as of the date this restatement is executed.

Subject to the limitations on benefits described in Article 4, the Accrued Benefit of a Participant whose Employment Commencement Date occurred after December 11, 1986, shall equal the benefit provided by Section 3.1(a). Subject to the limitations on benefits described in Article 4, the Accrued Benefit of a Participant whose Employment Commencement Date occurred on or before December 11, 1986, shall equal the greater of the benefit provided by Section 3.1(a) or Section 3.1(b).

- (a) A Participant's normal monthly retirement benefit payable as a life only annuity shall equal 1/12th of 2.7% of Final Average Monthly Compensation and 1/12th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the potential number of months of Credited Service at the Participant's Normal Retirement Date not to exceed 240 months, plus 1/12th of .35% of Final Average Monthly Compensation and 1/12th of .35% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the potential number of months of Credited Service at the Participant's Normal Retirement Date in excess of 240 months, but not more than 120 additional months. The Participant's normal monthly retirement benefit determined under the preceding sentence shall be multiplied by a fraction, not to exceed one, the numerator of which is the number of months of Credited Service that the Participant has earned at the date of determination, and the denominator of which is the potential number of months of Credited Service the Participant would have earned at the Participant's Normal Retirement Date.
- (b) A Participant's normal monthly retirement benefit payable as a life only annuity shall equal 1/12th of 4.39% of Final Average Monthly Compensation and 1/12th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the potential number of months of Credited Service at the Participant's Normal Retirement Date not to exceed 120 months. The Participant's normal monthly retirement benefit determined under the preceding sentence shall be multiplied by a fraction, not to exceed one, the numerator of which is the number of months of Credited Service that the Participant has earned at the date of determination, and the denominator of which is the potential number of months of Credited Service that the Participant would have earned at the Participant's Normal Retirement Date.
- ~~(c) For purposes of this Section, "potential months" means the months of service that would be credited if the Participant continued to be an Employee until attaining Normal Retirement Age.~~

- 3.2 **Normal Retirement Benefit.** Upon attainment of the Normal Retirement Date, a Participant's Accrued Benefit shall be 100% vested. The Normal Retirement benefit of a Participant shall equal his or her Accrued Benefit. Upon retiring from the service of the Employer on or after the Participant's Normal Retirement Date, a Participant shall receive the Normal Retirement benefit in accordance with Article 5.

3.3 **Retirement After Normal Retirement Date.** A Participant ~~who~~ both ~~who~~ retires after his or her Normal Retirement Date and commences his or her distribution after his or her Normal Retirement Date shall receive an amount equal to the greater of:

- (a) the benefit provided by the Actuarially Equivalent single sum value of the Participant's Accrued Benefit as of his or her Normal Retirement Date increased with interest on such single sum value at the rate of the Plan ~~Stated~~State Interest Rate, compounded annually from the Participant's Normal Retirement Date to the postponed retirement date, provided, that for years after the year the Participant attains age ~~70 1/2~~70 1/2, the Participant's accrued benefit shall be actuarially adjusted to reflect any period after the Participant attains age ~~70 1/2~~70 1/2 and before payment of benefits begins, or
- (b) the Participant's Accrued Benefit calculated under Section 3.1 including any service credited after Participant's Normal Retirement Date.

A Participant shall receive his or her benefit under this Section in accordance with Article 5.

3.4 **Early Retirement Benefit.** A Participant who retires from the service of the Employer on or after attainment of the Early Retirement Date and prior to the Participant's Normal Retirement Date, shall receive his or her Accrued Benefit as modified by this Section in accordance with Article 5. The monthly retirement amount payable to a Participant who retires prior to the Participant's Normal Retirement Date under the provisions of this Section shall be equal to the product of (a) and (b):

- (a) For a Participant whose Employment Commencement Date occurred after December 11, 1986, the amount defined under Section 3.4(a)(i) and for a Participant whose Employment Commencement Date occurred on or before December 11, 1986, the greater of the benefit provided by Section 3.4(a)(i) or (ii):
 - (i) A Participant's monthly early retirement benefit payable as a life only annuity shall equal 1/12th of 2.7% of Final Average Monthly Compensation and 1/12th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Early Retirement Date not to exceed 240 months, plus 1/12th of .35% of Final Average Monthly Compensation and 1/12th of .35% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Early Retirement Date in excess of 240 months, but not more than 120 additional months.
 - (ii) A Participant's monthly early retirement benefit payable as a life only annuity shall equal 1/12th of 4.39% of Final Average Monthly Compensation and 1/12th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Early Retirement Date not to exceed 120 months.
 - (iii) For purposes of this Section, Early Retirement Date means the date before the Participant's Normal Retirement Date on which a Participant terminates employment on or after completing 10 or more years of Credited Service and attaining age 55.

- (b) the factor, specified in the schedule below, based upon the number of years and full months by which the date payment of the Participant's Early Retirement Benefit precedes his or her Normal Retirement Date:

Actuarial Reduction Factors by Years and Months by Which
Early Retirement Date Precedes Normal Retirement Date

	<u>Months</u>											
	0	1	2	3	4	5	6	7	8	9	10	11
<u>Years</u>												
0	1.000	.994	.989	.983	.978	.972	.967	.961	.956	.950	.944	.939
1	.933	.928	.922	.917	.911	.906	.900	.894	.889	.883	.878	.872
2	.867	.861	.856	.850	.844	.839	.833	.828	.822	.817	.811	.806
3	.800	.794	.789	.783	.778	.772	.767	.761	.756	.750	.744	.739
4	.733	.728	.722	.717	.711	.706	.700	.694	.689	.683	.678	.672
5	.667	.664	.661	.658	.656	.653	.650	.647	.644	.642	.639	.636
6	.633	.631	.628	.625	.622	.619	.617	.614	.611	.608	.606	.603
7	.600	.597	.594	.592	.589	.586	.583	.581	.578	.575	.572	.569
8	.567	.564	.561	.558	.556	.553	.550	.547	.544	.542	.539	.536
9	.533	.531	.528	.525	.522	.519	.517	.514	.511	.508	.506	.503
10	.500											

3.5 Special Early Retirement Benefit.

- (a) For a Participant whose Employment Commencement Date occurred on or after January 1, 2008, the Participant shall qualify for Special Early Retirement if:
- (i) the Participant commences benefit payments prior to the Participant's Normal Retirement Date; and
 - (ii) the Participant has completed 20 years of Credited Service; and
 - (iii) the Participant terminated employment after attaining at least age 55.
- (b) For a Participant whose Employment Commencement Date occurred before January 1, 2008, the Participant shall qualify for Special Early Retirement if the Participant commences benefit payments prior to the Participant's Normal Retirement Date and:
- (i) the Participant has completed 20 years of Credited Service; or

- (ii) the Participant terminated employment after attaining at least age 55 and has completed at least 13 years of Credited Service prior to attaining age 58.

A Participant who has attained age 58 and has not completed 13 years of Credited Service shall not be eligible for the Special Early Retirement Benefit. The Special Early Retirement Benefit shall not commence prior to the first day of the month coincident with or next following the date which is the latest of (a) the date the Participant attains age 55, or (b) the date the Participant completes 13 years of Credited Service, or (c) the date the Participant terminates employment.

- (c) For a Participant whose Employment Commencement Date occurred after December 11, 1986, the Special Early Retirement Benefit shall be equal to the benefit provided by (i) below. For a Participant whose Employment Commencement Date occurred before December 11, 1986, the Special Early Retirement Benefit shall be equal to the greater of the benefit provided by (i) or (ii) ~~below~~:

- (i) A Participant's monthly special early retirement benefit payable as a life only annuity shall equal 1/12th of 2.7% of Final Average Monthly Compensation and 1/12th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Special Early Retirement Date not to exceed 240 months, plus 1/12th of .35% of Final Average Monthly Compensation and 1/12th of .35% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Special Early Retirement Date in excess of 240 months, but not more than 120 additional months.

- (ii) A Participant's monthly special early retirement benefit payable as a life only annuity shall equal 1/12th of 4.39% of Final Average Monthly Compensation and 1/12th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Special Early Retirement Date not to exceed 120 months.

- (d) The Special Early Retirement Benefit in (c) above shall not be reduced if the Participant has attained the Special Unreduced Early Retirement Date. The Special Early Retirement Benefit for a Participant who has not attained the Special Unreduced Early Retirement Date shall be reduced 1/12 of 5% for each month that the ~~Annuity Starting Date~~ ~~benefit commencement date~~ precedes the first day of the month coincident or next following the ~~date the Participant would have attained~~ ~~Participant's attainment of~~ the Special Unreduced Early Retirement Date.

- 3.6 **Benefit Upon Termination of Service for Reasons Other Than Retirement, Disability, and Death.** A Participant whose service is terminated prior to the Initial Vesting Date for any reason other than attainment of the Normal Retirement Date, attainment of the Early Retirement Date, Disability or death shall not be entitled to any benefit under the Plan. If a Participant's service is terminated prior to the Participant's Normal Retirement Date and on or after the Initial Vesting Date for any reason other than death, Disability, or attainment of the Early Retirement Date, the Participant shall be entitled to the Accrued Benefit as of the date of determination under Section 3.1 payable in accordance with Article 5.

Monthly retirement income payable to a Participant under this Section 3.6 prior to attaining the Normal Retirement Date shall be reduced to the Actuarial Equivalent of the benefit payable at the

Participant's expected Normal Retirement Date. If the Participant completed ten Years of Credited Service prior to terminating employment, the Participant may file a written request with the Plan Administrator at least 30 days prior to the effective date thereof to commence payment on the first business day of any month which is prior to the Participant's Normal Retirement Date and on or after the date on which the Participant attained the age of 55 years.

A Participant who elects to delay the commencement of his or her monthly retirement income past the Participant's Normal Retirement Date shall receive a benefit provided by the Actuarially Equivalent single sum value of the Participant's Accrued Benefit as of his or her Normal Retirement Date increased with interest on such single sum value at the rate of the Plan ~~Stated State~~ Interest Rate, compounded annually from the Participant's Normal Retirement Date to the postponed ~~Annuity Starting Date~~ benefit commencement date.

- 3.7 **Disability Retirement Benefit.** A Participant may retire from the service of the Employer prior to the Normal Retirement Date or Early Retirement Date if ~~if~~ the Employee is Disabled. Benefits payable under this Section shall be made in accordance with Article 5, provided, however, that payment shall commence not later than the Participant's Normal Retirement Date or, if later, the date the Participant is Disabled.

For purposes of calculating benefits payable under this Section 3.7, the Participant's Compensation shall be the Participant's Final Average Monthly Compensation under Section 1. ~~2320~~, or, if greater, the Participant's Regular Monthly Rate of Compensation for the month preceding the month during which the Participant became Disabled. The Regular Monthly Rate of Compensation shall be the monthly salary of a salaried Employee or the hourly pay rate multiplied by 174 hours for an hourly paid Employee.

For purposes of calculating benefits payable under this Section 3.7, the Participant shall receive Vesting Service and Credited Service as if the Participant had remained in the service of the Employer during the period of Disability from the date the Participant becomes Disabled until the date payment of benefits begins under this Section 3.7 or, if earlier, until the date the Participant ceases to receive payment of Social Security Disability benefits with at least 1,000 Hours of Service in each Plan Year until such earlier date.

Additional service credited as a result of Disability shall be counted for purposes of vesting and benefit calculation only; it shall not be counted for purposes of eligibility for Early Retirement, Special Early Retirement, or eligibility for benefit commencement prior to the Normal Retirement Date.

A Participant who qualifies for Early or Special Early Retirement without regard to Credited Service received under this Section 3.7 and becomes Disabled before his or her Normal Retirement Date may commence benefits under this Section 3.7 as of the Participant's Early or Special Early Retirement Benefit commencement date in an amount determined under Section 3.4 or 3.5 including, for purposes of determining Credited Service under Sections 3.4 (a)(i), 3.4(a)(ii), 3.5(i), and 3.5(ii), Credited Service received under this Section 3.7, but not before the Participant becomes Disabled and not later than the Participant's Normal Retirement Date.

The monthly retirement amount which is payable to a Participant who commences benefits on his or her Normal Retirement Date under this Section shall be equal to the Accrued Benefit to which the Participant would have been entitled on his or her Normal Retirement Date determined under Section 3.1, including for purposes of determining Credited Service under the last sentence of

Section 3.1(a) (or, if applicable, under the last sentence of Section 3.1(b)), Credited Service received under this Section 3.7.

A Participant who qualifies for benefit commencement prior to Normal Retirement under Section 3.6 without regard to Credited Service received under this Section 3.7 but was not eligible for Early or Special Early Retirement, and becomes Disabled before his or her Normal Retirement Date may commence benefits under this Section 3.7 on the first business day of any month which is prior to the Participant's Normal Retirement Date and on or after the date on which the Participant attained the age of 55 years in an amount equal to the Actuarial Equivalent of the Accrued Benefit calculated in accordance with Section 3.1, including, for purposes of determining Credited Service under the last sentence of Section 3.1(a) (or, if applicable, under the last sentence of Section 3.1(b)), Credited Service and Vesting Service received under this Section 3.7.

A Participant who becomes Disabled while employed after his or her Normal Retirement Date shall commence receiving the Accrued Benefit to which the Participant would have been entitled under Section 3.3 payable as of the date the Participant became Disabled.

Recovery From Disability. As of the date a Participant ceases to qualify for Social Security disability benefits the Participant shall cease to be Disabled. If a Participant ceases to be Disabled, the Participant shall cease to receive Vesting and Service Credit under this Section. However, a Participant who recovers from Disability shall be entitled to his or her vested Accrued Benefit, based upon the Vesting and Credited Service received before the Participant became Disabled and the Vesting and Credited Service received under this Section 3.7 during the period of Disability.

- 3.8 **Death Benefits.** Upon the death of a Participant before termination of service, the Participant's Accrued Benefit shall be 100% vested.

Death While Employed by the Employer. If a Participant dies prior to the Normal Retirement Date while employed by the Employer, the Participant's Beneficiary shall receive a benefit equal to the Actuarial Equivalent of the Participant's Accrued Benefit as of the date of death paid in accordance with Article 5. If the benefit would be greater, and if the Participant would have qualified for Special Early Retirement as of the date of death, the benefit payable will be the Actuarial Equivalent of the benefit that would have been payable to the survivor if the Participant had terminated employment on the date prior to death, survived to the Special Unreduced Early Retirement Date, commenced receiving the Special Early Retirement Benefits in the form of a Joint and 66-2/3% Survivor Annuity and then died. If a Participant dies after attainment of the Normal Retirement Date, the Participant's Beneficiary shall receive a benefit equal to the Actuarial Equivalent of the Participant's Accrued Benefit as if the Participant had Retired on the day prior to the Participant's date of death and benefits were calculated and paid in accordance with Section 3.3 and Article 5.

Death After Termination of Service. If a terminated Participant dies prior to the Participant's Annuity Starting Date, the Participant's Beneficiary will receive a benefit equal to the Actuarial Equivalent of the Participant's Accrued Benefit in accordance with Article 5, provided the Participant had reached the Initial Vesting Date as of the date he or she terminated service with the Employer. If the benefit would be greater and if the Participant had completed, as of the date of death, the service required to qualify for Special Early Retirement but had not attained the required age, the benefit payable will be the Actuarial Equivalent of the benefit that would have been payable to the survivor if the Participant survived to the Special Unreduced Early Retirement Date, commenced receiving the Special Early Retirement Benefits in the form of a Joint and 66-2/3% Survivor Annuity and then died.

Benefit Payable Upon Death of Disabled Participant Prior to Commencement of Benefits.

Effective on and after July 26, 1992, if a Participant dies after the Participant is Disabled, but prior to the date that a distribution of benefits commences under the Plan, the Participant's Beneficiary will receive a benefit equal to the Actuarial Equivalent of the Participant's Accrued Benefit, in accordance with Article 5, that would have been payable on behalf of the Participant if the Participant had remained in the service of the Employer until the date of death with at least 1,000 Hours of Service in each Plan Year, with no change in the Participant's last regular monthly rate of Compensation after becoming Disabled. If the benefit would be greater and if the Participant had completed, as of the date of death, the service required to qualify for Special Early Retirement but had not attained the required age, the benefit payable will be the Actuarial Equivalent of the benefit that would have been payable to the survivor if the Participant survived to the Special Unreduced Early Retirement Date, commenced receiving the Special Early Retirement Benefits in the form of a Joint and 66-2/3% Survivor Annuity and then died.

3.9 Benefit Upon Return to Employment After Termination of Service.

Accrued Benefit For Participant Who Has Not Received Any Benefits. If a Participant's service is terminated for any reason, and the Participant subsequently is reemployed before any payments commence, the Participant will accrue a benefit under the Plan in accordance with the rules regarding Credited Service in Section 1. 1342(c). The Participant's Accrued Benefit shall not be less than the amount to which the Participant was entitled to as of the Participant's previous termination of service.

Accrued Benefit For Participant Who Is Receiving Benefits Or Who Has Received A Full Distribution. If a Participant's service is terminated for any reason, and the terminated Participant subsequently is reemployed with the Employer after the date a distribution of benefits commences, the following rules shall apply:

- (a) If the Participant does not complete at least 1,000 Hours of Service in the Plan Year in which reemployment occurs or in any subsequent Plan Year, payments (if any remain) will continue.
- (b) If the Participant completes at least 1,000 Hours of Service in the Plan Year in which reemployment occurs or in any subsequent Plan Year, no income payments (if any remain) will be made during the remainder of the period of reemployment. The Plan Administrator shall notify the Participant in writing that the payments will be suspended. Payments will be suspended on a prospective basis only.
 - (i) Upon the subsequent termination of service of such Participant, the Participant's benefit under the Plan shall be reduced on an Actuarially Equivalent basis for all income payments that the Participant has received; however, for a Participant who was previously receiving monthly payments over a period of at least the life expectancy of that Participant, the recomputed monthly benefit shall not be less than the monthly benefit received by the Participant prior to the Reemployment Date plus the Cost of Living adjustments (COLA) that would have been made during the period of reemployment for which the benefit payments were suspended and had he not been reemployed.
 - (ii) Notwithstanding (i) above, if a Participant subsequently is reemployed on or after the Normal Retirement Date, and payments are suspended, the Actuarially Equivalent single sum value required to provide the retirement income which

otherwise would have been payable on his behalf after suspension, shall be accumulated with interest from such suspension to the date of his subsequent retirement or, if earlier, to the date of his death, and such single sum value, together with such accumulated interest, shall be applied upon his retirement or death to provide a benefit payable on behalf of such Participant in accordance with Article ~~3~~.

Death During Qualified Military Service: Effective for deaths occurring on or after January 1, 2007, if a Participant dies while performing qualified military service, the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. For purposes of this paragraph, qualified military service means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by an individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

3.10 **Adjustments for In Service~~Inservice~~ Distributions.** If a Participant receives an In Service~~Inservice~~ Distribution as provided under Section 5.7(b), the following rules shall apply:

- (a) If the Participant does not complete at least 1,000 Hours of Service in the Plan Year in which the In Service~~Inservice~~ Distribution is made or in any subsequent Plan Year, payments (if any remain) will continue.
- (b) If the Participant completes at least 1,000 Hours of Service in the Plan Year in which the In Service~~Inservice~~ Distribution is made or in any subsequent Plan Year, the following rules will apply:
 - (i) No income payments (if any remain) will be made during the remainder of the period of employment. The Plan Administrator shall notify the Participant in writing that the payments will be suspended. Payments will be suspended on a prospective basis only.
 - (ii) The Participant may not request another In Service~~Inservice~~ Distribution after the suspension begins.
 - (iii) Upon the termination of service of such Participant, the Participant's remaining benefit under the Plan, if any, shall be reduced on an Actuarially Equivalent basis for all benefit payments that the Participant has received; provided, however, in the case of an annuity payment, that the benefit payable after termination of service will never be less than the benefit the Participant is receiving as a result of the In Service~~Inservice~~ Distribution.
 - (iv) Notwithstanding (iii) above, if a Participant's payments are suspended, the Actuarially Equivalent single sum value required to provide the benefit which otherwise would have been payable on his behalf after the suspension, shall be accumulated with interest from such suspension to the date of his retirement, or, if earlier, to the date of his death, and such single sum value, together with such accumulated interest, shall be applied upon his retirement or death to provide a benefit payable on behalf of such Participant in accordance with Article 3.

- 3.11 **Cost of Living Adjustments.** The monthly amount payable to a Participant (or a Participant's Beneficiary) under this Plan after the Annuity Starting Date shall be increased or decreased while payable, commencing on the July 1st next following the date the monthly income commences, and on the first day of each subsequent July, in accordance with the following paragraph, if the Participant (or the Participant's Beneficiary) so elects.

Each such increase or decrease shall be based on the percentage change in the U.S. Consumer Price Index, which is defined as the index published by the U.S. Department of Labor as "Consumer Price Index - U.S. Average - All Items - Urban Wage Earners and Clerical Workers (CPI-W)," its substitute if replaced, or any alternative U.S. index adopted for retirement income adjustment. The percentage change applicable for any July 1st determination shall be the U.S. Consumer Price Index for the 12 months ending March 31 preceding such July 1, compared to such index for the year ending March 31 one year earlier. With respect to commencement of benefits before December 6, 1991, the increase or decrease in the monthly payments shall equal the lesser of (1) the change in the U.S. Consumer Price Index or (2) 6%. With respect to commencement of benefits on or after December 6, 1991, the increase or decrease in the monthly payments shall equal the lesser of (1) two-thirds of the change in the U.S. Consumer Price Index or (2) 4%. Yearly adjustments under this Section shall not reduce the Participant's (or the Beneficiary's) monthly benefit ~~income~~ below the level established at the time the payment of benefits commenced to the Participant or the Participant's Beneficiary.

The Participant (or the Participant's Beneficiary) shall be entitled to elect to have the provisions of this Section apply in the year in which the Participant separates from service. In addition, a Participant (or the Participant's Beneficiary) shall be entitled to elect to have the provisions of this Section apply in the year in which the Participant (or the Participant's Beneficiary) actually commences receiving benefits. A Participant (or the Participant's Beneficiary) may revoke his or her election at any time prior to commencement of benefits. At the time benefits commence, the election shall become irrevocable.

- 3.12 **No Duplication of Benefits.** A Participant shall not be eligible for benefits under more than one of Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 or 3.9 of this Article.

ARTICLE 4.

LIMITATION ON BENEFITS

4.1 **Maximum Amount of Benefits.** The ~~Annual Benefit~~~~annual benefit~~ otherwise payable to a Participant under the Plan at any time shall not exceed the Maximum Permissible Benefit (defined below). If the benefit the Participant would otherwise accrue in a Limitation Year would produce an ~~Annual Benefit~~~~annual benefit~~ in excess of the Maximum Permissible Benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit. If a Participant is, or has ever been, covered under more than one defined benefit Plan maintained by the Employer, the sum of the Participant's ~~Annual Benefits~~~~annual benefits~~ from all defined benefit plans may not exceed the Maximum Permissible Benefit.

4.2 **Definitions.**

- (a) **Annual ~~Benefit~~benefit.** A benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Article. For a Participant who has or will have distributions commencing at more than one Annuity Starting Date, the ~~Annual Benefit~~~~annual benefit~~ shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this Article as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of ~~whether~~~~which~~ a new starting date has occurred shall be made without regard to Section 1.401(a)-20, Q&A-10(d) and with regard to Section 1.415(b)-1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

No actuarial adjustment to the benefit shall be made for (i) survivor benefits payable to a surviving Spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (ii) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (iii) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code §417(e)(3) and would otherwise satisfy the limitations of this ~~Article~~~~Section~~, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Article applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code § 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account Social Security supplements described in Code §411(a)(9) and benefits transferred from another defined benefit Plan, other than transfers of distributable benefits pursuant to Section 1.411(d)-4, Q&A-3(c), of the Regulations, ~~but shall disregard benefits attributable to employee contributions or rollover contributions.~~

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of Actuarial Equivalence of forms of benefit other than a straight life annuity shall be made in accordance with Sections 4.2(a)(i) or (ii):

- (i) **Benefit Forms Not Subject to Code §417(e)(3):** The straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (a) the interest rate determined under Code § 415(b)(2)(E)(i) and the regulation thereunder and the applicable mortality table defined in Section 1.3 of the Plan for that Annuity Starting Date or (b) the Plan Stated Interest Rate and the applicable mortality table defined in Section 1.3 of the Plan for that Annuity Starting Date.
- (ii) **Benefit Forms Subject to Code §417(e)(3):** The straight life annuity that is actuarially equivalent to the Participant's form of benefit will be determined under this Section 4.2(a)(ii) if the form of the Participant's benefit is other than a benefit form described in [Section 4.2\(a\)\(i\)](#). In this case, the actuarially equivalent straight life annuity will be determined as follows:
 - (A) If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of:
 - 1) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and mortality table in the Plan for adjusting benefits in the same form;
 - 2) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table in Section 1.3 of the Plan; and
 - 3) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate defined in Section 1.3 and the applicable mortality table defined in Section 1.3, divided by 1.05.
 - (B) If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the Actuarially Equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount:
 - 1) The interest rate and mortality table specified in Section 1.3 for adjusting benefits in the same form; and
 - 2) A 5.5 interest rate assumption and the applicable mortality table defined in Section 1.3.

If the Annuity Starting Date of the Participant's benefit is on or after the first day of the first Plan Year beginning in 2004 and before December 31, 2005, the application of this Section 4.2(a)(ii)(B) shall not cause the amount payable under the Participant's form of benefit to be less than the benefit calculated under the Plan taking into account the limitations of this Article, except that the Actuarially Equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greatest annual amount: (i) the interest rate and mortality table specified Section 1.3 for adjusting benefits in the same form (as provided under the terms of the Plan in effect as of the date of the distribution); (ii) the applicable interest rate and mortality table defined in the Plan (as provided under the terms of the Plan in effect as of the date of the distribution); and (iii) the applicable interest rate defined in Section 1.3 (as in effect on the last day of the last Plan Year beginning before January 1, 2004, under provisions of the Plan then adopted and in effect) and applicable mortality table defined in Section 1.3 of the Plan.

- (b) **Compensation.** For purposes of this Section, compensation shall mean information required to be reported under Code §§ 6041, 6051, and 6052 (wages, tips, and other compensation as reported on Form W-2). Compensation is defined as wages, within the meaning of Code § 3401(a), and all other payments of compensation to an employee by the employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under Code §§ 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under Code § 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code § 3401(a)(2)).

For Limitations Years beginning after December 31, 1991, compensation for a Limitation Year is the compensation actually paid or made available during the Limitation Year.

For Limitation Years beginning on or after July 1, 2007, Compensation for a Limitation Year shall also include Compensation paid by the later of 2 ½ months after an Employee's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer, if the payment is regular compensation for services during the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer.

Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 ½ months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment, except, payments to an individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of § 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

Back pay, within the meaning of Section 1.415(c)-2(g)(8) of the Regulations, shall be treated as compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and Compensation that would otherwise be included under this definition.

For Limitation Years beginning after December 31, 1997, Compensation during each such Limitation Year shall include amounts that would otherwise be included in Compensation but for an election under Code §§ 125(a), 402(e)(3), 402(h)(1)(B), 402(k), 457(b) and, for Limitation Years beginning after December 31, 1997, Code § 132(f)(4).

~~(b) **Compensation.** For purposes of this Section, compensation shall mean compensation defined under Section 1.9(a), including 1.9(a)(i), but disregarding 1.9(a)(ii)-(v). Compensation will be limited as provided in Sections 1.9(d), (e), (f), (g), and (h).~~ Effective for years beginning on or after January 1, 2009, a differential wage payment, as defined in Code Section 3401(h)(2), shall be treated as compensation for purposes of Code Section 415 and any other Code Section that references the definition of compensation under Code Section 415.

- (c) **Defined Benefit Dollar Limitation~~benefit-dollar limitation~~.** Effective for Limitation Years ending after December 31, 2013, the “Defined Benefit Dollar Limitation~~defined benefit-dollar limitation~~” is \$210,000, per year as adjusted, effective January 1 of each year, under Code §415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under Code §415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies, but a Participant’s benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.
- (d) **Maximum permissible benefit:** The “Maximum Permissible Benefit” is the Defined Benefit Dollar Limitation~~defined benefit-dollar limitation~~ (adjusted where required, as provided in (i) and, if applicable, in (ii) or (iii) below).
 - (i) If the Participant has fewer than 10 years of participation in the Plan, the Defined Benefit Dollar Limitation~~defined benefit-dollar limitation~~ shall be multiplied by a fraction, (~~A~~) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the Plan and (~~B~~) the denominator of which is 10. This Subsection (i) will not apply to a distribution from the Plan on account of the Participant’s becoming disabled by reason of personal injuries or sickness, or as a result of the death of the Participant.
 - (ii) If the benefit of a Participant begins prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation~~defined benefit-dollar limitation~~ applicable to the Participant at such earlier age is an Annual Benefit~~annual benefit~~ payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the Defined Benefit Dollar Limitation~~defined benefit-dollar limitation~~ (adjusted under (i) above, if required). Actuarial Equivalence will be computed using whichever of the following produces the smaller annual amount: the lesser of (i) the interest rate and mortality table (or other tabular factor) specified in Section 1.3 and (ii) a 5 percent interest rate and the applicable mortality table as defined in Section 1.3.

(iii) If the benefit of a Participant begins prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's annuity starting date is the lesser of (A) the Annual Benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under (i) above, if required), with actuarial equivalence computed using a 5 percent interest rate and the applicable mortality table as defined in Section 1.3 (and expressing the Participant's age based on completed calendar months as of the annuity starting date), or (B) the Defined Benefit Dollar Limitation (adjusted under (i) above, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Article.

~~(iii)~~(iv) If the benefit of a Participant begins after the Participant attains age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation, the defined benefit dollar limitation applicable to the Participant at the later age is the Annual Benefit~~annual benefit~~ payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the Defined Benefit Dollar Limitation~~defined benefit dollar limitation~~ (adjusted under (i) above, if required), with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (i) the interest rate and mortality table (or other tabular factor) specified in Section 1.3 of the Plan and (ii) the actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation~~defined benefit dollar limitation~~ computed using a 5 percent interest rate assumption and the applicable mortality table as defined in Section 1.3 of the Plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored. Benefit increases resulting from the increase in the limitations of Code §415(b) shall be provided to all employees participating in the Plan who have one hour of service on or after the first day of the first limitation year ending after December 31, 2001.

(v) If the benefit of a Participant begins after the Participant attains age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, the Defined Benefit Dollar Limitation applicable to the Participant at the later age is the lesser of (A) the Annual Benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the Defined Benefit Dollar Limitation (adjusted under (i) above, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table as defined in Section 1.3 of the Plan (expressing the Participant's age based on completed calendar months as of the Annuity Starting Date), or (B) the Defined Benefit Dollar Limitation (adjusted under (i) above, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Article.

~~(iv)~~ Notwithstanding the other requirements of Sections (ii) and (iii) above, no adjustment will be made to the Defined Benefit Dollar Limitation~~defined benefit dollar limitation~~ to reflect the probability of a Participant's death between the

Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made.

~~(v)~~(vi) Minimum benefit permitted: Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

- (A) The retirement benefits payable for a Limitation Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether the plan has been terminated) ever maintained by the employer does not exceed \$10,000 multiplied by a fraction — ~~(14)~~ the numerator of which is the Participant's number of Years (or part thereof; but not less than one year) of Service (not to exceed 10) with the employer and ~~(24)~~ the denominator of which is 10; and
- (B) The employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Code § 401(h), and accounts for postretirement medical benefits established under Code §419A(d)(1) are not considered a separate defined contribution Plan).

~~(e) **Year of participation.** The Participant shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met:~~

- ~~(i) The Participant is credited with at least the Period of Service required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and~~
- ~~(ii) The Participant is included as a Participant under the eligibility provisions of Article 2 of the Plan for at least one day of the accrual computation period.~~

~~If these two conditions are met, the portion of a year of participation credited to the Participant shall equal the amount of Credited Service credited to the Participant for such accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code §415(e)(3)(C)(i) for an accrual computation period shall receive a year of participation with respect to that period. In no event shall more than one year of participation be credited for any twelve month period.~~

ARTICLE 5.

PAYMENT OF BENEFITS

- 5.1 **Normal and Automatic Forms of Payment.** The normal form of payment shall be a life only annuity. The automatic forms of payment shall be (i) a life only annuity if the Participant is unmarried; (ii) be a Qualified Joint and 50% Contingent Annuity for a married Participant and (iii) a Domestic Partner Joint and 50% Survivor Annuity if the Participant has a Domestic Partner.

Mandatory Single Sum Payment of Small Benefits. Notwithstanding any provision of the Plan to the contrary, in the event the Actuarially Equivalent single sum value of a Participant's vested Accrued Benefit is \$5,000 or less, the Plan Administrator shall direct that the Actuarially Equivalent single sum value of the vested portion of the Accrued Benefit be paid to the Participant in a single sum payment on or before the last day of the Plan Year following the Plan Year in which the Participant terminates employment with or requests an ~~In Service~~~~Inservice~~ Distribution from the Employer ~~and shall be paid on or before the Annuity Starting Date~~, provided that if the mandatory distribution is greater than \$1,000, and the Participant does not elect to have such distribution paid directly to an eligible retirement Plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator.

- 5.2 **Optional Forms of Payment.** In lieu of the automatic form of benefits payable in accordance with Section 5.1, a Participant may elect to receive a retirement income or benefit which is Actuarially Equivalent to the normal form of payment (described in Section 5.1) payable in accordance with one of the options listed below. A Participant's election of the form of payment shall be made in writing on a prescribed form and both the Participant and the Participant's Spouse, if any, must consent to the distribution, if required, in a manner that meets the requirements of Section 5.9. A Participant's election shall be irrevocable as of the Participant's Annuity Starting Date and shall apply to any additional benefits, if any, that may accrue after the application of the suspension rules Sections 3.9 and 3.10. Benefit payments will be made subject to the timing requirements set forth in Sections 5.3(b), 5.7 and 5.8.

Life Annuity. An annuity payable for the life of the Participant.

Life Annuity With 10 Year Certain. An annuity of a smaller monthly amount, payable to the Participant for the Participant's lifetime, and in the event of the Participant's death within a period of 10 years after the date the Participant's benefit payments first commenced, the same monthly amount payable for the remainder of such 10 year period to a Beneficiary designated by the Participant.

Joint & 66-2/3% Survivor Annuity With 10 Year Certain. An annuity of a modified monthly amount, payable to the Participant during the lifetime of the Participant and the Participant's Beneficiary, and following the death of either of them, 66-2/3% of such modified monthly amount payable to the survivor; provided, however, in the event the deaths of both the Participant and Beneficiary occur within a period of 10 years after the date as of which the monthly payments first commenced, the amount of monthly income which the survivor was receiving (66-2/3% of the monthly amount payable while both the Participant and Beneficiary were alive) shall be payable for the remainder of such 10-year period to an alternate Beneficiary designated by the Participant.

Joint and 50% Contingent Annuity. An annuity of a modified monthly amount, payable to the Participant during his lifetime, and in the event that the Participant predeceases the Participant's

Beneficiary, 50% of the modified monthly amount will be payable after the death of the Participant to the Beneficiary for the lifetime of the Beneficiary.

Domestic Partner Joint and 50% Survivor Annuity. An annuity of a modified monthly amount, payable to the Participant during his lifetime, and in the event that the Participant predeceases the Participant's Domestic Partner, 50% of the modified monthly amount (or such lesser amount as is required to comply with the incidental death benefit requirement in Code §401(a)(9)(G)) will be payable after the death of the Participant to the Participant's Domestic Partner for the lifetime of the Domestic Partner.

Joint & 66-2/3% Survivor Annuity. An annuity of a modified monthly amount, payable to the Participant during the joint lifetime of the Participant and Beneficiary, and following the death of either of them, 66-2/3% of such modified monthly amount payable to the survivor for the lifetime of the survivor.

Lump Sum Distribution at Retirement. An Actuarially Equivalent single sum payment adjusted by the cost of living assumption under Section 1.3. This option is not available for Participants electing to receive In Service~~Inservice~~ Distributions.

Notwithstanding any provision of Section 5.2 to the contrary, no optional form of retirement benefits will be payable if the optional form would violate the provisions of Code Section 401(a)(9) and Treasury Regulations thereunder.

5.3 **Death Benefits.**

(a) **Form of Payment of Death Benefit.**

- (i) If a Participant dies prior to the date that distribution of benefits commences under the Plan, the Participant's Beneficiary will receive death benefits payable as provided in Section 3.8, unless the Beneficiary elects to receive a single sum distribution payable as soon as administratively practicable. The Participant's Beneficiary shall have the right to receive the Participant's death benefits payable in the form of a single sum payment in lieu of the automatic or optional forms of benefit provided in Sections 5.1 and 5.2.
- (ii) If a Participant dies after the date that the distribution commences under the Plan but before the full payment has been completed under the elected option, and the Beneficiary survives the Participant, the Participant's Beneficiary shall receive any remaining benefit payable in the form elected by Participant.
- (iii) If both the Participant and the Beneficiary die after the date that the Participant's benefits commence under the Plan but before the full payment has been completed under any option providing for payments for a period certain, the contingent Beneficiary shall receive the remaining installment payments.
- (iv) Any election made under this paragraph shall be made by the Beneficiary in writing on a form prescribed by and filed with the Plan Administrator. Such elections on the form of payment shall be irrevocable as of the Annuity Starting Date.

(b) **Time of Payment of Death Benefit.**

- (i) Effective on and after June 1, 1993, if the Participant dies before distribution of the Participant's benefit commences, the Participant's entire benefit shall, at the election of the Beneficiary, (1) be distributed as soon as administratively practicable in a single sum payment, or (2) be distributed no later than five years after the Participant's death, unless any portion of the Participant's benefit is payable over the life expectancy of the Participant's Beneficiary (or over a period not extending beyond the Beneficiary's life expectancy) and payment commences to the Beneficiary no later than one year after the Participant's death. If the Beneficiary is the Participant's surviving Spouse, the surviving Spouse may delay distributions until the date on which the Participant would have attained age 62, or if later, the Participant's expected Normal Retirement Date, and, if the Spouse dies before payments begin, subsequent distributions shall be made as if the Spouse had been the Participant.
- (ii) If the Participant dies after distribution of the Participant's benefit has commenced, the remaining portion of the benefit will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

5.4 **Nontransferability.** Any annuity contract distributed from the Plan must be nontransferable.

5.5 **Direct Rollovers.** Notwithstanding any provision of the Plan to the contrary that would limit a Distributee's election under this Article, a Distributee may elect to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee. The election regarding a direct rollover shall be made at the time and in the manner prescribed by the Plan Administrator. This Section shall apply to any distribution made after December 31, 2001. No rollovers may be made into the Plan.

In the event of a mandatory distribution greater than \$1,000, if a Participant does not elect to have such distribution paid directly to an eligible retirement Plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement Plan designated by the Plan Administrator.

For purposes of this Section only:

- (a) **Distributee** means a Participant, former Participant, a Beneficiary who is the surviving spouse of a Participant or former Participant, or an "alternate payee" as defined in Code § 414(p). Effective for Plan Years beginning on and after December 31, 2009, a non-spouse beneficiary who is a designated beneficiary (who is not the Employee's surviving spouse) is a distributee with respect to the interest of the designated Beneficiary if the distribution is made to an individual retirement annuity described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) that is established for the purposes of receiving the distribution on behalf of the designated Beneficiary.
- (b) **Eligible Rollover Distribution** means any distribution of all or any portion of the balance to the credit of the Distributee. However, an Eligible Rollover Distribution shall not include: (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's

designated beneficiary; (2) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for a specified period of ten years or more; (3) any distribution to the extent the distribution is required under Code § 401(a)(9); (4) any portion of any distribution that is not includible in gross income, as determined without regard to the exclusion for net unrealized appreciation of employer securities; or (5) any other distribution that is reasonably expected to total less than \$200 during a year.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to (1) an individual retirement account or annuity described in Code § 408(a) or (b); (2) for taxable years beginning after December 31, 2001, and before January 1, 2007, to a qualified trust which is part of a qualified defined contribution Plan described in Code § 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Code § 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (c) **Eligible Retirement Plan** means: (1) an eligible Plan under Code § 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such Plan from this Plan, (2) an individual retirement account described in Code § 408(a); (3) an individual retirement annuity described in Code § 408(b); (4) an annuity Plan described in Code § 403(a); (5) an annuity contract described in Code § 403(b); (5) a qualified defined contribution Plan described in Code § 401(a) that accepts eligible rollover distributions; or (6) effective for distributions made after December 31, 2007, a Roth IRA described in Code Section 408A(b).

- 5.6 **Qualified Domestic Relations Order.** Section 6.4 covering non-alienation of benefits shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be (1) a qualified domestic relations order, as defined in Code § 414(p), or (2) any domestic relations order entered before January 1, 1985. Upon receipt of a qualified domestic relations order, the Plan Administrator shall direct the Trustee to provide for payment of benefits to an alternate payee as set forth in the order. The Plan Administrator shall establish procedures to determine whether an order is a qualified domestic relations order, to notify the Participant and any alternative payee of such determination, and to administer distributions pursuant to a qualified order. A domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order will not fail to be qualified (a) solely because the order is issued after, or revises, another domestic relations order or qualified domestic relations order; or (b) solely because of the time at which the order is issued, including issuance after the Annuity Starting Date or after the Participant's death. A former Spouse and a former Domestic Partner may be treated as a Spouse or the Surviving Spouse to the extent required under a qualified domestic relations order satisfying the requirements as defined in Code § 414(p).

5.7 Time of Distribution.

- (a) Generally, benefit payments to a Participant shall commence as of the first business day of the month which is coincident with or next following the Participant's Normal Retirement Date, the Participant's actual retirement date, the Participant's Early or Special Early Retirement Date (or such later date elected by the Participant) as applicable under ~~Article~~Section 3. However, if a Participant elects to receive a Lump Sum Distribution, benefit payments to a Participant shall commence as soon as administratively feasible after termination of employment and following the receipt of the Participant's election. Benefit payments to a Participant who is eligible to receive a deferred vested Accrued Benefit shall commence as of the first business day of the month coincident with or next following the Participant's Normal Retirement Date (or such later date elected by the Participant). If the Participant who is eligible to receive a deferred vested Benefit completed ten Years of Credited Service prior to terminating employment, the Participant may file a written request with the Plan Administrator at least 30 days prior to the effective date to have payment commence as of the first business day of any month which is prior to the Participant's Normal Retirement Date and on or after the date on which the Participant attained the age of 55 years.
- (b) Provided the requirements of this Subsection 5.7(b) are met, benefit payments to a Participant may commence as of the first business day of the month which is coincident with or next following the Participant's attainment of age 62 or later, even if the Participant has not terminated employment. In order to be eligible for such ~~In Service~~Inservice Distribution, the Participant must meet all of the following requirements:
 - (i) Except for the fact that the Participant has not terminated employment, the Participant otherwise must qualify for an unreduced retirement benefit under Sections 3.2, 3.3, 3.4 or 3.5.
 - (ii) The Participant must agree voluntarily to work fewer than 1,000 Hours of Service for the current Plan Year and all following Plan Years and the General Manager must agree in writing to the reduced work schedule.
 - (iii) The Participant must file a written request with the Plan Administrator at least 30 days prior to the effective date to have payment commence as of the first business day of any subsequent month which is prior to termination of employment.
 - (iv) Upon subsequent termination of employment, any additional accrued benefits, if any, must be paid in the same form elected by the Participant at the time of the request for the ~~In Service~~Inservice Distribution.

5.8 Required Distributions.

(a) General Rules.

- (i) **Precedence and Effective Date.** The requirements of this Section 5.8 shall apply to any distributions and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Section apply to calendar years beginning after December 31, 2002.

- (ii) Requirements of Regulations Incorporated. All distributions required under this Section shall be determined and made in accordance with Code §401(a)(9), including the incidental death benefit requirement in Code §401(a)(9)(G), and the Regulations issued thereunder. Without limiting the forgoing, all distributions to a Domestic Partner shall be made subject to the incidental death benefit limitations Code §401(a)(9)(G), and the Regulations issued thereunder.
- (iii) Limits on Payment Periods. As of the first distribution calendar-year, distributions made to a Participant, if not made in a single sum, may only be made over one of the following periods:
 - (A) the life of the Participant,
 - (B) the joint lives of the Participant and a designated Beneficiary,
 - (C) period certain not extending beyond the life expectancy of the Participant, or
 - (D) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated Beneficiary.

(b) **Time and Manner of Distribution.**

- (i) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, no later than the Participant's Required Beginning Date.
- (ii) Death of Participant Before Payments 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:
 - (A) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, then distributions to the surviving Spouse may begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or at the option of the surviving Spouse by a date no later than December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later. Alternatively, the Participant's entire interest will be distributed to the designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. If the surviving Spouse dies after the Participant but before distributions to either the Participant or the surviving Spouse begin, this alternative will apply as if the surviving Spouse were the Participant.
 - (B) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then distributions (including distributions to a Domestic Partner) may, but are not required to, begin by December 31 of the calendar year immediately following the calendar year in which the Participant died. Alternatively, the Participant's entire interest will be distributed to the designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (C) 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.
- (D) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before payments to the surviving Spouse are required to begin, this Subsection (b)(ii), other than Subsection (b)(ii)(A), will apply as if the surviving Spouse were the Participant.

For purposes of this Subsection (b)(ii) and (e), unless Subsection (b)(ii)(D) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Subsection (b)(ii)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Subsection (b)(ii)(A). If distributions under an annuity meeting the requirements of this Section 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 Subsection (b)(ii)(A)) the date distributions are considered to begin is the date distributions actually commence.

- (E) Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under the life expectancy rule, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with the five-year rule.

- (iii) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Subsections (c), (d) and (e) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and Section 1.401(a)(9) of the Regulations. Any part of the Participant's interest which is in the form of an individual account described in Code §414(k) will be distributed in a manner satisfying the requirements of Code §401(a)(9) and Section 1.401(a)(9) of the Regulations that apply to individual accounts.

(c) **Determination of Amount to be Distributed Each Year.**

- (i) **General Annuity Requirements.** If the Participant's interest is to be paid in the form of annuity distributions under the Plan, payments under the annuity shall satisfy the following requirements:

- (A) the annuity distributions will be paid in periodic payments made at uniform intervals not longer than one year;
- (B) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Subsection (d) or (e);
- (C) once payments have begun over a period, the period will be changed only in accordance with Subsection ~~(f);~~ ~~9;~~
- (D) payments will either be nonincreasing or increase only as follows:
 - 1) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;
 - 2) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the Annuity Starting Date, or if later, the date of the most recent percentage increase;
 - 3) by a constant percentage of less than 5 percent per year, applied not less frequently than annually;
 - 4) as a result of dividend or other payments that result from actuarial gains, provided:
 - a) actuarial gain is measured not less frequently than annually,
 - b) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),
 - c) the actuarial gain taken into account is limited to actuarial gain from investment experience,
 - d) the assumed interest rate used to calculate such actuarial gains is not less than 3 percent, and
 - e) the annuity payments are not increased by a constant percentage as described in paragraph 3) of this Subsection (c)(i)(D);
 - 5) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the Beneficiary whose life was being used to determine the distribution period described in

Section (d) dies or is no longer the Participant's Beneficiary pursuant to a Qualified Domestic Relations Order within the meaning of Code §414(p);

- 6) to provide a final payment upon the Participant's death not greater than the excess of the actuarial present value of the Participant's accrued benefit (within the meaning of Code §411(a)(7)) calculated as of the Annuity Starting Date using the applicable interest rate and the applicable mortality table defined in Section 1.3 over the total of payments before the Participant's death;
- 7) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death; or
- 8) to pay increased benefits that result from a Plan amendment.

(ii) **Amount Required to be Distributed by Required Beginning Date and Later Payment Intervals.** The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Subsection (b)(ii)(A) or (B)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

(iii) **Additional Accruals After First Distribution Calendar Year.** Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such benefit accrues.

(d) **Requirements For Annuity Distributions That Commence During Participant's Lifetime.**

(i) **Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse.** If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a ~~non-spouse~~~~nonspouse~~ Beneficiary (including a Participant's Domestic Partner), annuity payments to be made on or after the Participant's Required Beginning Date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant, using the table set forth in Section 1.401(a)(9)-6, Q&A 2(c)(2), in the manner described in Q&A 2(c)(1), of the Regulations, to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a ~~non-spouse~~~~nonspouse~~ Beneficiary (including a Participant's Domestic Partner) and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

- (ii) **Period Certain Annuities.** Unless the Participant's Spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Regulations for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's spouse is the Participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Subsection (d)(ii), or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the calendar year that contains the Annuity Starting Date.
- (e) **Requirements For Minimum Distributions After the Participant's Death.**
- (i) **Death After Distributions Begin.** If the Participant dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this Section the remaining portion of the Participant's interest will continue to be distributed over the remaining period over which distributions commenced.
 - (ii) **Death Before Distributions Begin.**
 - (A) **Participant Survived by Designated Beneficiary.** If the Participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Subsection (b)(ii)(A) or (B), over the life of the designated Beneficiary or over a period certain not exceeding:
 - 1) unless the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
 - 2) if the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the Annuity Starting Date.

Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in

which distributions would be required to begin under the life expectancy rule, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with the five-year rule.

- (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 Pension or Vested Benefit 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 Begin.** If the Participant dies before the date distribution of his or her Pension or Vested Benefit begins, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this Subsection (e) will apply as if the surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Subsection (b)(ii)(A).

(f) **Changes to Annuity Payment Period.**

- (i) **Permitted Changes.** An annuity payment period may be changed only in association with an annuity payment increase described in Subsection (c)(i)(D) or in accordance with Subsection (f)(ii).
- (ii) **Reannuitization.** An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in Subsection (f)(iii) are satisfied and:
 - (A) the modification occurs when the Participant retires or in connection with a Plan termination;
 - (B) the payment period prior to modification is a period certain without life contingencies; or
 - (C) the annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the Participant and a designated Beneficiary, the Participant's Spouse is the sole designated Beneficiary, and the modification occurs in connection with the Participant's becoming married to such Spouse.
- (iii) **Conditions.** The conditions in this Subsection (f)(iii) are satisfied if:
 - (A) the future payments after the modification satisfy the requirements of Section 401(a)(9), Section 1.401(a)(9) of the Regulations, and this Section 5.8Appendix (determined by treating the date of the change as a new

Annuity Starting Date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);

- (B) for purposes of Code §§415 and 417, the modification is treated as a new Annuity Starting Date;
- (C) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Code § 415 (determined at the original Annuity Starting Date, using the interest rates and mortality tables applicable to such date); and
- (D) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the employee at the original Annuity Starting Date under Code §401(a)(9) and this [Section 5.8Appendix](#).

(g) **Payments to a Surviving Child.**

- (i) **Special rule.** For purposes of this Section, payments made to a Participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving Spouse to the extent the payments become payable to the surviving Spouse upon cessation of the payments to the child.
- (ii) **Age of majority.** For purposes of this Section, a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of Section 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

(h) **Definitions.**

- (i) **Actuarial gain.** The difference between an amount determined using the actuarial assumptions (i.e., investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.
- (ii) **Designated beneficiary.** The individual who is designated by the Participant (or the Participant's surviving Spouse or surviving Domestic Partner as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code §401(a)(9) and Section 1.401(a)(9)-4 of the Regulations.
- (iii) **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 pursuant to Subsection (b)(ii).

- (iv) **Eligible cost-of-living index.** An index described in paragraphs (b)(2), (b)(3) or (b)(4) of Section 1.401(a)(9)-6, Q&A-14, of the Regulations.
- (v) **Life expectancy.** Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the Regulations.
- (vi) A Participant's interest will be actuarially increased to take into account the period after age ~~70 1/2~~ in which the Participant does not receive any benefits under the Plan. The actuarial increase will begin on April 1 following the calendar year in which the Participant attains age ~~70 1/2~~ (January 1, 1997 in the case of a Participant who attains age ~~70 1/2~~ prior to 1996), and will end on the date on which benefits commence after retirement in an amount sufficient to satisfy Section 401(a)(9). The amount of actuarial increase payable as of the end of the period for actuarial increases will be no less than the actuarial equivalent of the Participant's retirement benefits that would have been payable as of the date the actuarial increase must commence plus the actuarial equivalent of additional benefits accrued after that date, reduced by the actuarial equivalent of any distributions made after that date. The actuarial increase under this Section is not in addition to the actuarial increase to reflect the delay in payments after Normal Retirement.

- (i) **Alternative Compliance with Certain Annuity Requirements in 2003, 2004 and 2005.** A reasonable and good faith interpretation of the requirements of Code § 401(a)(9) apply in lieu of the requirements of Subsections (c), (d) and (f) for purposes of determining minimum required distributions for calendar years 2003, 2004, or 2005.

5.9 **Consent to Distribution.** At the time the notice described in Section 5.10 is furnished to the Participant, an election form also will be furnished. The Participant must complete such form and return it to the Plan Administrator by the later of 30 days after receipt of the form or the day before the Participant's Annuity Starting Date if the Participant wants to have his or her vested Accrued Benefit paid in an optional form of benefit described in Section 5.2. A Participant's election shall be revocable up until the Participant's Annuity Starting Date. A Participant who fails to complete and return the election form by the deadline in the second sentence of this paragraph shall be deemed to have elected the automatic form of payment specified in Section 5.1.

A married Participant or, (subject to the requirements of Code Section 401(a)(9) and the Regulations thereunder) a Participant with a Domestic Partner may elect the Joint & 66-2/3% Survivor Annuity or the Joint & 66-2/3% Survivor Annuity with 10 Year Certain options without his Spouse's or Domestic Partner's Consent. A married Participant or a Participant with a Domestic Partner must obtain his Spouse's or Domestic Partner's consent in the form of a Qualified Election before a distribution can be made as the 10 Year Certain & Life, Life Only, or Lump Sum Distribution option. Unless the Spouse or Domestic Partner's is the Participant's sole primary Beneficiary with regard to any distribution elections, the Spouse or Domestic Partner also must consent in the form of a Qualified Election to the Participant's Beneficiary designation or to any change in the Participant's Beneficiary designation.

A Qualified Election shall mean a written election of the form in which a Participant's Accrued Benefit will be paid, or a written beneficiary designation. The election must be in writing and the Participant's Spouse or Domestic Partner must consent to the election. A notary public or a Plan representative must witness the Spouse's or Domestic Partner's consent.

The Spouse's or Domestic Partner's consent to a benefit form or Beneficiary designation is irrevocable after a waiting period of 7 days. Spousal or Domestic Partner consent is not required if the Participant establishes to the satisfaction of a Plan representative that such written consent may not be obtained because there is no Spouse or Domestic Partner or the Spouse or Domestic Partner cannot be located. Any consent necessary under this provision will be valid only with respect to the Spouse or Domestic Partner who signs the consent.

Unless a Participant's Spouse or Domestic Partner has made a Qualified Election in a manner described in this Section 5.9 before the Participant's death, the Spouse or Domestic Partner shall be the Participant's primary Beneficiary. The Spouse or Domestic Partner of a deceased Participant who is entitled to any benefit under the Plan may elect an optional form of payment subject to Section 5.3. The Spouse or Domestic Partner may receive payments commencing at the Participant's Earliest Retirement Age. The Spouse or Domestic Partner may elect to defer payment of the benefit to a later date permitted under Section 5.8.

- 5.10 **Notice Requirements.** The Plan Administrator shall provide each Participant within one hundred and eighty days prior to the commencement of benefits, a written explanation of (1) the terms and conditions of a Qualified Joint and 50% Contingent Annuity; (2) the terms and conditions of a Domestic Partner Joint and 50% Survivor Annuity; (3) the Participant's right to elect an optional form of benefit; (4) the rights of a Participant's Spouse or Domestic Partner; and (4) the right to make and the effect of a revocation of a previous election to waive the Qualified Joint and 50% Contingent Annuity or the Domestic Partner Joint and 50% Survivor Annuity.

ARTICLE 6.

ADMINISTRATIVE PROVISIONS

- 6.1 **Participants to Furnish Required Information.** Each Participant and Beneficiary shall furnish to the Plan Administrator such information concerning the age and marital or civil union status of such persons as the Plan Administrator requests for purposes of administering the Plan. The provisions of the Plan respecting any payment thereunder are conditional upon the Participant and Beneficiary promptly furnishing true, full and complete information as the Plan Administrator may request. The Employer, the Committee, and anyone involved in the administration of the Plan shall be entitled to rely upon any certification, statement or representation made or evidence furnished by an Employee, Participant, or Beneficiary and shall not be liable on account of any act or failure to act in reliance thereon, any such certification, statement, representation, or evidence, upon being duly made or furnished, shall be conclusively binding upon the person furnishing same; but it shall not be binding upon the Employer, the Committee, or any other person involved in the administration of the Plan, and nothing herein contained shall be construed to prevent any of such parties from contesting any such certification, statement, representation, or evidence or to relieve the Employee, Participant, or Beneficiary from the duty of submitting satisfactory proof of any such fact.
- 6.2 **Beneficiary Designation.** Subject to the spousal and Domestic Partner consent rules as specified in Section 5.9, the Participant will designate a Beneficiary to receive any benefits payable upon his death on the form prescribed by and delivered to the Plan Administrator. Subject to the spousal consent and Domestic Partner consent rules as specified in Section 5.9, the Participant will have the right to change or revoke a designation at any time by filing a new designation or notice or revocation with the Plan Administrator. If a Participant fails to designate a Beneficiary before his death, or if no designated Beneficiary survives the Participant, the Plan Administrator will direct the Trustee to pay the benefit to the surviving Spouse or the Participant's surviving Domestic Partner at the date of the Participant's death. If the Participant does not have a surviving Spouse or surviving Domestic Partner at the date of the Participant's death, the Beneficiary shall mean the following classes of persons in the order named with a living member on the respective dates that distributions are payable:
- (a) the Participant's natural and adopted children in equal shares, provided that the then living issue of any deceased child shall take the parent's share by right of representation; or if none,
 - (b) the Participant's parents in equal shares; or if none,
 - (c) the Participant's brothers and sisters, in equal shares; or if none,
 - (d) the Participant's estate.
- 6.3 **Participants' Rights in Trust Fund.** No Participant or other person shall have any interest in or any right in, to, or under the Trust Fund, or any part of the assets thereof, except as expressly provided in the Plan.
- 6.4 **Benefits Not Assignable.** Except as provided in Section 5.64, no benefits, rights or accounts shall exist under the Plan which are subject in any manner to voluntary or involuntary anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, transfer, assign, pledge, encumber or charge any benefits, rights or accounts shall be null

and void. Except as provided in Section 5.64, no benefit, right or account under the Plan shall be liable for, or subject to, the debts, contracts, liabilities, engagements, torts or other obligations of the person entitled to such benefit, right or account. Except as provided in Section 5.64, no benefit, fight or account under the Plan shall constitute an asset in case of the bankruptcy, receivership, or divorce of any person entitled under the Plan.

- 6.5 **Benefits Payable to Minors and Incompetents.** Whenever any person entitled to payments under this Plan shall be a minor or under other legal disability or in the sole judgment of the Committee shall otherwise be unable to apply such payments to his own best interest and advantage, the Committee may direct all or any portion of such payments to be made to the duly-appointed guardian, conservator or other duly-appointed legal representative of such person. The decision of the Committee will, in each such case, be final and binding upon all persons, and the Committee shall not be obliged to see to the proper application or expenditure of any payments so made. Any payment made pursuant to the power conferred upon the Committee shall operate as a complete discharge of the obligations of the Trustee, the Committee and the Employer.
- 6.6 **Conditions of Employment Not Affected by Plan.** The establishment and maintenance of the Plan will not be construed as conferring any legal rights upon any Participant to the continuation of his employment with the Employer, nor will the Plan interfere with the right of the Employer to discipline, lay off or discharge any Participant. The adoption and maintenance of the Plan shall not be deemed to constitute a contract between the Employer and any Employee, or to be a consideration for, inducement to, or condition of, the employment of any person.
- 6.7 **Notification of Mailing Address.** Each Participant and Beneficiary entitled to benefits shall file with the Plan Administrator, in writing, his or her address and each change of address. Any payment hereunder and any communication addressed to a Participant, former Participant, or Beneficiary at his last address filed with the Plan Administrator (or, if no such address has been filed, then at his last address as indicated on the records of the Employer) shall be binding on such person for all purposes of the Plan, and neither the Plan Administrator nor the Trustee, nor the Employer, shall be obligated to ascertain the receipt of such payment. If the Plan Administrator, for any reason, is in doubt as to whether payments are being received by the person entitled thereto, it may take reasonable steps to locate the Participant or Beneficiary. If the Plan Administrator is not furnished with satisfactory evidence of such person's proper mailing address, or with evidence of his death, and the Plan Administrator is unable to find any person to whom payment is due under the provisions of the Plan within three years of the date such payment of benefit was scheduled to have commenced, all retirement income and other benefit payments due shall be forfeited. If claim for any forfeited benefit is subsequently made by any such person to whom payment is due under the Plan, such forfeited benefits due such person shall be reinstated subject to Sections 7.10 and 7.11.
- 6.8 **Written Communications Required.** Any notice, request, instruction, or other communication to be given or made hereunder shall be in writing.
- 6.9 **Benefits Payable at Office of Trustee.** All benefits shall be paid by the trustee in negotiable funds made payable to the person entitled to receive such benefits.
- 6.10 **Administrative Powers.** ~~The Plan Subject to such appeal rights as are set forth herein, the Plan Administrator shall administer the Plan in accordance with its terms, and shall have all powers necessary to carry out the provisions of the Plan not otherwise reserved to the Employer, the Committee or the Trustee. The Plan Administrator's administrative powers duties specified in this~~

~~Plan, which~~ shall include but not be limited to the following powers and duties, each of which is subject to the duties and authorities of the Committee and the Trustee:

- (a) Interpretation. To interpret the Plan provisions and resolve all questions relating to the administration of the Plan, including the power to determine the rights ~~and~~ eligibility of ~~Employee an individual under~~ Participants and their Beneficiaries, and the Plan. amounts and values of their respective interests;
- (b) Rules. To adopt such rules and regulations as the Plan Administrator may deem reasonably necessary for the proper and efficient administration of the Plan and consistent with its purposes;
- (c) Enforcement. To enforce the Plan in accordance with its terms and with the Plan's rules and regulations and to consider and interpret the Plan, and settle and discharge disputes arising thereunder;
- (d) Claims. To make initial determinations of claims for benefits, or claims relating to eligibility to participate in the Plan;
- (e) Corrections and adjustments. To make such adjustments which the Plan Administrator deems necessary or desirable to correct any arithmetic or accounting errors. To correct any defect, supply any omission or reconcile any inconsistency in such manner and to such extent as the Plan Administrator shall deem necessary to carry out the purposes of the Plan.
- ~~(e)(f)~~ Records. To maintain the account records of all Participants; and
- (g) To perform administrative functions as directed by the Committee.
- ~~(f)(h)~~ Additional Powers. To do all other acts in the Plan Administrator's opinion necessary or desirable for the proper and advantageous administration of the Plan.

6.11 Claims and Appeals

- (a) **Claim With Plan Administrator.** A Participant or Beneficiary who claims he or she is being denied any benefit or right provided under the Plan shall have the right to file a written claim with the Plan Administrator.
 - (i) Upon the receipt of such a claim and in the event the claim is denied, the Plan Administrator shall, within 90 days after receipt of such claim, provide such claimant a written statement which shall be delivered or mailed to the claimant by Certified or Registered Mail to the claimant's last known address, which statement shall contain the following:
 - (A) the specific reason for the denial of benefits;
 - (B) the specific reference to the pertinent provisions of the Plan upon which the denial is based;
 - (C) a description of any additional material or information which is necessary: and

- (D) an explanation of the appeal procedure provided below; provided, however, that if special circumstances require an extension of time for processing the claim, the Plan Administrator shall provide such claimant with such written statement described above not later than 180 days after receipt of the claimant's claim, but, in such event, the Plan Administrator shall furnish the claimant, within 90 days after its receipt of such claim, written notification of the extension explaining the circumstances requiring such extension and the date that it is anticipated that such written statement will be furnished.
- (b) **Appeal to Committee.** Within 60 days after the receipt of a notice of a denial of benefits as provided above, the claimant or the claimant's authorized representative may request, in writing, a hearing before the Committee for a review of the Plan Administrator's determination. The claimant's request shall be delivered to the Plan Administrator who shall set the date and time for the hearing, but shall not participate in the Committee's review. In conducting its hearing, the Committee shall consider any written statement, testimony or other evidence presented by the claimant or the authorized representative in support of the claim. The Committee shall give the claimant and the claimant's authorized representative reasonable access to all pertinent documents necessary for the preparation of the claim.
- (i) The Committee shall, within 60 days after receipt of such appeal, conduct a hearing and provide such claimant a written determination which shall be delivered or mailed to the claimant by Certified or Registered Mail to the claimant's last known address, provided, however, in the event that special circumstances require an extension of time for processing, the Committee shall so notify the claimant of the Committee's decision not later than 120 days after receipt of such appeal but, in such event, the Committee shall furnish the claimant, within 60 days after the Committee's receipt of such appeal, written notification of the extension explaining the circumstances requiring such extension and the date that it is anticipated that the Committee's decision will be furnished.
- (ii) The decision of the Committee shall be conveyed in writing to the claimant and shall include the specific reasons for the decision presented in a manner calculated to be understood by the claimant and shall contain references to all relevant Plan provisions on which the decision was based. The decision of the Committee shall be final and conclusive.
- (c) If the Committee suspends monthly benefits, the Plan Administrator shall notify the Participant in writing that benefits are being suspended. The notice shall contain a description of the specific reasons for the suspension, a general description of the Plan provisions relating to suspension of benefits, a copy of those Plan specifications, and shall inform the Participant of the procedure for requesting a review of the suspension of payments.

ARTICLE 7.

MISCELLANEOUS PROVISIONS

- 7.1 **Contributions.** No contributions shall be required of any Participant. The Employer intends, but does not guarantee, to make annual contributions in amounts required to meet the minimum funding requirements of Code §412, as specified in the actuary's valuation reports for the applicable periods of time. Subject to applicable provisions of law, the Employer, any of its officers, agents, or members of its Board of Directors do not guarantee, in any manner, the payment of benefits under the Plan.
- 7.2 **Employer Contributions Irrevocable.** The Employer shall have no right, title or interest in the Trust Fund or in any part thereof and no contributions made thereto shall revert to the Employer except such part of the Trust Fund, if any, which remains after the satisfaction of all liabilities to persons entitled to benefits under the Plan. Notwithstanding the preceding sentence, if a contribution either is made by a good faith mistake of fact, or is the result of a good faith mistake in determining the deductibility of such contribution, the excess of the amount contributed (net of any losses) over the amount that would have been contributed may be returned to the Employer within one year of the date of the mistaken payment or the disallowance of the deduction, as the case may be.
- 7.3 **Forfeitures.** Forfeitures shall not be used to increase the benefits that any Employee would otherwise receive under the Plan at any time prior to the termination of the Plan but shall be anticipated in determining the costs under the Plan.
- 7.4 **Amendment of Plan.** The Plan may be amended by the Employer in its discretion by resolution of the Board of Directors or by resolution of a committee appointed by the Board of Directors that has been granted specific authority to amend the Plan, except that under no condition shall such amendment result in, or permit, the return or repayment to the Employer of any property held or acquired by the Trustee hereunder or the proceeds thereof, or result in, or permit, the distribution of any such property for the benefit of anyone other than the Participants and their Beneficiaries, except to the extent provided by Section 7.11 and Section 7.6 with respect to termination of the Plan and expenses of administration, respectively. The Plan may not be amended to change the duties or responsibilities of the Trustee without the Trustee's written consent. Any permitted amendment may be made retroactively which, in the judgment of the Committee, is necessary or advisable, and which is allowed by law. Each amendment of the Plan shall be made in writing and shall state the date to which it is either retroactively or prospectively effective.
- 7.5 **Merger of Plan.** In the case of the merger or consolidation of the Plan with, or the transfer of assets or liabilities to, another qualified Plan, each Participant must be entitled to receive a benefit, upon termination of such other retirement Plan after such merger, consolidation or transfer, which is at least equal to the benefit the Participant would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had been terminated at that time.
- 7.6 **Expenses of Administration.** The Plan shall pay all expenses incurred in the administration of the Plan, including expenses and fees of the Trustee, except that the Employer may elect in its discretion to pay some or all of the Plan expenses and shall pay all expenses incurred in the establishment of the Plan.
- 7.7 **Formal Action by the Employer.** Any formal action permitted or required to be taken by the Employer shall be by resolution of its Board of Directors, or by written instrument executed by a

person or group of persons who has been authorized by resolution of such Board of Directors as having authority to take such action.

- 7.8 **Change in Vesting Schedule.** Though the Employer reserves the right to amend the vesting schedule at any time, the Employer shall not amend the vesting schedule (and no amendment shall be effective) if the amendment would reduce the vested percentage of any Participant's Accrued Benefit (determined as of the later of the date the Employer adopts the amendment, or the date the amendment becomes effective) to a percentage less than the vested percentage computed under the Plan without regard to the amendment.
- 7.9 **Termination of Plan.** The Plan may be terminated by the Employer at any time by resolution of the Board of Directors or by resolution of a committee appointed by the Board of Directors that has specific authority to terminate the Plan. Upon termination of the Plan, the Employer shall notify the Committee and the Trustee of the termination. In the event of the liquidation, dissolution, merger or consolidation of the Employer under such circumstances that there is a successor corporation, firm, association, or governmental authority continuing and carrying on all, or a substantial part of, the Employer's business, such successor may be substituted for the Employer under the terms of this Plan by formal action on such successor's part specifying its election to continue the Plan. Each action to terminate all or any portion of the Plan shall be made in writing and shall state the date to which it is either retroactively or prospectively effective.
- 7.10 **Benefits Nonforfeitable If Plan Is Terminated.** Upon termination or partial termination of the Plan, the rights of each affected Participant in the Plan to benefits accrued to the date of termination, to the extent then funded, shall be nonforfeitable. Benefits shall be determined and distributed as provided in Section 7.11.
- 7.11 **Termination of Plan and Distribution of Trust Fund.** Upon termination of the Plan in accordance with the provisions hereof, the Trust Fund shall be allocated and distributed as follows:
- (a) The Committee shall determine the date of distribution and the asset value of the Trust Fund to be distributed, after taking into account the expenses of such distribution.
 - (b) Any distribution made after the termination of the Plan shall be made, in whole or in part, to the extent that no discrimination in value results, in cash or in nontransferable annuity contracts, as the recipient shall elect in accordance with Article 5.
 - (c) The Committee, after having first determined the asset value properly allocable to each Participant and Beneficiary under the Plan, shall, among the participating Employees and Beneficiaries under the Plan, allocate the asset value as of the date of termination of the Plan in the manner set forth below, on the basis that the amount required to provide any given retirement income shall mean the Actuarially Equivalent single sum value of such retirement income, except that if the method of distribution involves the purchase of an insured annuity, the amount required to provide the given retirement income shall mean the single premium payable for such annuity.
 - (i) Allocation shall first be made with respect to each active, retired or terminated Participant and to each Beneficiary of a deceased Participant in an amount equal to (1) the amount, if any, credited to the Participant's account under the Plan on the date of termination of the Plan that is attributable to voluntary Employee contributions or (2) if the funds attributable to voluntary Employee contributions are being used to provide an Actuarially Equivalent benefit, the amount required

to provide (after the date of termination of the Plan) that portion of the Participant's benefit which is attributable to voluntary Employee contributions, provided, however, that if the asset value be less than the aggregate of such amounts, such amounts shall be reduced pro rata among such individuals so that the aggregate of such reduced amounts, will be equal to the asset value; and provided further, however, that the benefits on which the allocations specified below are based shall exclude any portion thereof attributable to the Participant's voluntary Employee contributions.

- (ii) If there is any asset value remaining, allocation shall next be made with respect to each active, retired or terminated Participant and to each Beneficiary of a deceased Participant in an amount equal to the excess, if any, of (1) the Participant's mandatory Employee contributions, if any, together with interest credited thereto over (2) the aggregate of payments, if any, exclusive of payments attributable to the Participant's voluntary Employee contributions, if any, which have previously been made on behalf of the Participant; provided, however, that if such remaining asset value be less than the aggregate of the amounts thus allocated hereunder, such latter amounts shall be reduced pro rata among such individuals so that the aggregate of such reduced amounts will be equal to the remaining asset value.
- (iii) If there be any asset value remaining after the allocations under (i) and (ii) above, allocation shall next be made with respect to:
 - (A) Each retired or terminated Participant whose retirement income payments commenced at least three years prior to the date of termination of the Plan in an amount equal to the excess, if any, of (a) the amount required to provide (after the date of termination of the Plan) the smallest amount of income payable to such Participant during such three-year period immediately preceding the date of termination of the Plan, based upon the provisions of the Plan as in effect during the five-year period immediately preceding the date of termination of the Plan which would result in the least amount of income being payable to such Participant over (b) the amount of his or her allocation, if any, under (ii) above;
 - (B) Each person receiving a retirement income on such date of termination on account of a deceased Participant or retired or terminated (but since deceased) Participant whose retirement income payments commenced, either to such person or to such retired or terminated (but since deceased) Participant, at least three years prior to the date of termination of the Plan in an amount equal to the excess, if any, of (a) the amount required to provide (after the date of termination of the Plan) the smallest amount of income payable to such person during such three-year period immediately preceding the date of termination of the Plan, based upon the provisions of the Plan as in effect during the five-year period immediately preceding the date of termination of the Plan which would result in the least amount of income being payable to such person over (b) the amount of this allocation, if any, under (ii) above; and
 - (C) Each other active, retired, or terminated Participant who, at least three years prior to the date of termination of the Plan, either had become eligible for normal retirement but had not yet retired or had satisfied the

applicable age and service requirements to be eligible for an early retirement benefit, or the Beneficiary of any such eligible Participant whose service was terminated by reason of his or her death during such three-year period, in an amount equal to the excess, if any, of (a) the amount required to provide (after the date of termination of the Plan) the monthly retirement income which would have been payable on behalf of such Participant if he had retired three years prior to the date of termination of the Plan, based upon the provisions of the Plan as in effect during the five-year period immediately preceding the date of termination of the Plan which would result in the least amount of income being payable to such Participant or Beneficiary over (b) the amount of his allocation, if any, under (ii) above; provided, however, that if such remaining asset value be less than the aggregate of the amounts thus allocated hereunder, such latter amounts shall be reduced pro rate among such individuals so that the aggregate of such reduced amounts will be equal to the remaining asset value.

- (iv) If there is any asset value remaining, allocation shall next be made with respect to each active, retired or terminated Participant and to each Beneficiary under the Plan in an amount equal to the excess, if any, of (1) the amount required to provide that portion of the Actuarially Equivalent single-sum value of the Accrued Benefit commencing at Normal Retirement Date which he or she had accrued as of the date of termination of the Plan or, if applicable, which he or she was receiving as of the date of the termination of the Plan over (2) the aggregate of the allocations, if any, made on his or her behalf under (ii) and (iii) above, provided, however, that if such remaining asset value be less than the aggregate of the amounts thus allocated hereunder, such latter amounts shall be reduced pro rata among such individuals so that the aggregate of such reduced amounts will be equal to the remaining asset value.
- (v) If there is any asset value remaining, allocation shall next be made with respect to each retired or terminated Participant receiving a retirement income hereunder on such date on account of a deceased Participant or a retired or terminated (but since deceased) Participant and each Participant who has, by such date, become eligible for Normal Retirement but has not yet retired, in an amount equal to the excess, if any, of (a) the amount required to provide the retirement income which such Participant or other person is receiving or is entitled to receive under the Plan over (b) the aggregate of the allocations made on behalf of such Participant or other person under (ii), (iii) and (iv) above; provided, however, that if such remaining asset value be less than the aggregate of the amounts thus allocated, hereunder, such latter amounts shall be reduced pro rate among such individuals so that the aggregate of such reduced amounts will be equal to the remaining asset value.
- (vi) If there is any asset value remaining, allocation shall next be made with respect to:
 - (A) Each Participant in the service of the Employer on the date of termination of the Plan whose Initial Vesting Date is on or prior to such date and who is not entitled to an allocation under (v) above, in an amount equal to the excess, if any, of (a) the amount required to provide the Actuarially Equivalent single-sum value of the vested retirement income which the Participant would have been entitled to receive under the provisions of

Section 3.7 if his or her service had been terminated on the date of termination of the Plan over (b) the aggregate of the allocations made on behalf of such Participant under (ii), (iii) and (iv) above; and

- (B) Each terminated Participant then entitled to a benefit under the provisions of Section 3.7 whose monthly income payments have not commenced by such date, in an amount equal to the excess, if any, of (a) the amount required to provide the Actuarially Equivalent single-sum value of the vested Accrued Benefit to which the Participant is entitled under Section 3.7 over (b) the aggregate of the allocations made on behalf of such Participant under (ii), (iii) and (iv) above; provided, however, that if such remaining asset value be less than the aggregate of the amounts thus allocated hereunder, such latter amounts shall be reduced pro rata among such individuals so that the aggregate of such reduced amounts will be equal to the remaining asset value.
- (vii) If there is any asset value remaining, allocation shall lastly be made with respect to each Participant in the service of the Employer on the date of termination of the Plan who is not entitled to an allocation under (v) above, in an amount equal to the excess, if any, of (1) the amount required to provide the Actuarially Equivalent single-sum value of the Accrued Benefit commencing at Normal Retirement Date which the Participant had accrued as of the date of termination of the Plan (assuming the Participant's vested percentage is 100%) over (2) the aggregate of the allocations made on behalf of such Participant under (ii), (iii), (iv) and (vi) above; provided, however, that if such remaining asset value is less than the aggregate of the amounts thus allocated hereunder, such latter amounts shall be reduced pro rata among such individuals so that the aggregate of such reduced amounts will be equal to such remaining asset value.
- (viii) In the event that there is asset value remaining after the full allocations specified in (i), (ii), (iii), (iv), (v), (vi) and (vii) above, such residual assets will be distributed to the Employer.
- (d) In order of priorities for, and the amounts of, the distributions set forth in (c) above and the rights of Participants and Beneficiaries to benefits under the Plan shall be subject (i) to the limitations provided by Article 4 of the Plan, (ii) to any changes, including the recapture of any prior distributions to Participants, if required by law; and (iii) to any changes required by the Internal Revenue Service as a condition for issuing a favorable determination letter stating that the distribution of assets will not adversely affect the continued qualified status of the Plan under Code § 401(a).
- (e) As soon as practicable after receipt by the Employer of (i) any approval required by law for a proposed method of distribution of assets and (ii) a favorable determination letter from the Internal Revenue Service stating that in its opinion such method will not adversely affect the continued qualified status of the Plan under Code § 401(a), the Committee shall direct the Trustee to distribute the assets in accordance with such method.

7.12 **Word Usage.** Words used in the masculine also apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural includes the singular and the singular includes the plural.

- 7.13 **Applicable Law.** The Plan will, unless superseded by Federal law, be construed and enforced according to the laws of the State of Colorado, and all provisions of the Plan will, unless superseded by Federal law, be administered according to the laws of such state.

ARTICLE 8.

RETIREMENT COMMITTEE

- 8.1 **Retirement Committee.** The Retirement Committee shall consist of six members, four of whom shall be members of the Board of Directors appointed by such Board, and two of whom shall be senior members of the Employer's management, namely the General Manager (who shall also serve as the Administrator of the Plan) and the Chief Financial Officer. Each member appointed by the Board shall serve at the pleasure of the Board of Directors until a successor shall be appointed in like manner.
- 8.2 **Officers of the Committee.** The Committee shall elect a Chairperson. The Chief Financial Officer shall act as Secretary.
- 8.3 **Action by the Committee.** A majority of the members of the Committee shall constitute a quorum for the Committee to act as set forth herein. The Committee may act only at a meeting at which a quorum is present. The Committee may keep minutes; a record of any actions, including any recommendations to the Administrator or the Board of Directors, shall be kept in written form by the Secretary.

A member of the Committee may not participate in any matter in which his or her individual right or claim to any benefit under the Plan is involved. If a Committee member is so prohibited from participating, the Employer's Board of Directors may appoint a temporary substitute member to exercise all of the powers of the disqualified member concerning the matter in question.

- 8.4 **Functions and Powers of the Committee.** The Committee's principal functions may include, but are not limited to:
- (a) exercise overall responsibility for overseeing the management of the Plan Trust Fund investments; in so doing, the Committee will abide by the governing legal standards and comply with all applicable laws, reporting, and disclosure requirements;
 - (b) establish and maintain an INVESTMENT POLICY STATEMENT in order to assist in the investment decision-making process by communicating to all parties involved investment objectives, asset allocation strategies (including risk tolerance and anticipated liquidity needs), clearly stated investment guidelines (including performance benchmarks and time horizon(s)), as well as an investment structure;
 - (c) retain an Investment Consultant to assist the Committee in the oversight of the overall investment program for the Fund and or an Investment Manager and retain investment management firms to manage the assets of the Fund;
 - (d) receive, at such intervals as the Committee deems appropriate, but no less frequently than quarterly, reports from the Investment Consultant and from the investment management firms that have been retained to manage the assets of the Fund; and
 - (e) make recommendations to the General Manager, as the Administrator of the Plan, regarding the engagement of a Trustee, an Actuary, one or more paying agents for the Trust Fund, and to the Employer's Board of Directors regarding matters of policy concerning the Plan, including the budgeting and expenditure of funds.

~~(f) review all orders, directions, consents or advice given to the Trustee by the Administrator of the Plan under terms of the Trust Agreement, and the Trustee shall be entitled to rely on any instrument delivered to it pursuant to such review by the Committee.~~

8.5 **Administrative Duties of the Committee.** The Committee, as part of its general duty to review the administration of the Plan by the Administrator, shall have the discretion to:

- (a) obtain all facts with respect to any Employee's age, amount of Compensation, length of service, Hours of Service, Vesting Service, Credited Service and date of initial coverage under the Plan, and by application of the facts so obtained and any other facts deemed material, verify the amount, if any, of benefit payable under the Plan on behalf of a Participant;
- (b) pursuant to the provisions of Article 6, review claims and render decisions with respect to a claim for (or denial of a claim for) a benefit under the Plan, which decisions shall be final and binding for all purposes;
- (c) pursuant to the provisions of Article 6, review the Administrator's interpretation of the Plan, in which case the Committee's interpretation of the Plan shall be final and binding for all purposes;
- (d) pursuant to the provisions of Article 6, review all questions arising in the administration of the Plan, including, but not limited to, questions regarding the entitlement of Participants and Beneficiaries to benefits provided under the Plan, which decisions shall be final and binding for all purposes;
- (e) periodically review the funding policy and method for the Plan for consistency with the objectives of the Plan and make recommendations to the Board of Directors and the Administrator regarding same; provided however, that any decisions pertaining to the amount and timing of contributions by the Employer to the Trust Fund are reserved to the Employer acting through its Board of Directors;
- (f) confirm directions for the Trustee with respect to the making of payments, the names of the payees, the amounts to be paid, and the time or times when payments are to be made;
- (g) confirm that the Administrator has furnished to the Trustee such information (including information relative to the liquidity needs of the Plan) as is necessary for the Trustee to carry out the purposes of the Trust Agreement;
- (h) approve the Administrator's engagement of professional accounting services for the purposes of an annual audit and opinion as to whether the financial statements and schedules of the Plan are presented fairly in conformity with generally accepted accounting principles; review and recommend such reports for presentation to the Employer's Board of Directors.

8.6 **Delegation of Additional Powers, Functions, and Duties.** The foregoing lists of powers, functions, and administrative duties are not intended to be either complete or conclusive, and the Committee shall, in addition, exercise such other powers and perform such other duties as the Employer's Board of Directors may deem necessary, desirable, advisable or proper for the supervision and administration of the Plan.

8.7 **Indemnification of Members of the Committee.** To the extent not covered by insurance, or if there is a failure to provide full insurance coverage for any reason, and to the extent permissible under applicable laws and regulations, the Employer agrees to hold harmless and indemnify the members of the Committee against any and all claims and causes of action by, or on behalf of, and all parties whomsoever, and all losses there from, including, without limitation, costs of defense and attorneys' fees, based upon, or arising out of, any act or omission relating to, or in connection with, the Plan and Trust Agreement, other than losses resulting from such person's fraud or willful misconduct.

8.8 **Actuary.** An actuary shall be appointed by the Administrator and approved by the Committee to do such technical and advisory work as the Administrator, the Committee or the Employer may request, including analysis of the experience of the Plan from time to time, the preparation of actuarial tables for the making of computations and the submission of an actuarial report at least annually to the Committee for review prior to submission to the Employer. This report shall contain an actuarial valuation showing the financial condition of the Plan, a statement of the contributions that are recommended to be made by the Employer for the ensuing year, and such other information as may be requested by the Administrator, the Committee, or the Employer.

In computing benefits to which a Participant may be entitled upon his or her retirement, termination, or request for an ~~In Service~~~~Inserviee~~ Distribution, such assumptions of mortality and interest rates as are specified in the Plan shall be used. The actuarial assumptions specified in the Plan and the computations based thereon, shall be conclusive and binding. Neither the Administrator, the Committee nor the Employer shall be liable for any mistakes or errors in such computations made in good faith, and the Trustee shall not be liable for any such mistakes or errors in any event.

8.9 **Fiduciaries.** The Trustee shall be the Fiduciary with respect to the powers, duties, and responsibilities described in Article 9 for investment of the Trust Fund. The Committee and the Administrator shall be Fiduciaries hereunder with respect to the other powers, duties, and responsibilities of the administration of the Plan; provided however, that certain powers, duties, and responsibilities of the Fiduciaries may be delegated by written agreement to others, to the extent permitted under the provisions of the Plan and Trust Agreement.

Nothing in the Plan shall be construed to prohibit any Fiduciary from:

- (a) receiving any benefit to which the Fiduciary may be entitled as a Participant or Beneficiary in the Plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the Plan as applied to all other Participants and Beneficiaries; or
- (b) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred in the performance of the Fiduciary's duties with respect to the Plan, except that no person so serving who already receives full-time pay from the Employer shall receive additional Compensation for serving in a fiduciary capacity, except for reimbursement of expenses properly and actually incurred.

Each Fiduciary shall be bonded as required by applicable law or statute of the United States or Colorado, unless such bond may under such law or statute be waived by the parties to the Trust Agreement. The Employer shall pay the cost of bonding any Fiduciary who is its Employee.

ARTICLE 9.

TRUST AGREEMENT

- 9.1 **Acceptance.** This Trust Agreement, incorporated as Article 9 under the Plan is made by and between the Employer and the Trustee. The Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed by the Trust. All right, title, and interest in and to the Trust Fund shall at all times be vested exclusively in the Trustee. The Trustee shall accept its appointment by executing the Plan or by executing a written acceptance of the office of Trustee. There shall be one Trustee, as determined from time to time by the Employer.
- 9.2 **Receipt of Contribution.** The Trustee shall hold in the Trust Fund all amounts received by the Trustee and designated in writing as contributions to the Trust Fund. All contributions so received together with any income or other increment realized by the Trust Fund shall be invested and administered by the Trustee in accordance with the terms of this Article 9. The Trustee shall have no responsibility or power with respect to the calculation or collection of any contributions to the Plan for the Employer.
- 9.3 **Payments From the Trust Fund.** Payments from the Trust Fund shall be made by the Trustee to such persons, in such manner, at such times, and in such amounts as the Committee shall specify in written Instructions to the Trustee. The Committee shall have the sole authority to direct the Trustee to make payments from the Trust Fund. The Committee shall act in its good faith discretion pursuant to the powers and duties described in Article 8. The Trustee shall have no obligation to inquire whether any payee or distributee is entitled to any payment, whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee shall make distribution under the Plan in cash or annuity contracts.
- If any check in payment of a benefit under the Plan which had been mailed by regular U.S. Mail to the last address of the payee as furnished to the Trustee by the Committee is returned unclaimed, the Trustee shall so notify the Committee and shall discontinue further payments to such payee until it receives further written instructions from the Committee.
- 9.4 **Assignment or Alienation.** Except as may be provided in a Qualified Domestic Relations Order accepted by the Plan, neither a Participant nor a Beneficiary may voluntarily or involuntarily anticipate, assign, or alienate (either at law or in equity) any benefit provided under the Plan, and the Trustee shall not recognize any such anticipation, assignment, or alienation. Furthermore, a benefit under the Plan shall not be subject to attachment, garnishment, levy, execution, or other legal or equitable process.
- 9.5 **Exclusive Benefit.** Except as the Plan permits the return of Employer contributions under circumstances specified in Section 7.2, it shall be impossible at any time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the Trust Fund to be used for, or diverted to, purposes other than the exclusive benefit of Plan Participants and their Beneficiaries, except that payment of taxes and administrative expenses may be made from the Trust Fund. The Trustee shall discharge its duties under this Article 9 solely in the interest of the Participants of the Plan and their Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

- 9.6 **Benefits Supported Only by Trust Fund.** Any person having any claim under the Plan shall look solely to the assets of the Trust Fund for payment. The Trust Fund will be used and applied only in accordance with the provisions of the Plan, to provide the benefits thereof.
- 9.7 **Trustee Investment Powers.** The Trustee shall ~~serve as a directed trustee~~have full discretion and authority with regard to the investment and management of the Trust Fund. ~~The Trustee shall be provided written directions regarding the investment and management of the Trust Fund by the Committee or, except~~ with respect to ~~a Plan asset~~asset under the control or direction of an Investment Manager properly appointed in accordance with Section 9.9, the Investment Manager. The Trustee shall not be liable for the acts or omissions of any Investment Manager appointed by the Committee, nor shall the Trustee be under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed Investment Manager. The Trustee shall have no obligation to question any written investment direction by a properly appointed Investment Manager. The Trustee shall comply as promptly as possible with any written investment direction given by the Committee or Investment Manager, as applicable. The Trustee must retain any investment obtained upon a proper written direction until receipt of another proper written direction to dispose of such investment.~~8 or with respect to a Plan asset subject to Committee direction of investment. The Trustee shall coordinate its investment policy with Plan financial needs as communicated to it by the Committee.~~ The Trustee is authorized and empowered, without previous application to, or subsequent ratification of any court, tribunal, or commission, or any federal or state governmental agency, but not by way of limitation:
- (a) To invest any part or all of the Trust Fund in any kind of property or type of investment consistent with the standards and requirements of the Uniform Prudent Investor Act, as published in Title 15, Article 1.1 of the Colorado Revised Statutes, as may be amended from time to time.
 - (b) To retain in cash so much of the Trust Fund as the Committee or Investment Manager, as applicable,~~it~~ may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest, including, if a bank is acting as Trustee, specific authority to invest in any type of deposit of the Trustee at a reasonable rate of interest or in a common trust fund (the provisions of which govern the investment of such assets and which the Plan incorporates by this reference) as described in Code § 584 which the Trustee (or all affiliates of the Trustee, as defined in Code § 1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency.
- 9.8 **Trustee Powers, Rights and Duties.** ~~Except as otherwise required by law, no party dealing with the Trustee shall have any obligation to inquire into the authority of the Trustee or into the application by the Trustee of any funds or other property transferred to the Trustee. The decisions of the Trustee in the exercise of any of its powers or the carrying out of any of its responsibilities shall be final and conclusive as to all persons for all purposes, to the extent permitted by law.~~ The Trustee shall have all the powers necessary or advisable to carry out the provisions of the Trust and all inherent, implied, and statutory powers now or subsequently provided by law, including, but not by way of limitation, the power and right to:
- (a) Cause any securities or other property to be registered and held in its name as Trustee, or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer;

- (b) Manage, sell, contract to sell, grant options to purchase, convey, exchange, pledge, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, encumber, mortgage, deed in trust, or use any other form of hypothecation, or otherwise deal with the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best; to retain, hold, maintain, or continue any securities or investments that it may hold as part of the Trust Fund for such length of time as it may deem advisable; and generally, in all respects, to do all things and exercise each and every right, power, and privilege in connection with and in relation to the Trust Fund as could be done, exercised, or executed by an individual holding and owning such property in absolute and unconditional ownership;
- (c) Abandon, compromise, contest, and arbitrate claims and demands; to institute, compromise, and defend actions at law (but without obligation to do so unless indemnified to the Trustee's satisfaction);
- (d) Vote in person or by proxy any shares of stock held in the Trust Fund; to participate in or to exchange securities or other property in reorganization, liquidation, or dissolution of any corporation, the securities of which are held in the Trust Fund as directed in writing by the Committee or Investment Manager, as applicable; provided that if no written voting directions from the applicable entity or individual are timely received by the Trustee, such security shall not be voted;
- (e) Borrow money and to pay any amount due on any loan or advance made to the Trust Fund, to charge against and pay from the Trust Fund all taxes of any nature levied, assessed, or imposed upon the Trust Fund;
- (f) Execute the application for any insurance contract to be applied for under the Plan, to pay from the Trust Fund premiums, assessments, dues, charges, and interest to acquire or maintain any insurance contracts held in the Trust Fund; to collect and receive all dividends or payments of any kind payable under any insurance contracts held in the Trust Fund or to leave the same with the issuing insurance company; and to exercise any other power or take any other action permitted under any insurance contract held in the Trust Fund;
- (g) Lease for oil, gas, and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interests in oil, gas, and other minerals; and to enter into operating agreements and to execute division and transfer orders;
- (h) Perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment, and distribution of the Trust; ~~and~~
- (i) Create and distribute the Trust Fund as the Committee directs in writing;
- ~~(j)~~ (j) Retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction; and-
- (k) Rely upon written instructions received from the Committee or Investment Manager, as applicable, and any other person or entity that has been designated by the Committee, in accordance with Trustee's formal, written procedures, to have the authority to act on behalf

of the Committee or Investment Manager, as applicable, without duty to inquire further as to the facts or other information provided.

9.9 **Investment Manager.** The Committee may appoint an Investment Manager to manage the investment of all or a portion of the Trust Fund. The Investment Manager shall be a fiduciary other than the Trustee:

- (a) who has the power to manage, acquire, or dispose of any assets of the Plan;
- (b) who is (1) registered as an investment adviser under the Investment Advisers Act of 1940; (2) a bank, as defined in the Investment Advisers Act of 1940; or (3) an insurance company qualified to perform services described in paragraph (a) under the laws of more than one state; and
- (c) who has acknowledged in writing that as Investment Manager, the person is a fiduciary with respect to the Plan.

If the Committee appoints an Investment Manager, the Investment Manager shall have the exclusive responsibilities for directing the investment and management of the assets of the Trust Fund to which its appointment applies. If more than one Investment Manager is appointed, each Investment Manager shall have exclusive responsibility for directing the investment and management of a specified portion of the assets of the Trust Fund as the Committee shall determine. The Trustee shall not be liable for the acts or omissions of any Investment Manager appointed by the Committee, nor shall the Trustee be under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed Investment Manager. The Trustee shall have no obligation to question any written investment direction by a properly appointed Investment Manager. The Trustee shall comply as promptly as possible with any written investment direction given by an Investment Manager.

9.10 **Investment of the Trust Fund.** At the written direction of the Committee or Investment Manager, as applicable, Investments of the Trust Fund shall be diversified to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. The Trustee or Investment Manager shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

9.11 **Committee Direction of Investment.** The Committee or Investment Manager, as applicable, shall provide written directions to have the right to direct the Trustee with respect to the investment and reinvestment of assets comprising the Trust Fund. ~~The In the event that the Committee exercises this right, the~~ Trustee shall be subject to all proper written directions of the Committee or Investment Manager, as applicable, which are made in accordance with the terms of this Trust Agreement. During any period of time when the Committee or Investment Manager, as applicable, exercises such right, the Trustee's responsibility with respect to such directed investments shall be limited to holding such assets of the Trust Fund as a custodian, providing accounting services, disbursing benefits as authorized, and executing such investment instructions only as directed by the Committee or Investment Manager, as applicable. The Trustee shall not be liable for any act or omission of the Committee or Investment Manager, as applicable except to the extent required by any state or federal law applicable, which liability cannot be waived. ~~Except to the extent that the Trustee from time to time receives directions under this Section from the Committee, the Trustee shall be authorized to administer the Trust without regard to this Section.~~

- 9.12 **Records and Accounts.** The Trustee shall keep all such records and accounts which may be necessary in the administration and conduct of this Trust. Upon written request from the Trustee, the Committee shall furnish the Trustee in writing with information specified in any such request and necessary or appropriate in connection with any of the Trustee's responsibilities or powers (including, without limitation, the names, addresses, and specimen signatures of all parties authorized to furnish instructions or notices to the Trustee). The Trustee's records and accounts shall be open to inspection by the Employer and the Committee at all reasonable times during business hours, and may be audited from time to time by any person or persons as the Employer or Committee may specify in writing. After the close of each Plan Year, the Trustee shall provide the Committee a statement of assets and liabilities of the Trust Fund for such year. The Trustee shall furnish the Committee any additional information relating to the Trust Fund that the Committee requests.

All income, profits, recoveries, contributions, forfeitures, and any and all moneys, securities, and properties of any kind at any time received or held by the Trustee shall be held for investment purposes as a commingled Trust Fund. Separate accounts or records may be maintained for operational or accounting purposes, but no such account or record shall be considered as segregating any funds or property from any other funds or property contained in the commingled fund.

- 9.13 **Valuation of the Trust Fund.** The Trustee shall determine the fair market value of the assets of the Trust Fund which are publicly traded, as defined in Treas. Reg. §54.4975-7(b)(iv), as of each Accounting Date to determine the current fair market value of the Trust Fund assets. The Trustee shall similarly determine the value of Trust assets invested in its or its affiliate's common or collective funds. The Committee shall have the sole fiduciary responsibility to value all other Trust assets that are not publicly traded. The Plan Administrator shall be responsible for hiring an independent appraiser to assist it in its valuation responsibilities to the extent required by law or the Plan or deemed prudent by the Plan Administrator. The Trustee shall value the Trust Fund on such other dates as directed by the Committee.

- 9.14 **Tax Returns.** The Trustee shall file all tax returns required of the Trustee.

- 9.15 **Fees and Expenses.** A Trustee shall be entitled to receive reasonable compensation for services rendered or for the reimbursement of expenses properly and actually incurred in the performance of its duties under the Trust. However, no Trustee who already receives full-time pay from the Employer shall receive compensation from the Plan, except for reimbursement of expenses properly and actually incurred. All compensation and expenses shall be paid by the Plan, unless the Employer, in its discretion, elects to pay all or any part of Trustee compensation or recurring administrative or overhead expenses. The Committee shall not treat any fee or expense properly paid, directly or indirectly, by the Employer as an Employer contribution.

- 9.16 **Change of Trustee.** A Trustee may be removed by the Employer at any time upon 30 days written notice to the Trustee, or on such shorter notice as may be agreed to by the Employer and the Trustee. A Trustee may resign at any time upon 30 days written notice to the Employer, or on such shorter notice as may be agreed to by the Employer and the Trustee.

Upon such removal or resignation, the Employer shall appoint a successor Trustee and the successor Trustee shall have the same powers and duties as those conferred upon the predecessor Trustee. If the Employer fails to appoint a successor Trustee within 60 days of removal or resignation of the Trustee, the Employer shall be treated as having appointed itself as Trustee and as having executed its acceptance of appointment. Each successor Trustee shall succeed to the title

of the Trust Fund vested in its predecessor upon the successor Trustee's written acceptance of the office of Trustee. The resigning or removed Trustee, upon receipt of acceptance in writing by the successor Trustee, shall execute all documents and do all acts necessary to vest the title of record in the successor Trustee. No successor Trustee shall be liable for the acts or omissions of any prior Trustee which occurred prior to the successor Trustee's acceptance of office, or be obliged to examine the accounts, records, or acts of any prior Trustee.

In the event that any corporate Trustee hereunder shall be converted into, shall merge or consolidate with, or shall sell or transfer substantially all of its assets and business to another corporation, state or federal, the corporation resulting from such conversion, merger, or consolidation, or the corporation to which such sale or transfer shall be made, shall thereupon become and be the Trustee under this Article with the same effect as though originally so named.

- 9.17 **Investment in Group Trust Fund.** The Employer specifically authorizes the Trustee to invest all or any portion of the assets comprising the Trust Fund in any group trust fund which at the time of the investment provides for the pooling of the assets of plans qualified under Code § 401(a). This authorization applies solely to a group trust fund exempt from taxation under Code § 501(a) and the trust agreement of which satisfies the requirements of Revenue Ruling 81-100. The provisions of the group trust fund agreement, as amended from time to time, are by this reference incorporated within this Plan and Trust. The provisions of the group trust fund shall govern any investment of Plan assets in that fund.

Furthermore, the Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the Trust created under any other qualified retirement plan the Employer maintains. However, the Trustee shall maintain separate records of account for the assets of each Trust in order to reflect properly each Participant's Accrued Benefit under the plan(s) in which he or she is a Participant.

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IN WITNESS WHEREOF, the Board of Directors of Platte River Power Authority has caused this instrument to be executed by its duly authorized officers on the date written below.

ATTEST:

PLATTE RIVER POWER AUTHORITY

Secretary or Assistant Secretary

By: _____

Title: _____

Date: _____

**Wells Fargo Bank, N.A.
Trustee**

By: _____

Title: _____

Date: _____

|

RESOLUTION NO. __-18

WHEREAS, the Platte River Power Authority (Platte River) maintains the Platte River Power Authority Defined Benefit Plan, as Amended and Restated Effective January 1, 2016 (Defined Benefit Plan) for the benefit of Platte River employees hired before September 1, 2010, who meet certain vesting criteria; and

WHEREAS, the Retirement Committee recommends that certain changes be made to the Defined Benefit Plan, effective as of January 1, 2019, for purposes of ensuring consistency with current model plan provisions issued by the IRS, incorporating updates to reflect the current trustee arrangement with Wells Fargo Bank, N.A., the Plan's Trustee ("Wells Fargo"), incorporating updates to the definition of "Spouse" to comply with current State and Federal law, and incorporating minor formatting edits; and

WHEREAS, the proposed Defined Benefit Plan updates do not impact or modify the way that benefits are calculated under the Plan; and

WHEREAS, the Board of Directors of Platte River reserved the right to amend the Defined Benefit Plan pursuant to Section 7.4 of the Defined Benefit Plan, subject to the consent of the Trustee in the event that such amendments change the duties or responsibilities of the Trustee; and

WHEREAS, as Plan Trustee, Wells Fargo, has approved the recommended amendments; and

WHEREAS, the Board of Directors of Platte River deems it advisable to amend and restate the Defined Benefit Plan, effective as of January 1, 2019, to reflect the changes identified herein.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of Platte River Power Authority as follows:

- (1) That the Platte River Power Authority Defined Benefit Plan, as Amended and Restated Effective January 1, 2019, attached as **Exhibit A**, is hereby adopted effective as of January 1, 2019.
- (2) The appropriate officers of Platte River are authorized, directed, and empowered to execute such documents and to take such other actions as are necessary to effectuate the adoption of the Platte River Power Authority Defined Benefit Plan, as Amended and Restated Effective January 1, 2019, and to carry out the intent of this Resolution.

AS WITNESS, I have executed my name as Secretary and have affixed the corporate seal of the Platte River Power Authority this _____ day of _____, 2018.

Secretary

Exhibit A

**PLATTE RIVER POWER AUTHORITY
DEFINED BENEFIT PLAN**

As Amended and Restated Effective
January 1, 2019

**PLATTE RIVER POWER AUTHORITY
FORT COLLINS, COLORADO**

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PLATTE RIVER POWER AUTHORITY

DEFINED BENEFIT PLAN

The Platte River Power Authority Defined Benefit Plan (formerly known as the Platte River Power Authority Employees' Pension Plan) and the Platte River Power Authority Defined Benefit Trust were adopted by the Employer effective as of June 1, 1973, in order to facilitate the retirement of its eligible employees in an orderly and equitable manner. The Plan was previously amended and restated in its entirety multiple times. Except as otherwise stated herein, the Plan is amended and restated in its entirety effective January 1, 2019. The existing Trust shall remain unchanged. By adopting this restated Plan, the Employer is continuing the Plan for the purpose of providing retirement benefits to Employees. The Employer intends that this Plan conform to and qualify under Code §§ 401 and 501.

The Plan was closed with respect to new hires. As a result, an Employee whose initial date of hire with the Employer is on or after September 1, 2010 shall not be eligible to participate in the Plan.

ARTICLE 1.

DEFINITIONS

- 1.1 **Accounting Date** shall mean the last day of the Plan Year.
- 1.2 **Accrued Benefit** shall have the meaning assigned to it by Section 3.1.
- 1.3 **Actuarial Equivalent or Actuarially Equivalent** shall mean equality in value of the aggregate amounts expected to be received under different forms of payments and determined on the basis of using interest compounded annually, mortality according to the Projected Annuity Mortality Table, unadjusted for females, and an assumption of no future cost of living adjustments:
 - (a) Interest Rate Assumption for Single Sum Distributions and for Sections 3.3, 3.9, and 3.10
 - (i) for distributions commencing after December 31, 2015, the Plan Stated Interest Rate; and
 - (ii) for distributions commencing before January 1, 2016, the interest rate assumption in effect under the Plan provisions in effect as of the date distribution commenced.
 - (b) Mortality Assumptions for Single Sum Distributions and for Sections 3.3, 3.9, and 3.10
 - (i) for distributions commencing after December 31, 2015, the Male RP-2014 healthy annuitant rates, without collar or quartile adjustments, but with improvements beyond 2007 backed out, and projected generationally from 2007 using the Society of Actuaries Retirement Plan Experience Committee model with 10 year convergence to a 1% long term improvement rate through age 85 and long term improvement rates declining to 0% linearly between ages 85 and 95;
 - (ii) for distributions commencing after December 31, 2013 and before January 1, 2016, the Male RP-2000 Combined Healthy Mortality Table; and
 - (iii) for distributions commencing before January 1, 2014, the Mortality Assumption in effect under the Plan provisions in effect as of the date distributions commenced.
 - (c) Cost of Living Adjustment Assumption for Single Sum Distributions and for Sections 3.3, 3.9, and 3.10
 - (i) for distributions commencing after December 31, 2015, 1.5%;
 - (ii) for distributions commencing after December 31, 2013 and before January 1, 2016, 2.0%; and
 - (iii) for distributions commencing before January 1, 2014, the Cost of Living Adjustment Assumption in effect under the Plan provision in effect as of the date the distribution commenced.
 - (d) Applicable Mortality Table — effective for Plan Years beginning after December 31, 2007, notwithstanding any other Plan provisions to the contrary and except as provided by the

Internal Revenue Service, the applicable mortality table used for purposes of adjusting any benefit or limitation under Code § 415(b)(2)(B), (C) or (D) and Article 4 is the mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the Plan Year under subparagraph (A) of Code § 430(h)(3) (without regard to subparagraphs (C) or (D) of that Section).

- (e) Applicable Interest Rate — effective for Plan Years beginning after December 31, 2007 and except as provided by the Internal Revenue Service, for purposes of determining the Actuarial Equivalent single sum value of the maximum benefit defined under Article 4, any provision requiring the use of the annual rate of interest in 30-year U.S. Treasury securities shall be implemented by using the rate of interest determined by the applicable interest rate described in Code § 417(e) after its amendment by the Pension Protection Act of 2006. The applicable interest rate shall be the adjusted first, second and third segment rates applied under rules similar to the rules of Code § 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe. For this purpose, the adjusted first, second and third segment rates are the first, second and third segment rates which would be determined under Code § 430(h)(2)(C) if:
 - (i) Code § 430(h)(2)(D) were applied by substituting the average yields for the month described in the preceding sentence for the average yields for the 24 month period described in such Section;
 - (ii) Code § 430(h)(2)(G)(i)(II) were applied by substituting “§ 417(e)(3)(A)(ii)(II) as worded prior to its amendment by the Pension Protection Act of 2006” for “§ 412(b)(5)(B)(ii)(II);” and
 - (iii) The applicable percentage under Code § 430(h)(2)(G) were treated as being 20 percent for the 2008 Plan Year, 40 percent for the 2009 Plan Year, 60 percent for the 2010 Plan Year, 80 percent for the 2011 Plan Year, and 100 percent for Plan Years 2012 and later.
 - (f) Applicable Interest Rate – effective for Plan Years beginning after December 31, 2013, and except as provided by the Internal Revenue Service, for purposes of determining the Actuarial Equivalent single sum value of the maximum benefit defined under Article 4, the interest rate is the greater of the Plan Stated Interest Rate or the rate determined under Code § 415(b)(2)(E)(i) and the regulations thereunder.
- 1.4 **Annuity Starting Date** shall mean the first day of the first period for which the Plan pays an amount as an annuity or in any other form.
 - 1.5 **Beneficiary** shall mean the person or persons (natural or otherwise) determined in accordance with Section 6.2, who is entitled to receive benefits under the Plan after a Participant’s death.
 - 1.6 **Break in Service** shall mean a Plan Year in which the Employee does not complete more than 500 Hours of Service with the Employer.
 - 1.7 **Code** shall mean the Internal Revenue Code of 1986, as amended from time-to-time.

- 1.8 **Colorado Civil Union Act** shall mean the Colorado Civil Union Act, as set forth in Colorado Senate Bill 13-011, signed by governor of the State of Colorado on March 21, 2013, and codified at Section 14-15-101 et. Seq. of the Colorado Revised Statutes.
- 1.9 **Committee** shall mean the Retirement Committee appointed to administer the Plan pursuant to the provisions of Article 8.
- 1.10 **Compensation** shall mean, subject to the limitations in Subsections (d), (e), (f), (g), and (h):
- (a) for Plan Years beginning on or after January 1, 2000, wages paid by the Employer for which the Employer is required to furnish the Participant a written statement under Code §§6041(d), 6051(a)(3), and 6052 adjusted as follows:
 - (i) any amounts contributed by an Employer on the Participant's behalf under a salary reduction agreement or designated as an employee contribution and not includable in the gross income of the Employee under Code §§125, 132(f), 402(g), 402(h), 414(h), 457, or 403(b) will be included;
 - (ii) accumulated personal leave and sick pay amounts paid upon termination of employment or upon commencement of an In Service Distribution will be included only for Participants whose Employment Commencement Date occurred prior to January 1, 2004;
 - (iii) all of the following will be excluded:
 - (A) expense reimbursements and allowances;
 - (B) all taxable fringe benefits except group term life insurance premiums;
 - (C) moving expenses;
 - (D) short-term disability payments;
 - (E) long-term disability payments;
 - (F) non-qualified deferred compensation;
 - (G) severance pay; and
 - (H) wellness initiatives.
 - (iv) for Participants whose Employment Commencement Date occurred on or after January 1, 2004, all of the following shall be excluded in addition to items excluded under (iii) above:
 - (A) overtime other than regularly scheduled overtime;
 - (B) payouts at termination or upon commencement of an In Service Distribution for Compensatory Time Off (CTO).

- (v) for Participants whose Employment Commencement Date occurred on or after January 1, 2008, all of the following shall be excluded in addition to items excluded under (iii) and (iv) above:
 - (A) payouts at termination or upon commencement of an In Service Distribution for Wellness Leave;
 - (B) payouts at termination or upon commencement of an In Service Distribution for Recognition Leave.
- (b) for Plan Years beginning on or after January 1, 1995, and ending on or before December 31, 1999, wages paid by the Employer that constitute wages within the meaning of Code §3401 or qualify as a payment of compensation for which the Employer is required to furnish the Participant a written statement under Code §§6041(d), 6051(a)(3), and 6052 adjusted as follows:
 - (i) any amounts contributed by an Employer on the Participant's behalf under a salary reduction agreement or designated as an Employee contribution and not includable in the gross income of the Employee under Code §§125, 402(g), 402(h), 414(h), 457, or 403(b) will be included;
 - (ii) all of the following will be excluded:
 - (A) reimbursements and other expense allowances;
 - (B) all taxable fringe benefits except group term life insurance premiums;
 - (C) moving expenses; and
 - (D) currently taxable deferred compensation and welfare benefits included as wages within the meaning of Code §3401.
- (c) for Plan Years prior to January 1, 1995, the compensation paid to a Participant by the Employer, for the applicable calendar year that would be subject to tax (for the purpose of the Federal Insurance Contribution Act) under Code § 3101(a), without the dollar limitation of §3121(a)(1).
- (d) for any Participant who became a Participant on or before December 31, 1995, the annual compensation taken into account under this Plan for any calendar year will not exceed the adjusted annual compensation limit under Code § 401(a)(17) as of July 1, 1993, which shall not be less than \$235,840 as adjusted annually by the Secretary of the Treasury to reflect cost of living changes.
- (e) subject to (d) above, for calendar years beginning after December 31, 1998, the annual compensation taken into account under this Plan for any calendar year shall not include amounts in excess of \$200,000, as adjusted annually by the Secretary of the Treasury to reflect cost of living changes.
- (f) subject to (d) above, for calendar years beginning on or after January 1, 1996 and for Participants who became a Participant on or after January 1, 1996, annual compensation

taken into account under this Plan for any calendar year shall not exceed \$150,000 as adjusted annually by the Secretary of the Treasury to reflect cost of living changes.

- (g) **Increase in limit.** The annual compensation of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001, shall not exceed \$200,000. Annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). If a determination period consists of fewer than 12 months, the \$200,000 limitation will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, compensation for any prior determination period shall be \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.
 - (h) **Cost-of-living adjustment.** The \$200,000 limit on annual compensation in (g) above shall be adjusted for cost-of-living increases in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.
- 1.11 **Compensatory Time Off (CTO)** shall mean paid time off for work hours that exceed the normal work schedule.
- 1.12 **Covered Compensation** means, in all years, the annual average divided by 12 (calculated without indexing) of the Taxable Wage Bases in effect for each calendar year during the 35 year period ending with the last day of the calendar year in which the Participant attains (or will attain) the Social Security retirement age (as defined in Code § 415(b)(8)). In determining a Participant's Covered Compensation for a Plan Year, the Taxable Wage Base for the current Plan Year and any subsequent Plan Year is assumed to be the same as the Taxable Wage Base in effect at the beginning of the Plan Year for which the determination is being made. A Participant's Covered Compensation for a Plan Year after the 35 year period is the Participant's Covered Compensation for the Plan Year during which the Participant attained the Social Security retirement age. A Participant's Covered Compensation for a Plan Year before the 35 year period is determined using the Taxable Wage Base in effect as of the beginning of the Plan Year. A Participant's Covered Compensation shall be adjusted for each Plan Year.
- 1.13 **Credited Service** means the total period of an Employee's service computed in full calendar months, counting the month during which the Employment Commencement Date occurs and the month during which the Employee terminates service with the Employer and all of the calendar months in between not otherwise excluded under the Plan.
- (a) Any absence due to the Employee's qualified military service will be included in Credited Service.
 - (b) Notwithstanding any provision herein, no Credited Service shall accrue for any Participant who has less than 1,000 Hours of Service in a Plan Year, unless it is (i) the Plan Year in which the Participant terminates employment with the Employer for any reason, (ii) the Plan Year in which the Participant works less than 1,000 Hours of Service but has an In Service Distribution commencement date, in which case Credited Service shall accrue only up to the In Service Distribution commencement date, or (iii) the partial Plan Year

following the Participant's Employment Commencement Date, in which case the actual number of Hours of Service shall be annualized by dividing the actual number of hours by the number of Credited Service months and multiplying by 12 to determine if Credited Service should be given for the partial year following the Employment Commencement Date.

- (c) If a Participant terminates employment and is reemployed, Credited Service shall be calculated as follows:
 - (i) Except as provided below, all Credited Service with the Employer will be included for the purposes of determining the Participant's vested Accrued Benefit.
 - (ii) If a Participant returns to service with the Employer within the same Plan Year in which he terminated service, and receives a partial year of Credited Service pursuant to (b)(i) above, but does not complete 1,000 Hours of Service during that Plan Year, the Employee will continue to be credited with the partial year of Credited Service under (b)(i) above.
 - (iii) If a Participant returns to service with the Employer and the Employee's number of One-Year Periods of Severance between the date of termination of service and the Reemployment Date is less than 5, the Employee will retain prior Credited Service accrued as of the date of termination of service.
 - (iv) If the Participant returns to service with the Employer and the Employee's number of One-Year Periods of Severance between the date of termination of service and the Reemployment Date equals or exceeds 5, the Employee's Credited Service as of the date of termination of service will be disregarded if both of the following conditions exist:
 - (A) The Employee did not have a vested interest as of the date of termination; and
 - (B) The Employee's Vesting Service as of the date of termination of service is less than or equal to the number of consecutive One-Year Periods of Severance between the date of termination and the Reemployment Date.
 - (v) If a Participant returns to service with the Employer prior to the date distribution of his vested Accrued Benefit commences and had terminated service on or after his or her Initial Vesting Date, Normal Retirement Date, Early Retirement Date, or Disability, all Credited Service earned as of the date of termination of service will be taken into account.
 - (vi) If a Participant has begun to receive his distribution of his vested Accrued Benefit prior to returning as a Participant, Credited Service earned prior to the distribution will be included, but the Participant's Accrued Benefit shall be adjusted as provided in Sections 3.9 and 3.10.
- (d) If a Participant receives an In Service Distribution, service worked after the In Service Distribution commencement date shall be counted for purposes of determining whether the Participant has earned any additional Accrued Benefit at the time the Employee subsequently terminates service, provided, however, that the Participant shall not receive

more than one year of Credited Service for the Plan Year in which the Participant's In Service Distribution commencement date occurs.

- 1.14 **Disability or Disabled** means a physical or mental condition that renders a Participant incapable of continuing in the employment of the Employer and incapable of engaging in any substantial gainful employment. A Participant will not be Disabled unless a Participant qualifies for Social Security disability benefits effective as of the month in which the Participant terminates employment with the Employer.
- 1.15 **Domestic Partner** shall mean a Party to a Civil Union as that term is defined in Section 103(5) of the Colorado Civil Union Act and any other person treated as Party to a Civil Union pursuant to C.R.S. Section 14-15-116.
- 1.16 **Domestic Partner Joint and 50% Survivor Annuity** shall mean an annuity for the life of the Participant with a survivor annuity for the life of the Participant's Domestic Partner which (1) subject to the requirements of Code Section 401(a)(9) is 50% of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and (2) which is the normal form of payment for Participants with Domestic Partners described in Section 5.1.
- 1.17 **Earliest Retirement Age** shall mean the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- 1.18 **Early Retirement Date** shall have the meaning specified under Section 3.4(a)(iii).
- 1.19 **Effective Date** shall mean June 1, 1973. The provisions of this restated Plan shall be effective as of the date of the latest restatement, except that for each Plan provision required by statute or regulation to be effective as of an earlier or later date, or by its terms effective as of an earlier or later date, the Effective Date is the date as of which the provision is required to be effective.
- 1.20 **Employee** shall mean any person on the payroll of the Employer whose wages from the Employer are subject to withholding for the purposes of Federal income taxes and for the purposes of the Federal Insurance Contributions Act. Employee shall not include a Leased Employee. Leased Employee shall mean an individual (other than a common law employee of the Employer) who, pursuant to an agreement between the Employer and a leasing organization, has performed services for the Employer on a substantially full time basis for a period of at least one year, and the individual's service is performed under the primary direction or control by the recipient. The Employer shall treat contributions or benefits provided to the Leased Employee by the leasing organization as contributions or benefits provided by the Employer to the extent attributable to services the Leased Employee performed for the Employer. Notwithstanding the preceding provisions of this paragraph, an individual is not a Leased Employee if the Leased Employee is covered by a safe harbor plan under Code § 414(n) and Leased Employees do not constitute more than 20% of Employees. Effective for years beginning on or after January 1, 2009, an individual receiving a differential wage payment, as defined in Code § 3401(h)(2), shall be treated as an Employee of the Employer making the payment.
- 1.21 **Employer** shall mean the Platte River Power Authority, a separate governmental entity and a political subdivision of the State of Colorado, and its successors or assigns.
- 1.22 **Employment Commencement Date** shall mean the date on which an Employee is first credited with performing an Hour of Service, as modified in Section 2.2 for reemployed Employees.

- 1.23 **Final Average Monthly Compensation** shall mean, for Plan Years ending on or before December 31, 1994, the Participant's average monthly rate of Compensation from the Employer for the 36 consecutive months out of the 120 months immediately preceding (1) the first day of the month coincident with or next following the date on which the Participant's service terminates for any reason, or (2) the Participant's Normal Retirement Date, whichever is earlier, which gives the highest average monthly rate of Compensation for the Participant. The Participant's average monthly rate of Compensation will be determined by dividing the total Compensation received during the 36 consecutive month period by 36. Prior to January 1, 1993, the number of months for which the Employee received Compensation from the Employer will be computed to the extent the Employee was paid on other than a monthly basis, by determining the number of bi-weekly pay periods ending within the 36 consecutive month period for which the Employee received Compensation from the Employer and converting such pay periods into months by dividing the number thereof by 2-1/6. In computing Final Average Monthly Compensation for a Participant who has returned to the active service of the Employer following a full calendar year or calendar years during which the Employee did not receive regular Compensation from the Employer because of a Leave of Absence without pay granted by the Employer, or because of such Participant's reemployment with a reinstatement of the Employee's prior Vesting Service and Credited Service, the period during which the Employee did not receive regular Compensation from the Employer shall be excluded in determining the 120 months and the 36 consecutive months to be used in determining the Participant's Final Average Monthly Compensation.

Effective for Plan Years beginning on or after January 1, 1995 for Participants who terminate service with the Employer on or after January 1, 1995, Final Average Monthly Compensation shall mean the greater of (1) Final Average Monthly Compensation as of December 31, 1994, or (2) the Participant's average annual Compensation from the Employer for three consecutive Plan Years out of the 10 Plan Years immediately preceding (i) the Participant's termination of service for any reason or (ii) the Participant's Normal Retirement Date, whichever is earlier, which gives the highest average annual Compensation for the Participant, divided by 12.

Effective for Plan Years beginning on or after January 1, 2001, for Participants who terminate service with the Employer on or after January 1, 2001, Final Average Monthly Compensation shall mean the greater of (1) Final Average Monthly Compensation as of December 31, 1994, or (2) the Participant's total Compensation from the Employer for three consecutive Plan Years out of the 10 Plan Years immediately preceding (i) the Participant's termination of service for any reason or (ii) the Participant's Normal Retirement Date, whichever is earlier, which gives the highest total Compensation for the Participant, plus any amounts received at termination for accrued personal leave, up to a maximum of 440 hours, and any amounts received at termination for accrued sick leave, up to a maximum of 400 hours, divided by 36, provided, however, that no amounts paid to a Participant shall be counted more than once for purposes of calculating Final Average Monthly Compensation.

Effective for Plan Years beginning on or after January 1, 2004, for Participants who terminate service with the Employer on or after January 1, 2004, Final Average Monthly Compensation shall mean the greater of (1) Final Average Monthly Compensation as of December 31, 1994, or (2) the Participant's total Compensation from the Employer for three consecutive Plan Years out of the 10 Plan Years in which the Participant was employed immediately preceding (i) the Participant's termination of service for any reason or (ii) the Participant's Normal Retirement Date, whichever is earlier, which gives the highest total Compensation for the Participant, plus, for Participants hired before January 1, 2004, any amounts received at termination for accrued personal leave, up to a maximum of 440 hours, and any amounts received at termination for accrued sick leave, up to a maximum of 400 hours, divided by 36, provided, however, that no amounts paid to a Participant

shall be counted more than once for purposes of calculating Final Average Monthly Compensation. For purposes of determining consecutive Plan Years, Plan Years for which the Participant is not credited with at least 1,000 hours shall be ignored, and the Plan Year first preceding such year and the Plan Year first following such year for which the Participant is credited with at least 1,000 hours shall be considered consecutive Plan Years.

For Participants who take an In Service Distribution permitted under Section 5.7(b), for purposes of calculating that distribution, Final Average Monthly Compensation shall mean the greater of (1) Final Average Monthly Compensation as of December 31, 1994, or (2) the Participant's total Compensation from the Employer for three consecutive Plan Years out of the 10 Plan Years in which the Participant was employed immediately preceding (i) the Participant's In Service Distribution commencement date or (ii) the Participant's Normal Retirement Date, whichever is earlier, which gives the highest total Compensation for the Participant, plus, for Participants hired before January 1, 2004, any amounts received as of the In Service Distribution commencement date for accrued personal leave, up to a maximum of 440 hours, and any amounts received as of the In Service Distribution commencement date for accrued sick leave, up to a maximum of 400 hours, divided by 36, provided, however, that no amounts paid to a Participant shall be counted more than once for purposes of calculating Final Average Monthly Compensation. For purposes of determining consecutive Plan Years, Plan Years for which the Participant is not credited with at least 1,000 hours shall be ignored, and the Plan Year first preceding such year and the Plan Year first following such year for which the Participant is credited with at least 1,000 hours shall be considered consecutive Plan Years.

1.24 **Hour of Service** means:

- (a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. The Plan Administrator shall credit Hours of Service under this paragraph (a) to the Employee for the period during which the Employee is paid, irrespective of when the services were performed.
- (b) Each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (regardless of whether the employment relationship has terminated) due to vacation, holiday, illness, Disability, layoff, jury duty, military duty, or Leave of Absence, provided that no Hours of Service shall be credited to an Employee:
 - (i) for a period during which no duties are performed, but payment is made or due under a Plan maintained solely for purpose of complying with applicable workers' compensation, unemployment compensation or disability insurance laws;
 - (ii) on account of any payment made or due an Employee solely as reimbursement for medical or medically related expenses incurred by the Employee;
 - (iii) And provided, that no Hours of Service shall be credited to a Participant for accumulated personal leave in excess of 440 hours; and for accumulated sick pay in excess of 400 hours.
- (c) Each hour not otherwise credited under the Plan for which back pay, irrespective of mitigation of damages, has either been awarded or agreed to by the Employer. The Plan Administrator shall credit Hours of Service under this paragraph (c) to the period or periods to which the award or agreement pertains.

- (d) Each hour for any period during which an Employee is not paid but is on an authorized Leave of Absence, or is temporarily laid off, provided that the Employee:
 - (i) returns to the employ of the Employer immediately after the expiration of the leave or layoff, and
 - (ii) remains in the employ of the Employer for at least 30 days after such return, or
 - (iii) fails to return or remain employed as provided above by reasons of death, Disability or attainment of the Normal Retirement Date.

If the Employee fails to return to the employ of the Employer or to remain in the employ of the Employer for at least 30 days after his return for reasons other than death, Disability or attainment of the Normal Retirement Date, then the Employee's original leave date shall be deemed to be the date the Employee terminates from service with the Employer.

- (e) If an individual is absent from work as a result of a qualified maternity or paternity leave, the 12 consecutive month period beginning on the first anniversary of the first date of the absence shall not constitute a One-Year Period of Severance. "Qualified maternity or paternity leave" means an absence from work commencing on or after the first day of the Plan Year beginning after December 31, 1984, by reason of (a) the pregnancy of the Employee, (b) the birth of a child of the Employee, (c) the placement of a child with the Employee in connection with the adoption of the child, or (d) caring for a child immediately following the birth or placement of the child.
- (f) Qualified military service will be credited for all purposes of the Plan as required under Code §414(u).

The Plan Administrator shall not credit an Hour of Service under more than one of the above paragraphs. The Plan Administrator shall credit Hours of Service in accordance with the rules set forth in paragraphs (b) and (c) of the DOL Reg. § 2530.200b-2, which is incorporated herein by reference.

- 1.25 **In Service Distribution** shall mean a distribution commenced by a Participant prior to termination of employment as described in Section 5.7(b).
- 1.26 **Initial Vesting Date** shall mean the date the Employee completes five Years of Vesting Service.
- 1.27 **Leave of Absence** shall mean an absence from active employment with the Employer by reason of an approved absence granted by the Employer. In the event that the Employee's service with the Employer is interrupted because of any absence including, but not limited to, discharge or resignation, which is not deemed a Leave of Absence, the Employee's employment with the Employer will be considered terminated for the purposes of the Plan as of the date of the beginning of the interruption.
- 1.28 **Limitation Year** shall mean the 12 month period commencing on January 1 and ending on the following December 31.

- 1.29 **Normal Retirement Date** shall mean the later of the date on which the Participant attains age 65 or the date which is the fifth anniversary of the first day of the first Plan Year in which the Employee became a Participant in the Plan.
- 1.30 **One-Year Period of Severance** shall mean each Period of Severance of 12 months, measured from the Employee's date of termination of service and from each one year anniversary of such date of termination of service, that precedes the Employee's subsequent performance of an Hour of Service.
- 1.31 **Participant** shall mean (1) any active Employee who has met the requirements of Section 2.1, (2) any former Employee who has met the requirements of Section 2.1 and whose service has not been terminated and (3) any retired or terminated Employee who has vested rights to benefits under the provisions of the Plan.
- 1.32 **Period of Service** means the period beginning on the Employee's Employment Commencement Date or Reemployment Date and ending on the date a One-Year Period of Severance begins.
- 1.33 **Period of Severance** shall mean the period measured from the Employee's date of termination of service and from each one year anniversary of such date of termination of service, that precedes the Employee's subsequent performance of an Hour of Service. A Period of Severance begins on the date the Employee retires, quits, is discharged or dies, or, if earlier, the twelve month anniversary of the date on which the Employee was first absent from service with the Employer for any other reason; provided, however, that if an Employee is absent from work for any other reason and retires, quits, is discharged or dies within twelve months, the Period of Severance begins on the date the Employee quits, retires, is discharged or dies.
- 1.34 **Plan** shall mean the Platte River Power Authority Defined Benefit Plan, as amended and restated.
- 1.35 **Plan Administrator** shall mean the Employer's General Manager or such other person or entity as designated from time to time by the Employer's Board of Directors.
- 1.36 **Plan Stated Interest Rate** shall mean, for Plan Years commencing after December 31, 2015, 7.5% per annum.
- 1.37 **Plan Year** shall mean the calendar year.
- 1.38 **Qualified Joint and Contingent Annuity** shall mean an annuity for the life of the Participant with a survivor annuity for the life of the Spouse (1) which is 50% of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and (2) which is the normal form of payment for married Participants described in Section 5.1.
- 1.39 **Reemployment Date** shall mean the date the Employee first performs an Hour of Service subsequent to incurring a Break in Service.
- 1.40 **Regulations or Treasury Regulations** shall mean those regulations interpreting and applying the Code published by the United States Treasury and Located in Title 26 of the Code of Federal Regulations.
- 1.41 **Required Beginning Date** shall mean April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires.

- 1.42 **Retire or Retirement** shall mean termination of employment eligible for immediate payment of Late, Normal, or Early or Special Early Retirement Benefit.
- 1.43 **Special Early Retirement Date** shall mean the date before the Participant's Normal Retirement Date on which the Special Early Retirement Benefit commences pursuant to Section 3.5.
- 1.44 **Special Unreduced Early Retirement Date** for purposes of determining whether a Participant qualifies for a Special Early Retirement Benefit under Section 3.5, shall mean the 7th anniversary of the date which is the later of (1) the date the Participant attains age 55 or (2) the date the Participant completes 13 years of Credited Service.
- 1.45 **Spouse** shall mean:
- (i) With respect to administration of the Plan for periods prior to June 26, 2013, the Spouse or surviving Spouse of the Participant, as determined in accordance with the Colorado Uniform Marriage Act.
 - (ii) With respect to administration of the Plan for periods on and after June 26, 2013, the Spouse or surviving Spouse of the Participant, provided that such individuals are lawfully married under any state law or the law of any foreign country, including, but not limited to, a same-sex marriage that is legally recognized as a marriage under any state law.
- A former Spouse and a former Domestic Partner will be treated as the Spouse or the surviving Spouse to the extent required under a qualified domestic relations order as defined in Code § 414(p).
- 1.46 **Taxable Wage Base** shall mean the contribution and benefit base in effect under § 230 of the Social Security Act at the beginning of the Plan Year.
- 1.47 **Trust and Trust Fund** shall mean the Trust Fund established pursuant to the terms of the Trust Agreement.
- 1.48 **Trust Agreement** shall mean the Platte River Power Authority Defined Benefit Trust as amended and restated in Article 9 of the Plan, effective as of November 1, 1994.
- 1.49 **Trustee** shall mean the Trustee appointed from time to time pursuant to the Trust Agreement to administer the Trust Fund maintained for the purposes of the Plan.
- 1.50 **Vesting Service** shall mean the total period of the Employee's service computed in years and months beginning with the Employee's Employment Commencement Date and ending on the date a Period of Severance begins.
- (a) Any absence due to the Employee's qualified military service will be included in Vesting Service.
 - (b) If a Participant is reemployed, Vesting Service will be calculated as follows:
 - (i) Except as provided below, all Vesting Service with the Employer will be included for the purposes of determining the Participant's vested Accrued Benefit.

- (ii) If a Participant returns to service with the Employer and the Employee's number of One-Year Periods of Severance between the date of termination of service and the Reemployment Date is less than 5, the Employee will retain prior Vesting Service accrued as of the date of termination of service.
- (iii) If the Participant returns to service with the Employer and the Employee's number of One-Year Periods of Severance between the date of termination of service and the Reemployment Date equals or exceeds 5, the Employee's Vesting Service as of the date of termination of service will be disregarded if both of the following conditions exist:
 - (A) The Employee did not have a vested interest as of the date of termination; and
 - (B) The Employee's Vesting Service as of the date of termination of service are less than or equal to the number of consecutive One-Year Periods of Severance between the date of termination and the Reemployment Date.

ARTICLE 2.

PARTICIPATION

- 2.1 **Participation.** The Plan was closed with respect to new hires on August 31, 2010. As a result, an Employee whose initial date of hire with the Employer is on or after September 1, 2010 shall not be eligible to participate in the Plan. Each Employee whose initial date of hire with the Employer is prior to September 1, 2010 and who is not a Participant will become a Participant in the Plan on the earlier of the following dates:
- (a) the first anniversary of the Employment Commencement Date, provided the Employee completes at least 1,000 Hours of Service during the 12 consecutive month period immediately following the Employee's Employment Commencement Date; or
 - (b) the January 1st next following the first Plan Year during which the Employee completes at least 1,000 Hours of Service provided the Employee does not complete at least 1,000 Hours of Service during the first 12 consecutive month period immediately following the Employee's Employment Commencement Date.
- 2.2 **Reemployment by the Employer.** An Employee hired before September 1, 2010, whose employment is terminated shall be subject to the following rules:
- (a) If the Employee was not a Participant in the Plan prior to terminating employment with the Employer, and the Employee subsequently returns to employment with the Employer, any prior service will be disregarded for purposes of Plan participation, and the Employee must meet the requirements of Section 2.1 after reemployment in order to become a Participant in the Plan. If this Section 2.2(a) applies, the Participant's Employment Commencement Date will be the date on which the Employee is credited with performing an Hour of Service after returning to employment with the Employer.
 - (b) If the Employee became a Participant in the Plan prior to terminating employment with the Employer, and the Employee subsequently returns to employment with the Employer, the Employee will be reinstated as a Participant on the date on which the Employee is credited with an Hour of Service after returning to employment with the Employer.

Payment or suspension of payment of benefits for reemployed Participants shall be governed by the provisions of Section 3.9.

ARTICLE 3.

BENEFIT TO BE RECEIVED UNDER THE PLAN

- 3.1 **Accrued Benefit.** A Participant's Accrued Benefit under the Plan shall not be less than the Participant's Accrued Benefit under the Plan as of the date this restatement is executed.

Subject to the limitations on benefits described in Article 4, the Accrued Benefit of a Participant whose Employment Commencement Date occurred after December 11, 1986, shall equal the benefit provided by Section 3.1(a). Subject to the limitations on benefits described in Article 4, the Accrued Benefit of a Participant whose Employment Commencement Date occurred on or before December 11, 1986, shall equal the greater of the benefit provided by Section 3.1(a) or Section 3.1(b).

- (a) A Participant's normal monthly retirement benefit payable as a life only annuity shall equal 1/12th of 2.7% of Final Average Monthly Compensation and 1/12th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the potential number of months of Credited Service at the Participant's Normal Retirement Date not to exceed 240 months, plus 1/12th of .35% of Final Average Monthly Compensation and 1/12th of .35% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the potential number of months of Credited Service at the Participant's Normal Retirement Date in excess of 240 months, but not more than 120 additional months. The Participant's normal monthly retirement benefit determined under the preceding sentence shall be multiplied by a fraction, not to exceed one, the numerator of which is the number of months of Credited Service that the Participant has earned at the date of determination, and the denominator of which is the potential number of months of Credited Service the Participant would have earned at the Participant's Normal Retirement Date.
- (b) A Participant's normal monthly retirement benefit payable as a life only annuity shall equal 1/12th of 4.39% of Final Average Monthly Compensation and 1/12th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the potential number of months of Credited Service at the Participant's Normal Retirement Date not to exceed 120 months. The Participant's normal monthly retirement benefit determined under the preceding sentence shall be multiplied by a fraction, not to exceed one, the numerator of which is the number of months of Credited Service that the Participant has earned at the date of determination, and the denominator of which is the potential number of months of Credited Service that the Participant would have earned at the Participant's Normal Retirement Date.
- 3.2 **Normal Retirement Benefit.** Upon attainment of the Normal Retirement Date, a Participant's Accrued Benefit shall be 100% vested. The Normal Retirement benefit of a Participant shall equal his or her Accrued Benefit. Upon retiring from the service of the Employer on or after the Participant's Normal Retirement Date, a Participant shall receive the Normal Retirement benefit in accordance with Article 5.
- 3.3 **Retirement After Normal Retirement Date.** A Participant who both retires after his or her Normal Retirement Date and commences his or her distribution after his or her Normal Retirement Date shall receive an amount equal to the greater of:

- (a) the benefit provided by the Actuarially Equivalent single sum value of the Participant's Accrued Benefit as of his or her Normal Retirement Date increased with interest on such single sum value at the rate of the Plan Stated Interest Rate, compounded annually from the Participant's Normal Retirement Date to the postponed retirement date, provided that for years after the year the Participant attains age 70 1/2, the Participant's accrued benefit shall be actuarially adjusted to reflect any period after the Participant attains age 70 1/2 and before payment of benefits begins, or
- (b) the Participant's Accrued Benefit calculated under Section 3.1 including any service credited after Participant's Normal Retirement Date.

A Participant shall receive his or her benefit under this Section in accordance with Article 5.

3.4 **Early Retirement Benefit.** A Participant who retires from the service of the Employer on or after attainment of the Early Retirement Date and prior to the Participant's Normal Retirement Date, shall receive his or her Accrued Benefit as modified by this Section in accordance with Article 5. The monthly retirement amount payable to a Participant who retires prior to the Participant's Normal Retirement Date under the provisions of this Section shall be equal to the product of (a) and (b):

- (a) For a Participant whose Employment Commencement Date occurred after December 11, 1986, the amount defined under Section 3.4(a)(i) and for a Participant whose Employment Commencement Date occurred on or before December 11, 1986, the greater of the benefit provided by Section 3.4(a)(i) or (ii):
 - (i) A Participant's monthly early retirement benefit payable as a life only annuity shall equal 1/12th of 2.7% of Final Average Monthly Compensation and 1/12th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Early Retirement Date not to exceed 240 months, plus 1/12th of .35% of Final Average Monthly Compensation and 1/12th of .35% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Early Retirement Date in excess of 240 months, but not more than 120 additional months.
 - (ii) A Participant's monthly early retirement benefit payable as a life only annuity shall equal 1/12th of 4.39% of Final Average Monthly Compensation and 1/12th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Early Retirement Date not to exceed 120 months.
 - (iii) For purposes of this Section, Early Retirement Date means the date before the Participant's Normal Retirement Date on which a Participant terminates employment on or after completing 10 or more years of Credited Service and attaining age 55.
- (b) the factor, specified in the schedule below, based upon the number of years and full months by which the date payment of the Participant's Early Retirement Benefit precedes his or her Normal Retirement Date:

Actuarial Reduction Factors by Years and Months by Which
Early Retirement Date Precedes Normal Retirement Date

<u>Years</u>	<u>Months</u>											
	0	1	2	3	4	5	6	7	8	9	10	11
0	1.000	.994	.989	.983	.978	.972	.967	.961	.956	.950	.944	.939
1	.933	.928	.922	.917	.911	.906	.900	.894	.889	.883	.878	.872
2	.867	.861	.856	.850	.844	.839	.833	.828	.822	.817	.811	.806
3	.800	.794	.789	.783	.778	.772	.767	.761	.756	.750	.744	.739
4	.733	.728	.722	.717	.711	.706	.700	.694	.689	.683	.678	.672
5	.667	.664	.661	.658	.656	.653	.650	.647	.644	.642	.639	.636
6	.633	.631	.628	.625	.622	.619	.617	.614	.611	.608	.606	.603
7	.600	.597	.594	.592	.589	.586	.583	.581	.578	.575	.572	.569
8	.567	.564	.561	.558	.556	.553	.550	.547	.544	.542	.539	.536
9	.533	.531	.528	.525	.522	.519	.517	.514	.511	.508	.506	.503
10	.500											

3.5 **Special Early Retirement Benefit.**

- (a) For a Participant whose Employment Commencement Date occurred on or after January 1, 2008, the Participant shall qualify for Special Early Retirement if:
- (i) the Participant commences benefit payments prior to the Participant's Normal Retirement Date; and
 - (ii) the Participant has completed 20 years of Credited Service; and
 - (iii) the Participant terminated employment after attaining at least age 55.
- (b) For a Participant whose Employment Commencement Date occurred before January 1, 2008, the Participant shall qualify for Special Early Retirement if the Participant commences benefit payments prior to the Participant's Normal Retirement Date and:
- (i) the Participant has completed 20 years of Credited Service; or
 - (ii) the Participant terminated employment after attaining at least age 55 and has completed at least 13 years of Credited Service prior to attaining age 58.

A Participant who has attained age 58 and has not completed 13 years of Credited Service shall not be eligible for the Special Early Retirement Benefit. The Special Early Retirement Benefit shall not commence prior to the first day of the month coincident with or next following the date which is the latest of (a) the date the Participant attains age 55, or (b) the date the Participant completes 13 years of Credited Service, or (c) the date the Participant terminates employment.

- (c) For a Participant whose Employment Commencement Date occurred after December 11, 1986, the Special Early Retirement Benefit shall be equal to the benefit provided by (i) below. For a Participant whose Employment Commencement Date occurred before December 11, 1986, the Special Early Retirement Benefit shall be equal to the greater of the benefit provided by (i) or (ii) below:
 - (i) A Participant's monthly special early retirement benefit payable as a life only annuity shall equal $\frac{1}{12}$ th of 2.7% of Final Average Monthly Compensation and $\frac{1}{12}$ th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Special Early Retirement Date not to exceed 240 months, plus $\frac{1}{12}$ th of .35% of Final Average Monthly Compensation and $\frac{1}{12}$ th of .35% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Special Early Retirement Date in excess of 240 months, but not more than 120 additional months.
 - (ii) A Participant's monthly special early retirement benefit payable as a life only annuity shall equal $\frac{1}{12}$ th of 4.39% of Final Average Monthly Compensation and $\frac{1}{12}$ th of .5% of Final Average Monthly Compensation in excess of Covered Compensation multiplied by the number of months of Credited Service at the Participant's Special Early Retirement Date not to exceed 120 months.
- (d) The Special Early Retirement Benefit in (c) above shall not be reduced if the Participant has attained the Special Unreduced Early Retirement Date. The Special Early Retirement Benefit for a Participant who has not attained the Special Unreduced Early Retirement Date shall be reduced $\frac{1}{12}$ of 5% for each month that the Annuity Starting Date precedes the first day of the month coincident or next following the date the Participant would have attained the Special Unreduced Early Retirement Date.

- 3.6 **Benefit Upon Termination of Service for Reasons Other Than Retirement, Disability, and Death.** A Participant whose service is terminated prior to the Initial Vesting Date for any reason other than attainment of the Normal Retirement Date, attainment of the Early Retirement Date, Disability or death shall not be entitled to any benefit under the Plan. If a Participant's service is terminated prior to the Participant's Normal Retirement Date and on or after the Initial Vesting Date for any reason other than death, Disability, or attainment of the Early Retirement Date, the Participant shall be entitled to the Accrued Benefit as of the date of determination under Section 3.1 payable in accordance with Article 5.

Monthly retirement income payable to a Participant under this Section 3.6 prior to attaining the Normal Retirement Date shall be reduced to the Actuarial Equivalent of the benefit payable at the Participant's expected Normal Retirement Date. If the Participant completed ten Years of Credited Service prior to terminating employment, the Participant may file a written request with the Plan Administrator at least 30 days prior to the effective date thereof to commence payment on the first

business day of any month which is prior to the Participant's Normal Retirement Date and on or after the date on which the Participant attained the age of 55 years.

A Participant who elects to delay the commencement of his or her monthly retirement income past the Participant's Normal Retirement Date shall receive a benefit provided by the Actuarially Equivalent single sum value of the Participant's Accrued Benefit as of his or her Normal Retirement Date increased with interest on such single sum value at the rate of the Plan Stated Interest Rate, compounded annually from the Participant's Normal Retirement Date to the postponed Annuity Starting Date.

- 3.7 **Disability Retirement Benefit.** A Participant may retire from the service of the Employer prior to the Normal Retirement Date or Early Retirement Date if the Employee is Disabled. Benefits payable under this Section shall be made in accordance with Article 5, provided, however, that payment shall commence not later than the Participant's Normal Retirement Date or, if later, the date the Participant is Disabled.

For purposes of calculating benefits payable under this Section 3.7, the Participant's Compensation shall be the Participant's Final Average Monthly Compensation under Section 1.23, or, if greater, the Participant's Regular Monthly Rate of Compensation for the month preceding the month during which the Participant became Disabled. The Regular Monthly Rate of Compensation shall be the monthly salary of a salaried Employee or the hourly pay rate multiplied by 174 hours for an hourly paid Employee.

For purposes of calculating benefits payable under this Section 3.7, the Participant shall receive Vesting Service and Credited Service as if the Participant had remained in the service of the Employer during the period of Disability from the date the Participant becomes Disabled until the date payment of benefits begins under this Section 3.7 or, if earlier, until the date the Participant ceases to receive payment of Social Security Disability benefits with at least 1,000 Hours of Service in each Plan Year until such earlier date.

Additional service credited as a result of Disability shall be counted for purposes of vesting and benefit calculation only; it shall not be counted for purposes of eligibility for Early Retirement, Special Early Retirement, or eligibility for benefit commencement prior to the Normal Retirement Date.

A Participant who qualifies for Early or Special Early Retirement without regard to Credited Service received under this Section 3.7 and becomes Disabled before his or her Normal Retirement Date may commence benefits under this Section 3.7 as of the Participant's Early or Special Early Retirement Benefit commencement date in an amount determined under Section 3.4 or 3.5 including, for purposes of determining Credited Service under Sections 3.4 (a)(i), 3.4(a)(ii), 3.5(i), and 3.5(ii), Credited Service received under this Section 3.7, but not before the Participant becomes Disabled and not later than the Participant's Normal Retirement Date.

The monthly retirement amount which is payable to a Participant who commences benefits on his or her Normal Retirement Date under this Section shall be equal to the Accrued Benefit to which the Participant would have been entitled on his or her Normal Retirement Date determined under Section 3.1, including for purposes of determining Credited Service under the last sentence of Section 3.1(a) (or, if applicable, under the last sentence of Section 3.1(b)), Credited Service received under this Section 3.7.

A Participant who qualifies for benefit commencement prior to Normal Retirement under Section 3.6 without regard to Credited Service received under this Section 3.7 but was not eligible for Early or Special Early Retirement, and becomes Disabled before his or her Normal Retirement Date may commence benefits under this Section 3.7 on the first business day of any month which is prior to the Participant's Normal Retirement Date and on or after the date on which the Participant attained the age of 55 years in an amount equal to the Actuarial Equivalent of the Accrued Benefit calculated in accordance with Section 3.1 including, for purposes of determining Credited Service under the last sentence of Section 3.1(a) (or, if applicable, under the last sentence of Section 3.1(b)), Credited Service and Vesting Service received under this Section 3.7.

A Participant who becomes Disabled while employed after his or her Normal Retirement Date shall commence receiving the Accrued Benefit to which the Participant would have been entitled under Section 3.3 payable as of the date the Participant became Disabled.

Recovery From Disability. As of the date a Participant ceases to qualify for Social Security disability benefits the Participant shall cease to be Disabled. If a Participant ceases to be Disabled, the Participant shall cease to receive Vesting and Service Credit under this Section. However, a Participant who recovers from Disability shall be entitled to his or her vested Accrued Benefit, based upon the Vesting and Credited Service received before the Participant became Disabled and the Vesting and Credited Service received under this Section 3.7 during the period of Disability.

- 3.8 **Death Benefits.** Upon the death of a Participant before termination of service, the Participant's Accrued Benefit shall be 100% vested.

Death While Employed by the Employer. If a Participant dies prior to the Normal Retirement Date while employed by the Employer, the Participant's Beneficiary shall receive a benefit equal to the Actuarial Equivalent of the Participant's Accrued Benefit as of the date of death paid in accordance with Article 5. If the benefit would be greater, and if the Participant would have qualified for Special Early Retirement as of the date of death, the benefit payable will be the Actuarial Equivalent of the benefit that would have been payable to the survivor if the Participant had terminated employment on the date prior to death, survived to the Special Unreduced Early Retirement Date, commenced receiving the Special Early Retirement Benefits in the form of a Joint and 66-2/3% Survivor Annuity and then died. If a Participant dies after attainment of the Normal Retirement Date, the Participant's Beneficiary shall receive a benefit equal to the Actuarial Equivalent of the Participant's Accrued Benefit as if the Participant had Retired on the day prior to the Participant's date of death and benefits were calculated and paid in accordance with Section 3.3 and Article 5.

Death After Termination of Service. If a terminated Participant dies prior to the Participant's Annuity Starting Date, the Participant's Beneficiary will receive a benefit equal to the Actuarial Equivalent of the Participant's Accrued Benefit in accordance with Article 5, provided the Participant had reached the Initial Vesting Date as of the date he or she terminated service with the Employer. If the benefit would be greater and if the Participant had completed, as of the date of death, the service required to qualify for Special Early Retirement but had not attained the required age, the benefit payable will be the Actuarial Equivalent of the benefit that would have been payable to the survivor if the Participant survived to the Special Unreduced Early Retirement Date, commenced receiving the Special Early Retirement Benefits in the form of a Joint and 66-2/3% Survivor Annuity and then died.

Benefit Payable Upon Death of Disabled Participant Prior to Commencement of Benefits. Effective on and after July 26, 1992, if a Participant dies after the Participant is Disabled, but prior

to the date that a distribution of benefits commences under the Plan, the Participant's Beneficiary will receive a benefit equal to the Actuarial Equivalent of the Participant's Accrued Benefit, in accordance with Article 5, that would have been payable on behalf of the Participant if the Participant had remained in the service of the Employer until the date of death with at least 1,000 Hours of Service in each Plan Year, with no change in the Participant's last regular monthly rate of Compensation after becoming Disabled. If the benefit would be greater and if the Participant had completed, as of the date of death, the service required to qualify for Special Early Retirement but had not attained the required age, the benefit payable will be the Actuarial Equivalent of the benefit that would have been payable to the survivor if the Participant survived to the Special Unreduced Early Retirement Date, commenced receiving the Special Early Retirement Benefits in the form of a Joint and 66-2/3% Survivor Annuity and then died.

3.9 **Benefit Upon Return to Employment After Termination of Service.**

Accrued Benefit For Participant Who Has Not Received Any Benefits. If a Participant's service is terminated for any reason, and the Participant subsequently is reemployed before any payments commence, the Participant will accrue a benefit under the Plan in accordance with the rules regarding Credited Service in Section 1.13(c). The Participant's Accrued Benefit shall not be less than the amount to which the Participant was entitled to as of the Participant's previous termination of service.

Accrued Benefit For Participant Who Is Receiving Benefits Or Who Has Received A Full Distribution. If a Participant's service is terminated for any reason, and the terminated Participant subsequently is reemployed with the Employer after the date a distribution of benefits commences, the following rules shall apply:

- (a) If the Participant does not complete at least 1,000 Hours of Service in the Plan Year in which reemployment occurs or in any subsequent Plan Year, payments (if any remain) will continue.
- (b) If the Participant completes at least 1,000 Hours of Service in the Plan Year in which reemployment occurs or in any subsequent Plan Year, no income payments (if any remain) will be made during the remainder of the period of reemployment. The Plan Administrator shall notify the Participant in writing that the payments will be suspended. Payments will be suspended on a prospective basis only.
 - (i) Upon the subsequent termination of service of such Participant, the Participant's benefit under the Plan shall be reduced on an Actuarially Equivalent basis for all income payments that the Participant has received; however, for a Participant who was previously receiving monthly payments over a period of at least the life expectancy of that Participant, the recomputed monthly benefit shall not be less than the monthly benefit received by the Participant prior to the Reemployment Date plus the Cost of Living adjustments (COLA) that would have been made during the period of reemployment for which the benefit payments were suspended and had he not been reemployed.
 - (ii) Notwithstanding (i) above, if a Participant subsequently is reemployed on or after the Normal Retirement Date, and payments are suspended, the Actuarially Equivalent single sum value required to provide the retirement income which otherwise would have been payable on his behalf after suspension, shall be accumulated with interest from such suspension to the date of his subsequent

retirement or, if earlier, to the date of his death, and such single sum value, together with such accumulated interest, shall be applied upon his retirement or death to provide a benefit payable on behalf of such Participant in accordance with Article 3.

Death During Qualified Military Service: Effective for deaths occurring on or after January 1, 2007, if a Participant dies while performing qualified military service, the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death. For purposes of this paragraph, qualified military service means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by an individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

3.10 **Adjustments for In Service Distributions.** If a Participant receives an In Service Distribution as provided under Section 5.7(b), the following rules shall apply:

- (a) If the Participant does not complete at least 1,000 Hours of Service in the Plan Year in which the In Service Distribution is made or in any subsequent Plan Year, payments (if any remain) will continue.
- (b) If the Participant completes at least 1,000 Hours of Service in the Plan Year in which the In Service Distribution is made or in any subsequent Plan Year, the following rules will apply:
 - (i) No income payments (if any remain) will be made during the remainder of the period of employment. The Plan Administrator shall notify the Participant in writing that the payments will be suspended. Payments will be suspended on a prospective basis only.
 - (ii) The Participant may not request another In Service Distribution after the suspension begins.
 - (iii) Upon the termination of service of such Participant, the Participant's remaining benefit under the Plan, if any, shall be reduced on an Actuarially Equivalent basis for all benefit payments that the Participant has received; provided, however, in the case of an annuity payment, that the benefit payable after termination of service will never be less than the benefit the Participant is receiving as a result of the In Service Distribution.
 - (iv) Notwithstanding (iii) above, if a Participant's payments are suspended, the Actuarially Equivalent single sum value required to provide the benefit which otherwise would have been payable on his behalf after the suspension, shall be accumulated with interest from such suspension to the date of his retirement, or, if earlier, to the date of his death, and such single sum value, together with such accumulated interest, shall be applied upon his retirement or death to provide a benefit payable on behalf of such Participant in accordance with Article 3.

3.11 **Cost of Living Adjustments.** The monthly amount payable to a Participant (or a Participant's Beneficiary) under this Plan after the Annuity Starting Date shall be increased or decreased while payable, commencing on the July 1st next following the date the monthly income commences, and

on the first day of each subsequent July, in accordance with the following paragraph, if the Participant (or the Participant's Beneficiary) so elects.

Each such increase or decrease shall be based on the percentage change in the U.S. Consumer Price Index, which is defined as the index published by the U.S. Department of Labor as "Consumer Price Index - U.S. Average - All Items - Urban Wage Earners and Clerical Workers (CPI-W)," its substitute if replaced, or any alternative U.S. index adopted for retirement income adjustment. The percentage change applicable for any July 1st determination shall be the U.S. Consumer Price Index for the 12 months ending March 31 preceding such July 1, compared to such index for the year ending March 31 one year earlier. With respect to commencement of benefits before December 6, 1991, the increase or decrease in the monthly payments shall equal the lesser of (1) the change in the U.S. Consumer Price Index or (2) 6%. With respect to commencement of benefits on or after December 6, 1991, the increase or decrease in the monthly payments shall equal the lesser of (1) two-thirds of the change in the U.S. Consumer Price Index or (2) 4%. Yearly adjustments under this Section shall not reduce the Participant's (or the Beneficiary's) monthly benefit below the level established at the time the payment of benefits commenced to the Participant or the Participant's Beneficiary.

The Participant (or the Participant's Beneficiary) shall be entitled to elect to have the provisions of this Section apply in the year in which the Participant separates from service. In addition, a Participant (or the Participant's Beneficiary) shall be entitled to elect to have the provisions of this Section apply in the year in which the Participant (or the Participant's Beneficiary) actually commences receiving benefits. A Participant (or the Participant's Beneficiary) may revoke his or her election at any time prior to commencement of benefits. At the time benefits commence, the election shall become irrevocable.

- 3.12 **No Duplication of Benefits.** A Participant shall not be eligible for benefits under more than one of Sections 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 or 3.9 of this Article.

ARTICLE 4.

LIMITATION ON BENEFITS

4.1 **Maximum Amount of Benefits.** The Annual Benefit otherwise payable to a Participant under the Plan at any time shall not exceed the Maximum Permissible Benefit (defined below). If the benefit the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit. If a Participant is, or has ever been, covered under more than one defined benefit Plan maintained by the Employer, the sum of the Participant's Annual Benefits from all defined benefit plans may not exceed the Maximum Permissible Benefit.

4.2 **Definitions.**

- (a) **Annual Benefit.** A benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Article. For a Participant who has or will have distributions commencing at more than one Annuity Starting Date, the Annual Benefit shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this Article as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Section 1.401(a)-20, Q&A-10(d) and with regard to Section 1.415(b)-1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

No actuarial adjustment to the benefit shall be made for (i) survivor benefits payable to a surviving Spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (ii) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (iii) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code §417(e)(3) and would otherwise satisfy the limitations of this Article, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Article applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code § 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account Social Security supplements described in Code §411(a)(9) and benefits transferred from another defined benefit Plan, other than transfers of distributable benefits pursuant to Section 1.411(d)-4, Q&A-3(c), of the Regulations.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of Actuarial Equivalence of forms of benefit other than a straight life annuity shall be made in accordance with Sections 4.2(a)(i) or (ii):

- (i) **Benefit Forms Not Subject to Code §417(e)(3):** The straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (a) the interest rate determined under Code § 415(b)(2)(E)(i) and the regulation thereunder and the applicable mortality table defined in Section 1.3 of the Plan for that Annuity Starting Date or (b) the Plan Stated Interest Rate and the applicable mortality table defined in Section 1.3 of the Plan for that Annuity Starting Date.
- (ii) **Benefit Forms Subject to Code §417(e)(3):** The straight life annuity that is actuarially equivalent to the Participant's form of benefit will be determined under this Section 4.2(a)(ii) if the form of the Participant's benefit is other than a benefit form described in Section 4.2(a)(i). In this case, the actuarially equivalent straight life annuity will be determined as follows:
 - (A) If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of:
 - 1) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and mortality table in the Plan for adjusting benefits in the same form;
 - 2) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table in Section 1.3 of the Plan; and
 - 3) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate defined in Section 1.3 and the applicable mortality table defined in Section 1.3, divided by 1.05.
 - (B) If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the Actuarially Equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount:
 - 1) The interest rate and mortality table specified in Section 1.3 for adjusting benefits in the same form; and
 - 2) A 5.5 interest rate assumption and the applicable mortality table defined in Section 1.3.

If the Annuity Starting Date of the Participant's benefit is on or after the first day of the first Plan Year beginning in 2004 and before December 31, 2005, the application of this Section 4.2(a)(ii)(B) shall not cause the amount payable under the Participant's form of benefit to be less than the benefit calculated under the Plan taking into account the limitations of this Article, except that the Actuarially Equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greatest annual amount: (i) the interest rate and mortality table specified Section 1.3 for adjusting benefits in the same form (as provided under the terms of the Plan in effect as of the date of the distribution); (ii) the applicable interest rate and mortality table defined in the Plan (as provided under the terms of the Plan in effect as of the date of the distribution); and (iii) the applicable interest rate defined in Section 1.3 (as in effect on the last day of the last Plan Year beginning before January 1, 2004, under provisions of the Plan then adopted and in effect) and applicable mortality table defined in Section 1.3 of the Plan.

- (b) **Compensation.** For purposes of this Section, compensation shall mean information required to be reported under Code §§ 6041, 6051, and 6052 (wages, tips, and other compensation as reported on Form W-2). Compensation is defined as wages, within the meaning of Code § 3401(a), and all other payments of compensation to an employee by the employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under Code §§ 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under Code § 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code § 3401(a)(2)).

For Limitations Years beginning after December 31, 1991, compensation for a Limitation Year is the compensation actually paid or made available during the Limitation Year.

For Limitation Years beginning on or after July 1, 2007, Compensation for a Limitation Year shall also include Compensation paid by the later of 2 ½ months after an Employee's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer, if the payment is regular compensation for services during the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer.

Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 ½ months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment, except, payments to an individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of § 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

Back pay, within the meaning of Section 1.415(c)-2(g)(8) of the Regulations, shall be treated as compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and Compensation that would otherwise be included under this definition.

For Limitation Years beginning after December 31, 1997, Compensation during each such Limitation Year shall include amounts that would otherwise be included in Compensation but for an election under Code §§ 125(a), 402(e)(3), 402(h)(1)(B), 402(k), 457(b) and, for Limitation Years beginning after December 31, 1997, Code § 132(f)(4).

Effective for years beginning on or after January 1, 2009, a differential wage payment, as defined in Code Section 3401(h)(2), shall be treated as compensation for purposes of Code Section 415 and any other Code Section that references the definition of compensation under Code Section 415.

- (c) **Defined Benefit Dollar Limitation.** Effective for Limitation Years ending after December 31, 2013, the “Defined Benefit Dollar Limitation” is \$210,000, per year as adjusted, effective January 1 of each year, under Code §415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under Code §415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies, but a Participant’s benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.
- (d) **Maximum permissible benefit:** The “Maximum Permissible Benefit” is the Defined Benefit Dollar Limitation (adjusted where required, as provided in (i) and, if applicable, in (ii) or (iii) below).
 - (i) If the Participant has fewer than 10 years of participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction, (A) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the Plan and (B) the denominator of which is 10. This Subsection (i) will not apply to a distribution from the Plan on account of the Participant’s becoming disabled by reason of personal injuries or sickness, or as a result of the death of the Participant.
 - (ii) If the benefit of a Participant begins prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation applicable to the Participant at such earlier age is an Annual Benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under (i) above, if required). Actuarial Equivalence will be computed using whichever of the following produces the smaller annual amount: the lesser of (i) the interest rate and mortality table (or other tabular factor) specified in Section 1.3 and (ii) a 5 percent interest rate and the applicable mortality table as defined in Section 1.3.
 - (iii) If the benefit of a Participant begins prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, the Defined Benefit Dollar Limitation for the Participant’s annuity starting date is the lesser of (A) the Annual Benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under (i) above, if required), with actuarial equivalence computed using a 5 percent interest rate and

the applicable mortality table as defined in Section 1.3 (and expressing the Participant's age based on completed calendar months as of the annuity starting date), or (B) the Defined Benefit Dollar Limitation (adjusted under (i) above, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Article.

- (iv) If the benefit of a Participant begins after the Participant attains age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation applicable to the Participant at the later age is the Annual Benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the Defined Benefit Dollar Limitation (adjusted under (i) above, if required), with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (i) the interest rate and mortality table (or other tabular factor) specified in Section 1.3 of the Plan and (ii) the actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation computed using a 5 percent interest rate assumption and the applicable mortality table as defined in Section 1.3 of the Plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored. Benefit increases resulting from the increase in the limitations of Code §415(b) shall be provided to all employees participating in the Plan who have one hour of service on or after the first day of the first limitation year ending after December 31, 2001.
- (v) If the benefit of a Participant begins after the Participant attains age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, the Defined Benefit Dollar Limitation applicable to the Participant at the later age is the lesser of (A) the Annual Benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the Defined Benefit Dollar Limitation (adjusted under (i) above, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table as defined in Section 1.3 of the Plan (expressing the Participant's age based on completed calendar months as of the Annuity Starting Date), or (B) the Defined Benefit Dollar Limitation (adjusted under (i) above, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Article.

Notwithstanding the other requirements of Sections (ii) and (iii) above, no adjustment will be made to the Defined Benefit Dollar Limitation to reflect the probability of a Participant's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made.

- (vi) Minimum benefit permitted: Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

- (A) The retirement benefits payable for a Limitation Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether the plan has been terminated) ever maintained by the employer does not exceed \$10,000 multiplied by a fraction — (1) the numerator of which is the Participant's number of Years (or part thereof; but not less than one year) of Service (not to exceed 10) with the employer and (2) the denominator of which is 10; and
- (B) The employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the Participant participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Code § 401(h), and accounts for postretirement medical benefits established under Code §419A(d)(1) are not considered a separate defined contribution Plan).

ARTICLE 5.

PAYMENT OF BENEFITS

- 5.1 **Normal and Automatic Forms of Payment.** The normal form of payment shall be a life only annuity. The automatic forms of payment shall be (i) a life only annuity if the Participant is unmarried; (ii) be a Qualified Joint and 50% Contingent Annuity for a married Participant and (iii) a Domestic Partner Joint and 50% Survivor Annuity if the Participant has a Domestic Partner.

Mandatory Single Sum Payment of Small Benefits. Notwithstanding any provision of the Plan to the contrary, in the event the Actuarially Equivalent single sum value of a Participant's vested Accrued Benefit is \$5,000 or less, the Plan Administrator shall direct that the Actuarially Equivalent single sum value of the vested portion of the Accrued Benefit be paid to the Participant in a single sum payment on or before the last day of the Plan Year following the Plan Year in which the Participant terminates employment with or requests an In Service Distribution from the Employer, provided that if the mandatory distribution is greater than \$1,000, and the Participant does not elect to have such distribution paid directly to an eligible retirement Plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Plan Administrator.

- 5.2 **Optional Forms of Payment.** In lieu of the automatic form of benefits payable in accordance with Section 5.1, a Participant may elect to receive a retirement income or benefit which is Actuarially Equivalent to the normal form of payment (described in Section 5.1) payable in accordance with one of the options listed below. A Participant's election of the form of payment shall be made in writing on a prescribed form and both the Participant and the Participant's Spouse, if any, must consent to the distribution, if required, in a manner that meets the requirements of Section 5.9. A Participant's election shall be irrevocable as of the Participant's Annuity Starting Date and shall apply to any additional benefits, if any, that may accrue after the application of the suspension rules Sections 3.9 and 3.10. Benefit payments will be made subject to the timing requirements set forth in Sections 5.3(b), 5.7 and 5.8.

Life Annuity. An annuity payable for the life of the Participant.

Life Annuity With 10 Year Certain. An annuity of a smaller monthly amount, payable to the Participant for the Participant's lifetime, and in the event of the Participant's death within a period of 10 years after the date the Participant's benefit payments first commenced, the same monthly amount payable for the remainder of such 10 year period to a Beneficiary designated by the Participant.

Joint & 66-2/3% Survivor Annuity With 10 Year Certain. An annuity of a modified monthly amount, payable to the Participant during the lifetime of the Participant and the Participant's Beneficiary, and following the death of either of them, 66-2/3% of such modified monthly amount payable to the survivor; provided, however, in the event the deaths of both the Participant and Beneficiary occur within a period of 10 years after the date as of which the monthly payments first commenced, the amount of monthly income which the survivor was receiving (66-2/3% of the monthly amount payable while both the Participant and Beneficiary were alive) shall be payable for the remainder of such 10-year period to an alternate Beneficiary designated by the Participant.

Joint and 50% Contingent Annuity. An annuity of a modified monthly amount, payable to the Participant during his lifetime, and in the event that the Participant predeceases the Participant's

Beneficiary, 50% of the modified monthly amount will be payable after the death of the Participant to the Beneficiary for the lifetime of the Beneficiary.

Domestic Partner Joint and 50% Survivor Annuity. An annuity of a modified monthly amount, payable to the Participant during his lifetime, and in the event that the Participant predeceases the Participant's Domestic Partner, 50% of the modified monthly amount (or such lesser amount as is required to comply with the incidental death benefit requirement in Code §401(a)(9)(G)) will be payable after the death of the Participant to the Participant's Domestic Partner for the lifetime of the Domestic Partner.

Joint & 66-2/3% Survivor Annuity. An annuity of a modified monthly amount, payable to the Participant during the joint lifetime of the Participant and Beneficiary, and following the death of either of them, 66-2/3% of such modified monthly amount payable to the survivor for the lifetime of the survivor.

Lump Sum Distribution at Retirement. An Actuarially Equivalent single sum payment adjusted by the cost of living assumption under Section 1.3. This option is not available for Participants electing to receive In Service Distributions.

Notwithstanding any provision of Section 5.2 to the contrary, no optional form of retirement benefits will be payable if the optional form would violate the provisions of Code Section 401(a)(9) and Treasury Regulations thereunder.

5.3 **Death Benefits.**

(a) **Form of Payment of Death Benefit.**

- (i) If a Participant dies prior to the date that distribution of benefits commences under the Plan, the Participant's Beneficiary will receive death benefits payable as provided in Section 3.8, unless the Beneficiary elects to receive a single sum distribution payable as soon as administratively practicable. The Participant's Beneficiary shall have the right to receive the Participant's death benefits payable in the form of a single sum payment in lieu of the automatic or optional forms of benefit provided in Sections 5.1 and 5.2.
- (ii) If a Participant dies after the date that the distribution commences under the Plan but before the full payment has been completed under the elected option, and the Beneficiary survives the Participant, the Participant's Beneficiary shall receive any remaining benefit payable in the form elected by Participant.
- (iii) If both the Participant and the Beneficiary die after the date that the Participant's benefits commence under the Plan but before the full payment has been completed under any option providing for payments for a period certain, the contingent Beneficiary shall receive the remaining installment payments.
- (iv) Any election made under this paragraph shall be made by the Beneficiary in writing on a form prescribed by and filed with the Plan Administrator. Such elections on the form of payment shall be irrevocable as of the Annuity Starting Date.

(b) **Time of Payment of Death Benefit.**

- (i) Effective on and after June 1, 1993, if the Participant dies before distribution of the Participant's benefit commences, the Participant's entire benefit shall, at the election of the Beneficiary, (1) be distributed as soon as administratively practicable in a single sum payment, or (2) be distributed no later than five years after the Participant's death, unless any portion of the Participant's benefit is payable over the life expectancy of the Participant's Beneficiary (or over a period not extending beyond the Beneficiary's life expectancy) and payment commences to the Beneficiary no later than one year after the Participant's death. If the Beneficiary is the Participant's surviving Spouse, the surviving Spouse may delay distributions until the date on which the Participant would have attained age 62, or if later, the Participant's expected Normal Retirement Date, and, if the Spouse dies before payments begin, subsequent distributions shall be made as if the Spouse had been the Participant.
- (ii) If the Participant dies after distribution of the Participant's benefit has commenced, the remaining portion of the benefit will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

5.4 **Nontransferability.** Any annuity contract distributed from the Plan must be nontransferable.

5.5 **Direct Rollovers.** Notwithstanding any provision of the Plan to the contrary that would limit a Distributee's election under this Article, a Distributee may elect to have all or any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee. The election regarding a direct rollover shall be made at the time and in the manner prescribed by the Plan Administrator. This Section shall apply to any distribution made after December 31, 2001. No rollovers may be made into the Plan.

In the event of a mandatory distribution greater than \$1,000, if a Participant does not elect to have such distribution paid directly to an eligible retirement Plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement Plan designated by the Plan Administrator.

For purposes of this Section only:

- (a) **Distributee** means a Participant, former Participant, a Beneficiary who is the surviving spouse of a Participant or former Participant, or an "alternate payee" as defined in Code § 414(p). Effective for Plan Years beginning on and after December 31, 2009, a non-spouse beneficiary who is a designated beneficiary (who is not the Employee's surviving spouse) is a distributee with respect to the interest of the designated Beneficiary if the distribution is made to an individual retirement annuity described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) that is established for the purposes of receiving the distribution on behalf of the designated Beneficiary.
- (b) **Eligible Rollover Distribution** means any distribution of all or any portion of the balance to the credit of the Distributee. However, an Eligible Rollover Distribution shall not include: (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's

designated beneficiary; (2) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for a specified period of ten years or more; (3) any distribution to the extent the distribution is required under Code § 401(a)(9); (4) any portion of any distribution that is not includible in gross income, as determined without regard to the exclusion for net unrealized appreciation of employer securities; or (5) any other distribution that is reasonably expected to total less than \$200 during a year.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to (1) an individual retirement account or annuity described in Code § 408(a) or (b); (2) for taxable years beginning after December 31, 2001, and before January 1, 2007, to a qualified trust which is part of a qualified defined contribution Plan described in Code §401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Code § 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (c) **Eligible Retirement Plan** means: (1) an eligible Plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such Plan from this Plan, (2) an individual retirement account described in Code § 408(a); (3) an individual retirement annuity described in Code § 408(b); (4) an annuity Plan described in Code § 403(a); (5) an annuity contract described in Code §403(b); (5) a qualified defined contribution Plan described in Code § 401(a) that accepts eligible rollover distributions; or (6) effective for distributions made after December 31, 2007, a Roth IRA described in Code Section 408A(b).

- 5.6 **Qualified Domestic Relations Order.** Section 6.4 covering non-alienation of benefits shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be (1) a qualified domestic relations order, as defined in Code § 414(p), or (2) any domestic relations order entered before January 1, 1985. Upon receipt of a qualified domestic relations order, the Plan Administrator shall direct the Trustee to provide for payment of benefits to an alternate payee as set forth in the order. The Plan Administrator shall establish procedures to determine whether an order is a qualified domestic relations order, to notify the Participant and any alternative payee of such determination, and to administer distributions pursuant to a qualified order. A domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order will not fail to be qualified (a) solely because the order is issued after, or revises, another domestic relations order or qualified domestic relations order; or (b) solely because of the time at which the order is issued, including issuance after the Annuity Starting Date or after the Participant's death. A former Spouse and a former Domestic Partner may be treated as a Spouse or the Surviving Spouse to the extent required under a qualified domestic relations order satisfying the requirements as defined in Code § 414(p).

5.7 Time of Distribution.

- (a) Generally, benefit payments to a Participant shall commence as of the first business day of the month which is coincident with or next following the Participant's Normal Retirement Date, the Participant's actual retirement date, the Participant's Early or Special Early Retirement Date (or such later date elected by the Participant) as applicable under Article 3. However, if a Participant elects to receive a Lump Sum Distribution, benefit payments to a Participant shall commence as soon as administratively feasible after termination of employment and following the receipt of the Participant's election. Benefit payments to a Participant who is eligible to receive a deferred vested Accrued Benefit shall commence as of the first business day of the month coincident with or next following the Participant's Normal Retirement Date (or such later date elected by the Participant). If the Participant who is eligible to receive a deferred vested Benefit completed ten Years of Credited Service prior to terminating employment, the Participant may file a written request with the Plan Administrator at least 30 days prior to the effective date to have payment commence as of the first business day of any month which is prior to the Participant's Normal Retirement Date and on or after the date on which the Participant attained the age of 55 years.
- (b) Provided the requirements of this Subsection 5.7(b) are met, benefit payments to a Participant may commence as of the first business day of the month which is coincident with or next following the Participant's attainment of age 62 or later, even if the Participant has not terminated employment. In order to be eligible for such In Service Distribution, the Participant must meet all of the following requirements:
 - (i) Except for the fact that the Participant has not terminated employment, the Participant otherwise must qualify for an unreduced retirement benefit under Sections 3.2, 3.3, 3.4 or 3.5.
 - (ii) The Participant must agree voluntarily to work fewer than 1,000 Hours of Service for the current Plan Year and all following Plan Years and the General Manager must agree in writing to the reduced work schedule.
 - (iii) The Participant must file a written request with the Plan Administrator at least 30 days prior to the effective date to have payment commence as of the first business day of any subsequent month which is prior to termination of employment.
 - (iv) Upon subsequent termination of employment, any additional accrued benefits, if any, must be paid in the same form elected by the Participant at the time of the request for the In Service Distribution.

5.8 Required Distributions.

(a) General Rules.

- (i) **Precedence and Effective Date.** The requirements of this Section 5.8 shall apply to any distributions and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Section apply to calendar years beginning after December 31, 2002.
- (ii) **Requirements of Regulations Incorporated.** All distributions required under this Section shall be determined and made in accordance with Code §401(a)(9),

including the incidental death benefit requirement in Code §401(a)(9)(G), and the Regulations issued thereunder. Without limiting the forgoing, all distributions to a Domestic Partner shall be made subject to the incidental death benefit limitations Code §401(a)(9)(G), and the Regulations issued thereunder.

- (iii) Limits on Payment Periods. As of the first distribution calendar year, distributions made to a Participant, if not made in a single sum, may only be made over one of the following periods:
 - (A) the life of the Participant,
 - (B) the joint lives of the Participant and a designated Beneficiary,
 - (C) period certain not extending beyond the life expectancy of the Participant, or
 - (D) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated Beneficiary.

(b) Time and Manner of Distribution.

- (i) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, no later than the Participant's Required Beginning Date.
- (ii) Death of Participant Before Payments 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:
 - (A) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, then distributions to the surviving Spouse may begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or at the option of the surviving Spouse by a date no later than December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later. Alternatively, the Participant's entire interest will be distributed to the designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. If the surviving Spouse dies after the Participant but before distributions to either the Participant or the surviving Spouse begin, this alternative will apply as if the surviving Spouse were the Participant.
 - (B) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then distributions (including distributions to a Domestic Partner) may, but are not required to, begin by December 31 of the calendar year immediately following the calendar year in which the Participant died. Alternatively, the Participant's entire interest will be distributed to the designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (C) 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.

- (D) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before payments to the surviving Spouse are required to begin, this Subsection (b)(ii), other than Subsection (b)(ii)(A), will apply as if the surviving Spouse were the Participant.

For purposes of this Subsection (b)(ii) and (e), unless Subsection (b)(ii)(D) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Subsection (b)(ii)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Subsection (b)(ii)(A). If distributions under an annuity meeting the requirements of this Section 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 Subsection (b)(ii)(A)) the date distributions are considered to begin is the date distributions actually commence.

- (E) Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under the life expectancy rule, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with the five-year rule.

- (iii) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Subsections (c), (d) and (e) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and Section 1.401(a)(9) of the Regulations. Any part of the Participant's interest which is in the form of an individual account described in Code §414(k) will be distributed in a manner satisfying the requirements of Code §401(a)(9) and Section 1.401(a)(9) of the Regulations that apply to individual accounts.

(c) **Determination of Amount to be Distributed Each Year.**

- (i) **General Annuity Requirements.** If the Participant's interest is to be paid in the form of annuity distributions under the Plan, payments under the annuity shall satisfy the following requirements:

- (A) the annuity distributions will be paid in periodic payments made at uniform intervals not longer than one year;
- (B) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Subsection (d) or (e);
- (C) once payments have begun over a period, the period will be changed only in accordance with Subsection (f);
- (D) payments will either be nonincreasing or increase only as follows:
 - 1) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;
 - 2) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the Annuity Starting Date, or if later, the date of the most recent percentage increase;
 - 3) by a constant percentage of less than 5 percent per year, applied not less frequently than annually;
 - 4) as a result of dividend or other payments that result from actuarial gains, provided:
 - a) actuarial gain is measured not less frequently than annually,
 - b) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),
 - c) the actuarial gain taken into account is limited to actuarial gain from investment experience,
 - d) the assumed interest rate used to calculate such actuarial gains is not less than 3 percent, and
 - e) the annuity payments are not increased by a constant percentage as described in paragraph 3) of this Subsection (c)(i)(D);
 - 5) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the Beneficiary whose life was being used to determine the distribution period described in

Section (d) dies or is no longer the Participant's Beneficiary pursuant to a Qualified Domestic Relations Order within the meaning of Code §414(p);

- 6) to provide a final payment upon the Participant's death not greater than the excess of the actuarial present value of the Participant's accrued benefit (within the meaning of Code §411(a)(7)) calculated as of the Annuity Starting Date using the applicable interest rate and the applicable mortality table defined in Section 1.3 over the total of payments before the Participant's death;
- 7) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death; or
- 8) to pay increased benefits that result from a Plan amendment.

(ii) **Amount Required to be Distributed by Required Beginning Date and Later Payment Intervals.** The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Subsection (b)(ii)(A) or (B)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

(iii) **Additional Accruals After First Distribution Calendar Year.** Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such benefit accrues.

(d) **Requirements For Annuity Distributions That Commence During Participant's Lifetime.**

(i) **Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse.** If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-spouse Beneficiary (including a Participant's Domestic Partner), annuity payments to be made on or after the Participant's Required Beginning Date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant, using the table set forth in Section 1.401(a)(9)-6, Q&A 2(c)(2), in the manner described in Q&A 2(c)(1), of the Regulations, to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse Beneficiary (including a Participant's Domestic Partner) and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

- (ii) **Period Certain Annuities.** Unless the Participant's Spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Regulations for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's spouse is the Participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Subsection (d)(ii), or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the calendar year that contains the Annuity Starting Date.
- (e) **Requirements For Minimum Distributions After the Participant's Death.**
 - (i) **Death After Distributions Begin.** If the Participant dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this Section the remaining portion of the Participant's interest will continue to be distributed over the remaining period over which distributions commenced.
 - (ii) **Death Before Distributions Begin.**
 - (A) **Participant Survived by Designated Beneficiary.** If the Participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Subsection (b)(ii)(A) or (B), over the life of the designated Beneficiary or over a period certain not exceeding:
 - 1) unless the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
 - 2) if the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the Annuity Starting Date.

Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in

which distributions would be required to begin under the life expectancy rule, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with the five-year rule.

- (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 Pension or Vested Benefit 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 Begin.** If the Participant dies before the date distribution of his or her Pension or Vested Benefit begins, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this Subsection (e) will apply as if the surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Subsection (b)(ii)(A).

(f) **Changes to Annuity Payment Period.**

- (i) **Permitted Changes.** An annuity payment period may be changed only in association with an annuity payment increase described in Subsection (c)(i)(D) or in accordance with Subsection (f)(ii).
- (ii) **Reannuitization.** An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in Subsection (f)(iii) are satisfied and:
 - (A) the modification occurs when the Participant retires or in connection with a Plan termination;
 - (B) the payment period prior to modification is a period certain without life contingencies; or
 - (C) the annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the Participant and a designated Beneficiary, the Participant's Spouse is the sole designated Beneficiary, and the modification occurs in connection with the Participant's becoming married to such Spouse.
- (iii) **Conditions.** The conditions in this Subsection (f)(iii) are satisfied if:
 - (A) the future payments after the modification satisfy the requirements of Section 401(a)(9), Section 1.401(a)(9) of the Regulations, and this Section 5.8 (determined by treating the date of the change as a new Annuity

Starting Date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);

- (B) for purposes of Code §§415 and 417, the modification is treated as a new Annuity Starting Date;
- (C) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Code § 415 (determined at the original Annuity Starting Date, using the interest rates and mortality tables applicable to such date); and
- (D) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the employee at the original Annuity Starting Date under Code §401(a)(9) and this Section 5.8.

(g) **Payments to a Surviving Child.**

- (i) **Special rule.** For purposes of this Section, payments made to a Participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving Spouse to the extent the payments become payable to the surviving Spouse upon cessation of the payments to the child.
- (ii) **Age of majority.** For purposes of this Section, a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of Section 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

(h) **Definitions.**

- (i) **Actuarial gain.** The difference between an amount determined using the actuarial assumptions (i.e., investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.
- (ii) **Designated beneficiary.** The individual who is designated by the Participant (or the Participant's surviving Spouse or surviving Domestic Partner as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code §401(a)(9) and Section 1.401(a)(9)-4 of the Regulations.
- (iii) **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 pursuant to Subsection (b)(ii).

- (iv) **Eligible cost-of-living index.** An index described in paragraphs (b)(2), (b)(3) or (b)(4) of Section 1.401(a)(9)-6, Q&A-14, of the Regulations.
- (v) **Life expectancy.** Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the Regulations.
- (vi) A Participant's interest will be actuarially increased to take into account the period after age 70 1/2 in which the Participant does not receive any benefits under the Plan. The actuarial increase will begin on April 1 following the calendar year in which the Participant attains age 70 1/2 (January 1, 1997 in the case of a Participant who attains age 70 1/2 prior to 1996), and will end on the date on which benefits commence after retirement in an amount sufficient to satisfy Section 401(a)(9). The amount of actuarial increase payable as of the end of the period for actuarial increases will be no less than the actuarial equivalent of the Participant's retirement benefits that would have been payable as of the date the actuarial increase must commence plus the actuarial equivalent of additional benefits accrued after that date, reduced by the actuarial equivalent of any distributions made after that date. The actuarial increase under this Section is not in addition to the actuarial increase to reflect the delay in payments after Normal Retirement.

- (i) **Alternative Compliance with Certain Annuity Requirements in 2003, 2004 and 2005.** A reasonable and good faith interpretation of the requirements of Code § 401(a)(9) apply in lieu of the requirements of Subsections (c), (d) and (f) for purposes of determining minimum required distributions for calendar years 2003, 2004, or 2005.

5.9 **Consent to Distribution.** At the time the notice described in Section 5.10 is furnished to the Participant, an election form also will be furnished. The Participant must complete such form and return it to the Plan Administrator by the later of 30 days after receipt of the form or the day before the Participant's Annuity Starting Date if the Participant wants to have his or her vested Accrued Benefit paid in an optional form of benefit described in Section 5.2. A Participant's election shall be revocable up until the Participant's Annuity Starting Date. A Participant who fails to complete and return the election form by the deadline in the second sentence of this paragraph shall be deemed to have elected the automatic form of payment specified in Section 5.1.

A married Participant or, (subject to the requirements of Code Section 401(a)(9) and the Regulations thereunder) a Participant with a Domestic Partner may elect the Joint & 66-2/3% Survivor Annuity or the Joint & 66-2/3% Survivor Annuity with 10 Year Certain options without his Spouse's or Domestic Partner's Consent. A married Participant or a Participant with a Domestic Partner must obtain his Spouse's or Domestic Partner's consent in the form of a Qualified Election before a distribution can be made as the 10 Year Certain & Life, Life Only, or Lump Sum Distribution option. Unless the Spouse or Domestic Partner's is the Participant's sole primary Beneficiary with regard to any distribution elections, the Spouse or Domestic Partner also must consent in the form of a Qualified Election to the Participant's Beneficiary designation or to any change in the Participant's Beneficiary designation.

A Qualified Election shall mean a written election of the form in which a Participant's Accrued Benefit will be paid, or a written beneficiary designation. The election must be in writing and the

Participant's Spouse or Domestic Partner must consent to the election. A notary public or a Plan representative must witness the Spouse's or Domestic Partner's consent.

The Spouse's or Domestic Partner's consent to a benefit form or Beneficiary designation is irrevocable after a waiting period of 7 days. Spousal or Domestic Partner consent is not required if the Participant establishes to the satisfaction of a Plan representative that such written consent may not be obtained because there is no Spouse or Domestic Partner or the Spouse or Domestic Partner cannot be located. Any consent necessary under this provision will be valid only with respect to the Spouse or Domestic Partner who signs the consent.

Unless a Participant's Spouse or Domestic Partner has made a Qualified Election in a manner described in this Section 5.9 before the Participant's death, the Spouse or Domestic Partner shall be the Participant's primary Beneficiary. The Spouse or Domestic Partner of a deceased Participant who is entitled to any benefit under the Plan may elect an optional form of payment subject to Section 5.3. The Spouse or Domestic Partner may receive payments commencing at the Participant's Earliest Retirement Age. The Spouse or Domestic Partner may elect to defer payment of the benefit to a later date permitted under Section 5.8.

- 5.10 **Notice Requirements.** The Plan Administrator shall provide each Participant within one hundred and eighty days prior to the commencement of benefits, a written explanation of (1) the terms and conditions of a Qualified Joint and 50% Contingent Annuity; (2) the terms and conditions of a Domestic Partner Joint and 50% Survivor Annuity; (3) the Participant's right to elect an optional form of benefit; (4) the rights of a Participant's Spouse or Domestic Partner; and (4) the right to make and the effect of a revocation of a previous election to waive the Qualified Joint and 50% Contingent Annuity or the Domestic Partner Joint and 50% Survivor Annuity.

ARTICLE 6.

ADMINISTRATIVE PROVISIONS

- 6.1 **Participants to Furnish Required Information.** Each Participant and Beneficiary shall furnish to the Plan Administrator such information concerning the age and marital or civil union status of such persons as the Plan Administrator requests for purposes of administering the Plan. The provisions of the Plan respecting any payment thereunder are conditional upon the Participant and Beneficiary promptly furnishing true, full and complete information as the Plan Administrator may request. The Employer, the Committee, and anyone involved in the administration of the Plan shall be entitled to rely upon any certification, statement or representation made or evidence furnished by an Employee, Participant, or Beneficiary and shall not be liable on account of any act or failure to act in reliance thereon, any such certification, statement, representation, or evidence, upon being duly made or furnished, shall be conclusively binding upon the person furnishing same; but it shall not be binding upon the Employer, the Committee, or any other person involved in the administration of the Plan, and nothing herein contained shall be construed to prevent any of such parties from contesting any such certification, statement, representation, or evidence or to relieve the Employee, Participant, or Beneficiary from the duty of submitting satisfactory proof of any such fact.
- 6.2 **Beneficiary Designation.** Subject to the spousal and Domestic Partner consent rules as specified in Section 5.9, the Participant will designate a Beneficiary to receive any benefits payable upon his death on the form prescribed by and delivered to the Plan Administrator. Subject to the spousal consent and Domestic Partner consent rules as specified in Section 5.9, the Participant will have the right to change or revoke a designation at any time by filing a new designation or notice or revocation with the Plan Administrator. If a Participant fails to designate a Beneficiary before his death, or if no designated Beneficiary survives the Participant, the Plan Administrator will direct the Trustee to pay the benefit to the surviving Spouse or the Participant's surviving Domestic Partner at the date of the Participant's death. If the Participant does not have a surviving Spouse or surviving Domestic Partner at the date of the Participant's death, the Beneficiary shall mean the following classes of persons in the order named with a living member on the respective dates that distributions are payable:
- (a) the Participant's natural and adopted children in equal shares, provided that the then living issue of any deceased child shall take the parent's share by right of representation; or if none,
 - (b) the Participant's parents in equal shares; or if none,
 - (c) the Participant's brothers and sisters, in equal shares; or if none,
 - (d) the Participant's estate.
- 6.3 **Participants' Rights in Trust Fund.** No Participant or other person shall have any interest in or any right in, to, or under the Trust Fund, or any part of the assets thereof, except as expressly provided in the Plan.
- 6.4 **Benefits Not Assignable.** Except as provided in Section 5.6, no benefits, rights or accounts shall exist under the Plan which are subject in any manner to voluntary or involuntary anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, transfer, assign, pledge, encumber or charge any benefits, rights or accounts shall be null

and void. Except as provided in Section 5.6, no benefit, right or account under the Plan shall be liable for, or subject to, the debts, contracts, liabilities, engagements, torts or other obligations of the person entitled to such benefit, right or account. Except as provided in Section 5.6, no benefit, right or account under the Plan shall constitute an asset in case of the bankruptcy, receivership, or divorce of any person entitled under the Plan.

- 6.5 **Benefits Payable to Minors and Incompetents.** Whenever any person entitled to payments under this Plan shall be a minor or under other legal disability or in the sole judgment of the Committee shall otherwise be unable to apply such payments to his own best interest and advantage, the Committee may direct all or any portion of such payments to be made to the duly-appointed guardian, conservator or other duly-appointed legal representative of such person. The decision of the Committee will, in each such case, be final and binding upon all persons, and the Committee shall not be obliged to see to the proper application or expenditure of any payments so made. Any payment made pursuant to the power conferred upon the Committee shall operate as a complete discharge of the obligations of the Trustee, the Committee and the Employer.
- 6.6 **Conditions of Employment Not Affected by Plan.** The establishment and maintenance of the Plan will not be construed as conferring any legal rights upon any Participant to the continuation of his employment with the Employer, nor will the Plan interfere with the right of the Employer to discipline, lay off or discharge any Participant. The adoption and maintenance of the Plan shall not be deemed to constitute a contract between the Employer and any Employee, or to be a consideration for, inducement to, or condition of, the employment of any person.
- 6.7 **Notification of Mailing Address.** Each Participant and Beneficiary entitled to benefits shall file with the Plan Administrator, in writing, his or her address and each change of address. Any payment hereunder and any communication addressed to a Participant, former Participant, or Beneficiary at his last address filed with the Plan Administrator (or, if no such address has been filed, then at his last address as indicated on the records of the Employer) shall be binding on such person for all purposes of the Plan, and neither the Plan Administrator nor the Trustee, nor the Employer, shall be obligated to ascertain the receipt of such payment. If the Plan Administrator, for any reason, is in doubt as to whether payments are being received by the person entitled thereto, it may take reasonable steps to locate the Participant or Beneficiary. If the Plan Administrator is not furnished with satisfactory evidence of such person's proper mailing address, or with evidence of his death, and the Plan Administrator is unable to find any person to whom payment is due under the provisions of the Plan within three years of the date such payment of benefit was scheduled to have commenced, all retirement income and other benefit payments due shall be forfeited. If claim for any forfeited benefit is subsequently made by any such person to whom payment is due under the Plan, such forfeited benefits due such person shall be reinstated subject to Sections 7.10 and 7.11.
- 6.8 **Written Communications Required.** Any notice, request, instruction, or other communication to be given or made hereunder shall be in writing.
- 6.9 **Benefits Payable at Office of Trustee.** All benefits shall be paid by the trustee in negotiable funds made payable to the person entitled to receive such benefits.
- 6.10 **Administrative Powers.** The Plan Administrator shall administer the Plan in accordance with its terms, and shall have all powers necessary to carry out the provisions of the Plan not otherwise reserved to the Employer, the Committee or the Trustee. The Plan Administrator's administrative powers shall include but not be limited to the following powers and duties, each of which is subject to the duties and authorities of the Committee and the Trustee:

- (a) **Interpretation.** To interpret the Plan provisions and resolve all questions relating to the administration of the Plan, including the power to determine the rights and eligibility of an individual under the Plan. ;
- (b) **Rules.** To adopt such rules and regulations as the Plan Administrator may deem reasonably necessary for the proper and efficient administration of the Plan and consistent with its purposes;
- (c) **Enforcement.** To enforce the Plan in accordance with its terms and with the Plan's rules and regulations and to consider and interpret the Plan, and settle and discharge disputes arising thereunder;
- (d) **Claims.** To make initial determinations of claims for benefits, or claims relating to eligibility to participate in the Plan;
- (e) **Corrections and adjustments.** To make such adjustments which the Plan Administrator deems necessary or desirable to correct any arithmetic or accounting errors. To correct any defect, supply any omission or reconcile any inconsistency in such manner and to such extent as the Plan Administrator shall deem necessary to carry out the purposes of the Plan.
- (f) **Records.** To maintain the account records of all Participants; and
- (g) To perform administrative functions as directed by the Committee.
- (h) **Additional Powers.** To do all other acts in the Plan Administrator's opinion necessary or desirable for the proper and advantageous administration of the Plan.

6.11 **Claims and Appeals**

- (a) **Claim With Plan Administrator.** A Participant or Beneficiary who claims he or she is being denied any benefit or right provided under the Plan shall have the right to file a written claim with the Plan Administrator.
 - (i) Upon the receipt of such a claim and in the event the claim is denied, the Plan Administrator shall, within 90 days after receipt of such claim, provide such claimant a written statement which shall be delivered or mailed to the claimant by Certified or Registered Mail to the claimant's last known address, which statement shall contain the following:
 - (A) the specific reason for the denial of benefits;
 - (B) the specific reference to the pertinent provisions of the Plan upon which the denial is based;
 - (C) a description of any additional material or information which is necessary: and
 - (D) an explanation of the appeal procedure provided below; provided, however, that if special circumstances require an extension of time for processing the claim, the Plan Administrator shall provide such claimant with such written statement described above not later than 180 days after

receipt of the claimant's claim, but, in such event, the Plan Administrator shall furnish the claimant, within 90 days after its receipt of such claim, written notification of the extension explaining the circumstances requiring such extension and the date that it is anticipated that such written statement will be furnished.

- (b) **Appeal to Committee.** Within 60 days after the receipt of a notice of a denial of benefits as provided above, the claimant or the claimant's authorized representative may request, in writing, a hearing before the Committee for a review of the Plan Administrator's determination. The claimant's request shall be delivered to the Plan Administrator who shall set the date and time for the hearing, but shall not participate in the Committee's review. In conducting its hearing, the Committee shall consider any written statement, testimony or other evidence presented by the claimant or the authorized representative in support of the claim. The Committee shall give the claimant and the claimant's authorized representative reasonable access to all pertinent documents necessary for the preparation of the claim.
 - (i) The Committee shall, within 60 days after receipt of such appeal, conduct a hearing and provide such claimant a written determination which shall be delivered or mailed to the claimant by Certified or Registered Mail to the claimant's last known address, provided, however, in the event that special circumstances require an extension of time for processing, the Committee shall so notify the claimant of the Committee's decision not later than 120 days after receipt of such appeal but, in such event, the Committee shall furnish the claimant, within 60 days after the Committee's receipt of such appeal, written notification of the extension explaining the circumstances requiring such extension and the date that it is anticipated that the Committee's decision will be furnished.
 - (ii) The decision of the Committee shall be conveyed in writing to the claimant and shall include the specific reasons for the decision presented in a manner calculated to be understood by the claimant and shall contain references to all relevant Plan provisions on which the decision was based. The decision of the Committee shall be final and conclusive.
- (c) If the Committee suspends monthly benefits, the Plan Administrator shall notify the Participant in writing that benefits are being suspended. The notice shall contain a description of the specific reasons for the suspension, a general description of the Plan provisions relating to suspension of benefits, a copy of those Plan specifications, and shall inform the Participant of the procedure for requesting a review of the suspension of payments.

ARTICLE 7.

MISCELLANEOUS PROVISIONS

- 7.1 **Contributions.** No contributions shall be required of any Participant. The Employer intends, but does not guarantee, to make annual contributions in amounts required to meet the minimum funding requirements of Code §412, as specified in the actuary's valuation reports for the applicable periods of time. Subject to applicable provisions of law, the Employer, any of its officers, agents, or members of its Board of Directors do not guarantee, in any manner, the payment of benefits under the Plan.
- 7.2 **Employer Contributions Irrevocable.** The Employer shall have no right, title or interest in the Trust Fund or in any part thereof and no contributions made thereto shall revert to the Employer except such part of the Trust Fund, if any, which remains after the satisfaction of all liabilities to persons entitled to benefits under the Plan. Notwithstanding the preceding sentence, if a contribution either is made by a good faith mistake of fact, or is the result of a good faith mistake in determining the deductibility of such contribution, the excess of the amount contributed (net of any losses) over the amount that would have been contributed may be returned to the Employer within one year of the date of the mistaken payment or the disallowance of the deduction, as the case may be.
- 7.3 **Forfeitures.** Forfeitures shall not be used to increase the benefits that any Employee would otherwise receive under the Plan at any time prior to the termination of the Plan but shall be anticipated in determining the costs under the Plan.
- 7.4 **Amendment of Plan.** The Plan may be amended by the Employer in its discretion by resolution of the Board of Directors or by resolution of a committee appointed by the Board of Directors that has been granted specific authority to amend the Plan, except that under no condition shall such amendment result in, or permit, the return or repayment to the Employer of any property held or acquired by the Trustee hereunder or the proceeds thereof, or result in, or permit, the distribution of any such property for the benefit of anyone other than the Participants and their Beneficiaries, except to the extent provided by Section 7.11 and Section 7.6 with respect to termination of the Plan and expenses of administration, respectively. The Plan may not be amended to change the duties or responsibilities of the Trustee without the Trustee's written consent. Any permitted amendment may be made retroactively which, in the judgment of the Committee, is necessary or advisable, and which is allowed by law. Each amendment of the Plan shall be made in writing and shall state the date to which it is either retroactively or prospectively effective.
- 7.5 **Merger of Plan.** In the case of the merger or consolidation of the Plan with, or the transfer of assets or liabilities to, another qualified Plan, each Participant must be entitled to receive a benefit, upon termination of such other retirement Plan after such merger, consolidation or transfer, which is at least equal to the benefit the Participant would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had been terminated at that time.
- 7.6 **Expenses of Administration.** The Plan shall pay all expenses incurred in the administration of the Plan, including expenses and fees of the Trustee, except that the Employer may elect in its discretion to pay some or all of the Plan expenses and shall pay all expenses incurred in the establishment of the Plan.
- 7.7 **Formal Action by the Employer.** Any formal action permitted or required to be taken by the Employer shall be by resolution of its Board of Directors, or by written instrument executed by a

person or group of persons who has been authorized by resolution of such Board of Directors as having authority to take such action.

- 7.8 **Change in Vesting Schedule.** Though the Employer reserves the right to amend the vesting schedule at any time, the Employer shall not amend the vesting schedule (and no amendment shall be effective) if the amendment would reduce the vested percentage of any Participant's Accrued Benefit (determined as of the later of the date the Employer adopts the amendment, or the date the amendment becomes effective) to a percentage less than the vested percentage computed under the Plan without regard to the amendment.
- 7.9 **Termination of Plan.** The Plan may be terminated by the Employer at any time by resolution of the Board of Directors or by resolution of a committee appointed by the Board of Directors that has specific authority to terminate the Plan. Upon termination of the Plan, the Employer shall notify the Committee and the Trustee of the termination. In the event of the liquidation, dissolution, merger or consolidation of the Employer under such circumstances that there is a successor corporation, firm, association, or governmental authority continuing and carrying on all, or a substantial part of, the Employer's business, such successor may be substituted for the Employer under the terms of this Plan by formal action on such successor's part specifying its election to continue the Plan. Each action to terminate all or any portion of the Plan shall be made in writing and shall state the date to which it is either retroactively or prospectively effective.
- 7.10 **Benefits Nonforfeitable If Plan Is Terminated.** Upon termination or partial termination of the Plan, the rights of each affected Participant in the Plan to benefits accrued to the date of termination, to the extent then funded, shall be nonforfeitable. Benefits shall be determined and distributed as provided in Section 7.11.
- 7.11 **Termination of Plan and Distribution of Trust Fund.** Upon termination of the Plan in accordance with the provisions hereof, the Trust Fund shall be allocated and distributed as follows:
- (a) The Committee shall determine the date of distribution and the asset value of the Trust Fund to be distributed, after taking into account the expenses of such distribution.
 - (b) Any distribution made after the termination of the Plan shall be made, in whole or in part, to the extent that no discrimination in value results, in cash or in nontransferable annuity contracts, as the recipient shall elect in accordance with Article 5.
 - (c) The Committee, after having first determined the asset value properly allocable to each Participant and Beneficiary under the Plan, shall, among the participating Employees and Beneficiaries under the Plan, allocate the asset value as of the date of termination of the Plan in the manner set forth below, on the basis that the amount required to provide any given retirement income shall mean the Actuarially Equivalent single sum value of such retirement income, except that if the method of distribution involves the purchase of an insured annuity, the amount required to provide the given retirement income shall mean the single premium payable for such annuity.
 - (i) Allocation shall first be made with respect to each active, retired or terminated Participant and to each Beneficiary of a deceased Participant in an amount equal to (1) the amount, if any, credited to the Participant's account under the Plan on the date of termination of the Plan that is attributable to voluntary Employee contributions or (2) if the funds attributable to voluntary Employee contributions are being used to provide an Actuarially Equivalent benefit, the amount required

to provide (after the date of termination of the Plan) that portion of the Participant's benefit which is attributable to voluntary Employee contributions, provided, however, that if the asset value be less than the aggregate of such amounts, such amounts shall be reduced pro rata among such individuals so that the aggregate of such reduced amounts, will be equal to the asset value; and provided further, however, that the benefits on which the allocations specified below are based shall exclude any portion thereof attributable to the Participant's voluntary Employee contributions.

- (ii) If there is any asset value remaining, allocation shall next be made with respect to each active, retired or terminated Participant and to each Beneficiary of a deceased Participant in an amount equal to the excess, if any, of (1) the Participant's mandatory Employee contributions, if any, together with interest credited thereto over (2) the aggregate of payments, if any, exclusive of payments attributable to the Participant's voluntary Employee contributions, if any, which have previously been made on behalf of the Participant; provided, however, that if such remaining asset value be less than the aggregate of the amounts thus allocated hereunder, such latter amounts shall be reduced pro rata among such individuals so that the aggregate of such reduced amounts will be equal to the remaining asset value.
- (iii) If there be any asset value remaining after the allocations under (i) and (ii) above, allocation shall next be made with respect to:
 - (A) Each retired or terminated Participant whose retirement income payments commenced at least three years prior to the date of termination of the Plan in an amount equal to the excess, if any, of (a) the amount required to provide (after the date of termination of the Plan) the smallest amount of income payable to such Participant during such three-year period immediately preceding the date of termination of the Plan, based upon the provisions of the Plan as in effect during the five-year period immediately preceding the date of termination of the Plan which would result in the least amount of income being payable to such Participant over (b) the amount of his or her allocation, if any, under (ii) above;
 - (B) Each person receiving a retirement income on such date of termination on account of a deceased Participant or retired or terminated (but since deceased) Participant whose retirement income payments commenced, either to such person or to such retired or terminated (but since deceased) Participant, at least three years prior to the date of termination of the Plan in an amount equal to the excess, if any, of (a) the amount required to provide (after the date of termination of the Plan) the smallest amount of income payable to such person during such three-year period immediately preceding the date of termination of the Plan, based upon the provisions of the Plan as in effect during the five-year period immediately preceding the date of termination of the Plan which would result in the least amount of income being payable to such person over (b) the amount of this allocation, if any, under (ii) above; and
 - (C) Each other active, retired, or terminated Participant who, at least three years prior to the date of termination of the Plan, either had become eligible for normal retirement but had not yet retired or had satisfied the

applicable age and service requirements to be eligible for an early retirement benefit, or the Beneficiary of any such eligible Participant whose service was terminated by reason of his or her death during such three-year period, in an amount equal to the excess, if any, of (a) the amount required to provide (after the date of termination of the Plan) the monthly retirement income which would have been payable on behalf of such Participant if he had retired three years prior to the date of termination of the Plan, based upon the provisions of the Plan as in effect during the five-year period immediately preceding the date of termination of the Plan which would result in the least amount of income being payable to such Participant or Beneficiary over (b) the amount of his allocation, if any, under (ii) above; provided, however, that if such remaining asset value be less than the aggregate of the amounts thus allocated hereunder, such latter amounts shall be reduced pro rate among such individuals so that the aggregate of such reduced amounts will be equal to the remaining asset value.

- (iv) If there is any asset value remaining, allocation shall next be made with respect to each active, retired or terminated Participant and to each Beneficiary under the Plan in an amount equal to the excess, if any, of (1) the amount required to provide that portion of the Actuarially Equivalent single-sum value of the Accrued Benefit commencing at Normal Retirement Date which he or she had accrued as of the date of termination of the Plan or, if applicable, which he or she was receiving as of the date of the termination of the Plan over (2) the aggregate of the allocations, if any, made on his or her behalf under (ii) and (iii) above, provided, however, that if such remaining asset value be less than the aggregate of the amounts thus allocated hereunder, such latter amounts shall be reduced pro rata among such individuals so that the aggregate of such reduced amounts will be equal to the remaining asset value.
- (v) If there is any asset value remaining, allocation shall next be made with respect to each retired or terminated Participant receiving a retirement income hereunder on such date on account of a deceased Participant or a retired or terminated (but since deceased) Participant and each Participant who has, by such date, become eligible for Normal Retirement but has not yet retired, in an amount equal to the excess, if any, of (a) the amount required to provide the retirement income which such Participant or other person is receiving or is entitled to receive under the Plan over (b) the aggregate of the allocations made on behalf of such Participant or other person under (ii), (iii) and (iv) above; provided, however, that if such remaining asset value be less than the aggregate of the amounts thus allocated, hereunder, such latter amounts shall be reduced pro rate among such individuals so that the aggregate of such reduced amounts will be equal to the remaining asset value.
- (vi) If there is any asset value remaining, allocation shall next be made with respect to:
 - (A) Each Participant in the service of the Employer on the date of termination of the Plan whose Initial Vesting Date is on or prior to such date and who is not entitled to an allocation under (v) above, in an amount equal to the excess, if any, of (a) the amount required to provide the Actuarially Equivalent single-sum value of the vested retirement income which the Participant would have been entitled to receive under the provisions of

Section 3.7 if his or her service had been terminated on the date of termination of the Plan over (b) the aggregate of the allocations made on behalf of such Participant under (ii), (iii) and (iv) above; and

- (B) Each terminated Participant then entitled to a benefit under the provisions of Section 3.7 whose monthly income payments have not commenced by such date, in an amount equal to the excess, if any, of (a) the amount required to provide the Actuarially Equivalent single-sum value of the vested Accrued Benefit to which the Participant is entitled under Section 3.7 over (b) the aggregate of the allocations made on behalf of such Participant under (ii), (iii) and (iv) above; provided, however, that if such remaining asset value be less than the aggregate of the amounts thus allocated hereunder, such latter amounts shall be reduced pro rata among such individuals so that the aggregate of such reduced amounts will be equal to the remaining asset value.
- (vii) If there is any asset value remaining, allocation shall lastly be made with respect to each Participant in the service of the Employer on the date of termination of the Plan who is not entitled to an allocation under (v) above, in an amount equal to the excess, if any, of (1) the amount required to provide the Actuarially Equivalent single-sum value of the Accrued Benefit commencing at Normal Retirement Date which the Participant had accrued as of the date of termination of the Plan (assuming the Participant's vested percentage is 100%) over (2) the aggregate of the allocations made on behalf of such Participant under (ii), (iii), (iv) and (vi) above; provided, however, that if such remaining asset value is less than the aggregate of the amounts thus allocated hereunder, such latter amounts shall be reduced pro rata among such individuals so that the aggregate of such reduced amounts will be equal to such remaining asset value.
- (viii) In the event that there is asset value remaining after the full allocations specified in (i), (ii), (iii), (iv), (v), (vi) and (vii) above, such residual assets will be distributed to the Employer.
- (d) In order of priorities for, and the amounts of, the distributions set forth in (c) above and the rights of Participants and Beneficiaries to benefits under the Plan shall be subject (i) to the limitations provided by Article 4 of the Plan, (ii) to any changes, including the recapture of any prior distributions to Participants, if required by law; and (iii) to any changes required by the Internal Revenue Service as a condition for issuing a favorable determination letter stating that the distribution of assets will not adversely affect the continued qualified status of the Plan under Code § 401(a).
- (e) As soon as practicable after receipt by the Employer of (i) any approval required by law for a proposed method of distribution of assets and (ii) a favorable determination letter from the Internal Revenue Service stating that in its opinion such method will not adversely affect the continued qualified status of the Plan under Code § 401(a), the Committee shall direct the Trustee to distribute the assets in accordance with such method.

7.12 **Word Usage.** Words used in the masculine also apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural includes the singular and the singular includes the plural.

- 7.13 **Applicable Law.** The Plan will, unless superseded by Federal law, be construed and enforced according to the laws of the State of Colorado, and all provisions of the Plan will, unless superseded by Federal law, be administered according to the laws of such state.

ARTICLE 8.

RETIREMENT COMMITTEE

- 8.1 **Retirement Committee.** The Retirement Committee shall consist of six members, four of whom shall be members of the Board of Directors appointed by such Board, and two of whom shall be senior members of the Employer's management, namely the General Manager (who shall also serve as the Administrator of the Plan) and the Chief Financial Officer. Each member appointed by the Board shall serve at the pleasure of the Board of Directors until a successor shall be appointed in like manner.
- 8.2 **Officers of the Committee.** The Committee shall elect a Chairperson. The Chief Financial Officer shall act as Secretary.
- 8.3 **Action by the Committee.** A majority of the members of the Committee shall constitute a quorum for the Committee to act as set forth herein. The Committee may act only at a meeting at which a quorum is present. The Committee may keep minutes; a record of any actions, including any recommendations to the Administrator or the Board of Directors, shall be kept in written form by the Secretary.
- A member of the Committee may not participate in any matter in which his or her individual right or claim to any benefit under the Plan is involved. If a Committee member is so prohibited from participating, the Employer's Board of Directors may appoint a temporary substitute member to exercise all of the powers of the disqualified member concerning the matter in question.
- 8.4 **Functions and Powers of the Committee.** The Committee's principal functions may include, but are not limited to:
- (a) exercise overall responsibility for overseeing the management of the Plan Trust Fund investments; in so doing, the Committee will abide by the governing legal standards and comply with all applicable laws, reporting, and disclosure requirements;
 - (b) establish and maintain an INVESTMENT POLICY STATEMENT in order to assist in the investment decision-making process by communicating to all parties involved investment objectives, asset allocation strategies (including risk tolerance and anticipated liquidity needs), clearly stated investment guidelines (including performance benchmarks and time horizon(s)), as well as an investment structure;
 - (c) retain an Investment Consultant to assist the Committee in the oversight of the overall investment program for the Fund and/or an Investment Manager and retain investment management firms to manage the assets of the Fund;
 - (d) receive, at such intervals as the Committee deems appropriate, but no less frequently than quarterly, reports from the Investment Consultant and from the investment management firms that have been retained to manage the assets of the Fund; and
 - (e) make recommendations to the General Manager, as the Administrator of the Plan, regarding the engagement of a Trustee, an Actuary, one or more paying agents for the Trust Fund, and to the Employer's Board of Directors regarding matters of policy concerning the Plan, including the budgeting and expenditure of funds.

8.5 **Administrative Duties of the Committee.** The Committee, as part of its general duty to review the administration of the Plan by the Administrator, shall have the discretion to:

- (a) obtain all facts with respect to any Employee's age, amount of Compensation, length of service, Hours of Service, Vesting Service, Credited Service and date of initial coverage under the Plan, and by application of the facts so obtained and any other facts deemed material, verify the amount, if any, of benefit payable under the Plan on behalf of a Participant;
- (b) pursuant to the provisions of Article 6, review claims and render decisions with respect to a claim for (or denial of a claim for) a benefit under the Plan, which decisions shall be final and binding for all purposes;
- (c) pursuant to the provisions of Article 6, review the Administrator's interpretation of the Plan, in which case the Committee's interpretation of the Plan shall be final and binding for all purposes;
- (d) pursuant to the provisions of Article 6, review all questions arising in the administration of the Plan, including, but not limited to, questions regarding the entitlement of Participants and Beneficiaries to benefits provided under the Plan, which decisions shall be final and binding for all purposes;
- (e) periodically review the funding policy and method for the Plan for consistency with the objectives of the Plan and make recommendations to the Board of Directors and the Administrator regarding same; provided however, that any decisions pertaining to the amount and timing of contributions by the Employer to the Trust Fund are reserved to the Employer acting through its Board of Directors;
- (f) confirm directions for the Trustee with respect to the making of payments, the names of the payees, the amounts to be paid, and the time or times when payments are to be made;
- (g) confirm that the Administrator has furnished to the Trustee such information (including information relative to the liquidity needs of the Plan) as is necessary for the Trustee to carry out the purposes of the Trust Agreement;
- (h) approve the Administrator's engagement of professional accounting services for the purposes of an annual audit and opinion as to whether the financial statements and schedules of the Plan are presented fairly in conformity with generally accepted accounting principles; review and recommend such reports for presentation to the Employer's Board of Directors.

8.6 **Delegation of Additional Powers, Functions, and Duties.** The foregoing lists of powers, functions, and administrative duties are not intended to be either complete or conclusive, and the Committee shall, in addition, exercise such other powers and perform such other duties as the Employer's Board of Directors may deem necessary, desirable, advisable or proper for the supervision and administration of the Plan.

8.7 **Indemnification of Members of the Committee.** To the extent not covered by insurance, or if there is a failure to provide full insurance coverage for any reason, and to the extent permissible under applicable laws and regulations, the Employer agrees to hold harmless and indemnify the members of the Committee against any and all claims and causes of action by, or on behalf of, and

all parties whomsoever, and all losses there from, including, without limitation, costs of defense and attorneys' fees, based upon, or arising out of, any act or omission relating to, or in connection with, the Plan and Trust Agreement, other than losses resulting from such person's fraud or willful misconduct.

- 8.8 **Actuary.** An actuary shall be appointed by the Administrator and approved by the Committee to do such technical and advisory work as the Administrator, the Committee or the Employer may request, including analysis of the experience of the Plan from time to time, the preparation of actuarial tables for the making of computations and the submission of an actuarial report at least annually to the Committee for review prior to submission to the Employer. This report shall contain an actuarial valuation showing the financial condition of the Plan, a statement of the contributions that are recommended to be made by the Employer for the ensuing year, and such other information as may be requested by the Administrator, the Committee, or the Employer.

In computing benefits to which a Participant may be entitled upon his or her retirement, termination, or request for an In Service Distribution, such assumptions of mortality and interest rates as are specified in the Plan shall be used. The actuarial assumptions specified in the Plan and the computations based thereon, shall be conclusive and binding. Neither the Administrator, the Committee nor the Employer shall be liable for any mistakes or errors in such computations made in good faith, and the Trustee shall not be liable for any such mistakes or errors in any event.

- 8.9 **Fiduciaries.** The Trustee shall be the Fiduciary with respect to the powers, duties, and responsibilities described in Article 9 for investment of the Trust Fund. The Committee and the Administrator shall be Fiduciaries hereunder with respect to the other powers, duties, and responsibilities of the administration of the Plan; provided however, that certain powers, duties, and responsibilities of the Fiduciaries may be delegated by written agreement to others, to the extent permitted under the provisions of the Plan and Trust Agreement.

Nothing in the Plan shall be construed to prohibit any Fiduciary from:

- (a) receiving any benefit to which the Fiduciary may be entitled as a Participant or Beneficiary in the Plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the Plan as applied to all other Participants and Beneficiaries; or
- (b) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred in the performance of the Fiduciary's duties with respect to the Plan, except that no person so serving who already receives full-time pay from the Employer shall receive additional Compensation for serving in a fiduciary capacity, except for reimbursement of expenses properly and actually incurred.

Each Fiduciary shall be bonded as required by applicable law or statute of the United States or Colorado, unless such bond may under such law or statute be waived by the parties to the Trust Agreement. The Employer shall pay the cost of bonding any Fiduciary who is its Employee.

ARTICLE 9.

TRUST AGREEMENT

- 9.1 **Acceptance.** This Trust Agreement, incorporated as Article 9 under the Plan is made by and between the Employer and the Trustee. The Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed by the Trust. All right, title, and interest in and to the Trust Fund shall at all times be vested exclusively in the Trustee. The Trustee shall accept its appointment by executing the Plan or by executing a written acceptance of the office of Trustee. There shall be one Trustee, as determined from time to time by the Employer.
- 9.2 **Receipt of Contribution.** The Trustee shall hold in the Trust Fund all amounts received by the Trustee and designated in writing as contributions to the Trust Fund. All contributions so received together with any income or other increment realized by the Trust Fund shall be invested and administered by the Trustee in accordance with the terms of this Article 9. The Trustee shall have no responsibility or power with respect to the calculation or collection of any contributions to the Plan for the Employer.
- 9.3 **Payments From the Trust Fund.** Payments from the Trust Fund shall be made by the Trustee to such persons, in such manner, at such times, and in such amounts as the Committee shall specify in written Instructions to the Trustee. The Committee shall have the sole authority to direct the Trustee to make payments from the Trust Fund. The Committee shall act in its good faith discretion pursuant to the powers and duties described in Article 8. The Trustee shall have no obligation to inquire whether any payee or distributee is entitled to any payment, whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee shall make distribution under the Plan in cash or annuity contracts.
- If any check in payment of a benefit under the Plan which had been mailed by regular U.S. Mail to the last address of the payee as furnished to the Trustee by the Committee is returned unclaimed, the Trustee shall so notify the Committee and shall discontinue further payments to such payee until it receives further written instructions from the Committee.
- 9.4 **Assignment or Alienation.** Except as may be provided in a Qualified Domestic Relations Order accepted by the Plan, neither a Participant nor a Beneficiary may voluntarily or involuntarily anticipate, assign, or alienate (either at law or in equity) any benefit provided under the Plan, and the Trustee shall not recognize any such anticipation, assignment, or alienation. Furthermore, a benefit under the Plan shall not be subject to attachment, garnishment, levy, execution, or other legal or equitable process.
- 9.5 **Exclusive Benefit.** Except as the Plan permits the return of Employer contributions under circumstances specified in Section 7.2, it shall be impossible at any time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the Trust Fund to be used for, or diverted to, purposes other than the exclusive benefit of Plan Participants and their Beneficiaries, except that payment of taxes and administrative expenses may be made from the Trust Fund. The Trustee shall discharge its duties under this Article 9 solely in the interest of the Participants of the Plan and their Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

- 9.6 **Benefits Supported Only by Trust Fund.** Any person having any claim under the Plan shall look solely to the assets of the Trust Fund for payment. The Trust Fund will be used and applied only in accordance with the provisions of the Plan, to provide the benefits thereof.
- 9.7 **Trustee Investment Powers.** The Trustee shall serve as a directed trustee with regard to the investment and management of the Trust Fund. The Trustee shall be provided written directions regarding the investment and management of the Trust Fund by the Committee or with respect to Plan assets under the control or direction of an Investment Manager properly appointed in accordance with Section 9.9, the Investment Manager. The Trustee shall not be liable for the acts or omissions of any Investment Manager appointed by the Committee, nor shall the Trustee be under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed Investment Manager. The Trustee shall have no obligation to question any written investment direction by a properly appointed Investment Manager. The Trustee shall comply as promptly as possible with any written investment direction given by the Committee or Investment Manager, as applicable. The Trustee must retain any investment obtained upon a proper written direction until receipt of another proper written direction to dispose of such investment. The Trustee is authorized and empowered, without previous application to, or subsequent ratification of any court, tribunal, or commission, or any federal or state governmental agency, but not by way of limitation:
- (a) To invest any part or all of the Trust Fund in any kind of property or type of investment consistent with the standards and requirements of the Uniform Prudent Investor Act, as published in Title 15, Article 1.1 of the Colorado Revised Statutes, as may be amended from time to time.
 - (b) To retain in cash so much of the Trust Fund as the Committee or Investment Manager, as applicable, may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest, including, if a bank is acting as Trustee, specific authority to invest in any type of deposit of the Trustee at a reasonable rate of interest or in a common trust fund (the provisions of which govern the investment of such assets and which the Plan incorporates by this reference) as described in Code § 584 which the Trustee (or all affiliates of the Trustee, as defined in Code § 1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency.
- 9.8 **Trustee Powers, Rights and Duties.** The Trustee shall have all the powers necessary or advisable to carry out the provisions of the Trust and all inherent, implied, and statutory powers now or subsequently provided by law, including, but not by way of limitation, the power and right to:
- (a) Cause any securities or other property to be registered and held in its name as Trustee, or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer;
 - (b) Manage, sell, contract to sell, grant options to purchase, convey, exchange, pledge, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, encumber, mortgage, deed in trust, or use any other form of hypothecation, or otherwise deal with the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best; to retain, hold, maintain, or continue any securities or investments that it may hold as part of the Trust Fund for such length of time as it may deem advisable; and generally, in all

respects, to do all things and exercise each and every right, power, and privilege in connection with and in relation to the Trust Fund as could be done, exercised, or executed by an individual holding and owning such property in absolute and unconditional ownership;

- (c) Abandon, compromise, contest, and arbitrate claims and demands; to institute, compromise, and defend actions at law (but without obligation to do so unless indemnified to the Trustee's satisfaction);
- (d) Vote in person or by proxy any shares of stock held in the Trust Fund; to participate in or to exchange securities or other property in reorganization, liquidation, or dissolution of any corporation, the securities of which are held in the Trust Fund as directed in writing by the Committee or Investment Manager, as applicable; provided that if no written voting directions from the applicable entity or individual are timely received by the Trustee, such security shall not be voted;
- (e) Borrow money and to pay any amount due on any loan or advance made to the Trust Fund, to charge against and pay from the Trust Fund all taxes of any nature levied, assessed, or imposed upon the Trust Fund;
- (f) Execute the application for any insurance contract to be applied for under the Plan, to pay from the Trust Fund premiums, assessments, dues, charges, and interest to acquire or maintain any insurance contracts held in the Trust Fund; to collect and receive all dividends or payments of any kind payable under any insurance contracts held in the Trust Fund or to leave the same with the issuing insurance company; and to exercise any other power or take any other action permitted under any insurance contract held in the Trust Fund;
- (g) Lease for oil, gas, and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interests in oil, gas, and other minerals; and to enter into operating agreements and to execute division and transfer orders;
- (h) Perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment, and distribution of the Trust;
- (i) Create and distribute the Trust Fund as the Committee directs in writing;
- (j) Retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction; and
- (k) Rely upon written instructions received from the Committee or Investment Manager, as applicable, and any other person or entity that has been designated by the Committee, in accordance with Trustee's formal, written procedures, to have the authority to act on behalf of the Committee or Investment Manager, as applicable, without duty to inquire further as to the facts or other information provided.

9.9 **Investment Manager.** The Committee may appoint an Investment Manager to manage the investment of all or a portion of the Trust Fund. The Investment Manager shall be a fiduciary other than the Trustee:

- (a) who has the power to manage, acquire, or dispose of any assets of the Plan;

- (b) who is (1) registered as an investment adviser under the Investment Advisers Act of 1940; (2) a bank, as defined in the Investment Advisers Act of 1940; or (3) an insurance company qualified to perform services described in paragraph (a) under the laws of more than one state; and
- (c) who has acknowledged in writing that as Investment Manager, the person is a fiduciary with respect to the Plan.

If the Committee appoints an Investment Manager, the Investment Manager shall have the exclusive responsibilities for directing the investment and management of the assets of the Trust Fund to which its appointment applies. If more than one Investment Manager is appointed, each Investment Manager shall have exclusive responsibility for directing the investment and management of a specified portion of the assets of the Trust Fund as the Committee shall determine. The Trustee shall not be liable for the acts or omissions of any Investment Manager appointed by the Committee, nor shall the Trustee be under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed Investment Manager. The Trustee shall have no obligation to question any written investment direction by a properly appointed Investment Manager. The Trustee shall comply as promptly as possible with any written investment direction given by an Investment Manager.

- 9.10 **Investment of the Trust Fund.** At the written direction of the Committee or Investment Manager, as applicable, Investments of the Trust Fund shall be diversified to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. The Trustee or Investment Manager shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- 9.11 **Committee Direction of Investment.** The Committee or Investment Manager, as applicable, shall provide written directions to the Trustee with respect to the investment and reinvestment of assets comprising the Trust Fund. The Trustee shall be subject to all proper written directions of the Committee or Investment Manager, as applicable, which are made in accordance with the terms of this Trust Agreement. During any period of time when the Committee or Investment Manager, as applicable, exercises such right, the Trustee's responsibility with respect to such directed investments shall be limited to holding such assets of the Trust Fund as a custodian, providing accounting services, disbursing benefits as authorized, and executing such investment instructions only as directed by the Committee or Investment Manager, as applicable. The Trustee shall not be liable for any act or omission of the Committee or Investment Manager, as applicable except to the extent required by any state or federal law applicable, which liability cannot be waived.
- 9.12 **Records and Accounts.** The Trustee shall keep all such records and accounts which may be necessary in the administration and conduct of this Trust. Upon written request from the Trustee, the Committee shall furnish the Trustee in writing with information specified in any such request and necessary or appropriate in connection with any of the Trustee's responsibilities or powers (including, without limitation, the names, addresses, and specimen signatures of all parties authorized to furnish instructions or notices to the Trustee). The Trustee's records and accounts shall be open to inspection by the Employer and the Committee at all reasonable times during business hours, and may be audited from time to time by any person or persons as the Employer or Committee may specify in writing. After the close of each Plan Year, the Trustee shall provide the Committee a statement of assets and liabilities of the Trust Fund for such year. The Trustee shall furnish the Committee any additional information relating to the Trust Fund that the Committee requests.

All income, profits, recoveries, contributions, forfeitures, and any and all moneys, securities, and properties of any kind at any time received or held by the Trustee shall be held for investment purposes as a commingled Trust Fund. Separate accounts or records may be maintained for operational or accounting purposes, but no such account or record shall be considered as segregating any funds or property from any other funds or property contained in the commingled fund.

- 9.13 **Valuation of the Trust Fund.** The Trustee shall determine the fair market value of the assets of the Trust Fund which are publicly traded, as defined in Treas. Reg. §54.4975-7(b)(iv), as of each Accounting Date to determine the current fair market value of the Trust Fund assets. The Trustee shall similarly determine the value of Trust assets invested in its or its affiliate's common or collective funds. The Committee shall have the sole fiduciary responsibility to value all other Trust assets that are not publicly traded. The Plan Administrator shall be responsible for hiring an independent appraiser to assist it in its valuation responsibilities to the extent required by law or the Plan or deemed prudent by the Plan Administrator. The Trustee shall value the Trust Fund on such other dates as directed by the Committee.
- 9.14 **Tax Returns.** The Trustee shall file all tax returns required of the Trustee.
- 9.15 **Fees and Expenses.** A Trustee shall be entitled to receive reasonable compensation for services rendered or for the reimbursement of expenses properly and actually incurred in the performance of its duties under the Trust. However, no Trustee who already receives full-time pay from the Employer shall receive compensation from the Plan, except for reimbursement of expenses properly and actually incurred. All compensation and expenses shall be paid by the Plan, unless the Employer, in its discretion, elects to pay all or any part of Trustee compensation or recurring administrative or overhead expenses. The Committee shall not treat any fee or expense properly paid, directly or indirectly, by the Employer as an Employer contribution.
- 9.16 **Change of Trustee.** A Trustee may be removed by the Employer at any time upon 30 days written notice to the Trustee, or on such shorter notice as may be agreed to by the Employer and the Trustee. A Trustee may resign at any time upon 30 days written notice to the Employer, or on such shorter notice as may be agreed to by the Employer and the Trustee.

Upon such removal or resignation, the Employer shall appoint a successor Trustee and the successor Trustee shall have the same powers and duties as those conferred upon the predecessor Trustee. If the Employer fails to appoint a successor Trustee within 60 days of removal or resignation of the Trustee, the Employer shall be treated as having appointed itself as Trustee and as having executed its acceptance of appointment. Each successor Trustee shall succeed to the title of the Trust Fund vested in its predecessor upon the successor Trustee's written acceptance of the office of Trustee. The resigning or removed Trustee, upon receipt of acceptance in writing by the successor Trustee, shall execute all documents and do all acts necessary to vest the title of record in the successor Trustee. No successor Trustee shall be liable for the acts or omissions of any prior Trustee which occurred prior to the successor Trustee's acceptance of office, or be obliged to examine the accounts, records, or acts of any prior Trustee.

In the event that any corporate Trustee hereunder shall be converted into, shall merge or consolidate with, or shall sell or transfer substantially all of its assets and business to another corporation, state or federal, the corporation resulting from such conversion, merger, or consolidation, or the corporation to which such sale or transfer shall be made, shall thereupon become and be the Trustee under this Article with the same effect as though originally so named.

- 9.17 **Investment in Group Trust Fund.** The Employer specifically authorizes the Trustee to invest all or any portion of the assets comprising the Trust Fund in any group trust fund which at the time of the investment provides for the pooling of the assets of plans qualified under Code § 401(a). This authorization applies solely to a group trust fund exempt from taxation under Code § 501(a) and the trust agreement of which satisfies the requirements of Revenue Ruling 81-100. The provisions of the group trust fund agreement, as amended from time to time, are by this reference incorporated within this Plan and Trust. The provisions of the group trust fund shall govern any investment of Plan assets in that fund.

Furthermore, the Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the Trust created under any other qualified retirement plan the Employer maintains. However, the Trustee shall maintain separate records of account for the assets of each Trust in order to reflect properly each Participant's Accrued Benefit under the plan(s) in which he or she is a Participant.

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IN WITNESS WHEREOF, the Board of Directors of Platte River Power Authority has caused this instrument to be executed by its duly authorized officers on the date written below.

ATTEST:

PLATTE RIVER POWER AUTHORITY

Secretary or Assistant Secretary

By: _____

Title: _____

Date: _____

**Wells Fargo Bank, N.A.
Trustee**

By: _____

Title: _____

Date: _____

DAVIS GRAHAM & STUBBS

MEMORANDUM

TO: Platte River Power Authority
 FROM: Davis Graham & Stubbs LLP
 DATE: November 1, 2018
 SUBJECT: Platte River Power Authority Defined Contribution Plan ("Plan")
 Summary of Changes

Attached, for your review, is a redline highlighting the changes that will be made to the Platte River Power Authority Defined Contribution Plan, as amended and restated effective January 1, 2014 ("2014 Document") by the adoption of the proposed version of the Platte River Power Authority Defined Contribution Plan, as amended and restated effective January 1, 2019 ("Proposed Document"). These changes modify the Plan to include current model provisions, as issued by the Internal Revenue Service ("IRS") in its October, 2017 Defined Contribution Listing of Required Modifications and Information Package ("LRMs") and provide minor formatting edits.

Following is a list of the changes made pursuant to the Proposed Document, excluding minor wording and formatting changes (all page references are to the attached redline document):

1. Page 2, Section 2.1(a). The definition of Participant Account is revised to be Account to avoid the inconsistent use of Participant Account and Account.
2. Page 3, Section 2.1(h). The definition of Eligible Employee is revised to provide that regardless of a decision by the IRS, a court or other legal authority to reclassify an independent contractor, temporary employee, or leased employee as a common law employee, that employee is not an Eligible Employee for Plan purposes.
3. Page 4, Section 2.1(o). The definition of Leased Employee is revised for consistency with LRM 10 to clarify the treatment of Leased Employees if Leased Employees do not constitute more than 20 percent of the Employer's non-highly compensated employees.
4. Page 5, Section 2.1(t). The definition of Plan Administrator is revised to provide that the Plan Administrator is the General Manager of the Platte River Power Authority, consistent with Section 8.1(a).
5. Pages 6 through 7, Section 2.1(cc). The definition of Spouse is revised to comply with current State and Federal law, as well as related guidance issued by the IRS regarding the recognition of marriages between people of the same gender.
6. Page 7, Section 2.1(dd). The definition of Temporary Employee is revised to provide more definition consistent with Platte River's Employee Handbook.
7. Page 10, Section 3.5(b). The language is modified for consistency with LRM 86 to clarify the treatment of a Participant's Account for a Participant who dies while performing Qualified Military Service.
8. Page 10, Section 3.5(c). The language referencing contributions made by Employees performing Qualified Military Service is deleted because there are no employee contributions to the Plan.
9. Page 13, Section 5.1(a). The language is modified to remove an incorrect cross reference.

10. Page 13, Section 5.1(b). The language referencing the Employer's Aggregated Employer Group is deleted because Employer's Aggregated Employer Group is not defined in the Plan and Platte River Power Authority has no affiliates.
11. Page 13, Section 5.1(c). The definition of "Limitation Year" was added to the Plan because it is used, but not defined.
12. Pages 15 through 16, Section 5.2. The language is modified to incorporate the concept of a short limitation year, consistent with LRM 31.
13. Pages 16 through 17, Section 5.3. The language is modified for consistency with LRM 31 and Revenue Procedure 2018-42 to remove benefit limitation correction provisions that no longer apply. In the future, such corrections will be implemented in accordance with the Internal Revenue Service's Employee Plans Compliance Resolution System.
14. Pages 18 through 45, Articles VI, VII, VIII, IX and X. Various modifications are proposed by Platte River Power Authority staff to modify the authority of the Plan Administrator, Plan Committee and Trustee.
15. Page 20, Section 7.2(b). The language is modified to clarify the forms of distribution and how accounts are distributed if the Participant fails to make an election.
16. Page 33, Section 8.4(f). The subsection is added to clarify that the Plan Administrator's authority is limited to the authority that is not otherwise allocated to Platte River Power Authority, the Plan Committee, or the Trustee. Similar language was previously included at 8.6(e).
17. Page 33, Section 8.5. The Section was added by Platte River Power Authority Staff to specify the duties of the Plan Committee.
18. Page 35 through 36, Section 8.6(c). This section was added by Platte River Power Authority Staff to make the claim review procedures more consistent with those under the Platte River Power Authority Defined Benefit Plan.
19. Page 36, Section 8.6(e). This language is modified and moved to Section 8.4(f).
20. Page 38, Section 9.2(b). This language is modified to clarify that only investment options designated by the Plan Committee will be made available to Participants by the Trustee.
21. Page 44, Section 10.3. This language is modified to require that a Participant or beneficiary be declared legally incompetent by a court before a distribution can be processed for his or her benefit under this section. The modifications also remove the requirement that any determination be made under the Plan regarding the best interests of the legally incompetent individual.

Exhibit A

PLATTE RIVER
POWER AUTHORITY

***PLATTE RIVER POWER AUTHORITY
DEFINED CONTRIBUTION PLAN***

As Amended and Restated

December 6, 2018~~12, 2013~~

Effective Date of this Restatement

January 1, 2019~~2014~~

**PLATTE RIVER POWER AUTHORITY
FORT COLLINS, COLORADO**

History –

Adopted	March 25, 2010	Effective September 1, 2010
Amended and Restated	April 29, 2010	Effective September 1, 2010
Amended and Restated	August 25, 2010	Effective September 1, 2010
Amended and Restated	December 9, 2010	Effective September 1, 2010
Amendment Number One	September 22, 2011	Effective September 1, 2010
Amended and Restated	October 22, 2012	Effective January 1, 2012
Amended and Restated	December 12, 2013	Effective January 1, 2014
<u>Amended and Restated</u>	<u>December 6, 2018</u>	<u>Effective January 1, 2019</u>

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PLATTE RIVER POWER AUTHORITY

DEFINED CONTRIBUTION PLAN

ARTICLE I. THE PLAN

- 1.1. Establishment of the ~~2019~~2014 Plan.— This document restates the Platte River Power Authority Defined Contribution Plan, effective (except as otherwise provided herein) as of January 1, ~~2019~~2014. The Plan is intended to qualify as a profit ~~-~~sharing plan under Internal Revenue Code Section 401(a) and as a governmental plan under Code Section 414(d) and the Trust is intended to be exempt under Internal Revenue Code Section 501(a). The Plan and Trust are created for the exclusive benefit of Participants and their beneficiaries.
- 1.2. Applicability of the Plan.— The provisions of ~~the~~this Plan are applicable only to Eligible Employees who become Participants on or after the Effective Date of the Plan.
- 1.3. Purpose of the Plan.— The purpose of the Plan is to enable Participants to accumulate retirement savings.

ARTICLE II. DEFINITIONS

2.1. Definitions.— Whenever used in the Plan, the following terms will have the meanings set forth below unless otherwise provided. When the defined meaning is intended, the term is capitalized.

[a] “Account” means a Participant’s interest in the Trust, as adjusted from time to time for contributions, distributions, income, gain, loss and expense.

[a][b] “Code” means the Internal Revenue Code of 1986, as it may be amended from time to time.

[b][c] “Colorado Civil Union Act” means the ~~Colorado~~ Civil Union Act, as set forth in Colorado Senate Bill 13-011, signed by the governor of the State of Colorado on March 21, 2013, and codified at Section 14-15-101 et seq. of the Colorado Revised Statutes.

[e][d] “Disability” means a physical or mental condition that renders a Participant incapable of continuing in the employment of the Employer and incapable of engaging in any substantial gainful employment. A Participant will not be Disabled unless a Participant qualifies for Social Security disability benefits.

[d][e] “Domestic Partner” means ~~shall mean~~ a Party to a Civil Union as that term is defined in Section 103(5) of the Colorado Civil Union Act and any other person treated as Party to a Civil Union pursuant to C.R.S. Section ~~1414~~ 15-116.

[e][f] “Earnings” means the Participant’s salary reported to the Participant on the Employee Status Notification then in effect. The maximum annual Earnings taken into account under ~~the~~this Plan for Plan Years beginning on and after the Effective Date of the Plan, shall not exceed \$245,000 as adjusted by the Secretary of the Treasury for increases in the cost-of-living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which annual Earnings are determined (determination period) that begins in the calendar year. If a determination period consists of fewer than 12 months, the annual limit on Earnings will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

[g] “Effective Date” of ~~the~~this Plan means September 1, 2010.

[f][h] “~~, and the~~ Effective Date of this Restatement” means, ~~restatement is~~ January 1, ~~2019~~2014, except that any provision of the Plan that specifies or is required by ~~law~~the Code to have a different effective date shall have an effective date~~Effective Date~~ as of the latest of the date set forth in such provision, the date required by ~~law~~the Code, or the original Effective Date of the Plan.

~~{g}~~[i] “Eligible Employee” means any person employed as a Regular Employee whose Employment Commencement Date occurs on or after the Effective Date of the Plan, excluding Leased Employees, Employees whose first date of employment with the Employer in any status occurred prior to the Effective Date of the Plan and Employees who participate in the Platte River Power Authority Defined Benefit Plan.

For purposes of determining Eligible Employees only, any person who agrees with the Employer that such person’s services are to be performed as an independent contractor, temporary employee or leased employee shall not be considered an Eligible Employee for purposes of participating in the Plan, regardless of any classification as a common-law employee by the Internal Revenue Service or any government agency or any court of common jurisdiction.

~~{h}~~[j] “Employee”~~“Employee”~~ means any person receiving Earnings for regular personal services rendered to the Employer including officers and persons on authorized leaves of absence, but excluding independent contractors. The term “Employee” also will include any Leased Employee deemed to be an Employee of an Employer under Code Sections 414(n) or (o).

~~{a}~~[k] “Employer” means the Platte River Power Authority, a political subdivision and public corporation of the State of Colorado, and its successors or assigns.

~~{i}~~[l] “Employer Contributions” means the contributions made by the Employer on behalf of the Participant as described in Section 4.1.

~~{j}~~[m] “Employment Commencement Date” means the date on which the Employee first performs an Hour of Service with the Employer as a Regular Employee.

~~{k}~~[n] “Excess Earnings” means a Participant’s Earnings in excess of Social Security taxable wage under Code Section 3121(a)(1) for that Plan Year.

~~{l}~~[o] “Hour of Service” means each actual hour of service for which the Employer either directly or indirectly pays an Employee or for which the Employee is entitled to payment, for the performance of duties. The Plan Administrator credits hours of service under this paragraph to the Employee for the payroll period in which the Employee performs the duties, regardless of when paid.

~~{m}~~[p] “Leased Employee” means any person (other than an Employee of the Employer) who has performed services for the Employer (or for the Employer and related persons as determined under Code Section 414(n)(6)) under an agreement between the Employer and the leasing organization on a substantially full-time basis for a period of at least one year and the services are performed under the primary direction or control of the Employer. Any Leased Employee will be treated as an Employee~~employee~~ of the Employer for purposes of ~~the~~this Plan and any

contributions or benefits provided by the leasing organizations that are attributable to the services performed for the Employer will be treated as provided under a plan maintained by the Employer, provided, however, that a Leased Employee will not be treated as employed by the Employer if Leased Employees do not constitute more than 20 percent of the Employer's non-highly compensated employees and the Leased Employee is covered by a money purchase pension plan maintained by the leasing organization that provides [i] a nonintegrated employer contribution of at least 10% of compensation, as defined in Code Section 415(c)(3), including amounts contributed pursuant to a salary reduction agreement that are excludable from the employee's gross income under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B) or 403(b); [ii] immediate participation (unless the individual has had compensation of less than \$1,000 in each of the preceding four Plan Years ending with the current Plan Year); and [iii] full and immediate vesting. ~~In addition, Leased Employees may not constitute more than 20 percent of the Employer's non highly compensated employees.~~

~~(b)(q)~~ "Normal Retirement Age" means the later of the date on which the Participant attains age 65 or the date which is the third anniversary of the Participant's Employment Commencement Date.

~~(n)(r)~~ "Participant" means any Eligible Employee who becomes a Participant in the Plan. Participation ceases upon distribution of a Participant's entire vested Participant Account balance. Unless otherwise specified, "Participant" means both "Active" and "Inactive" Participants. "Active Participant" means a Participant currently employed by the Employer or an affiliated Employer. "Inactive Participant" means a Participant who is not currently employed by the Employer or an affiliated Employer.

~~(c)~~ ~~"Participant Account" shall mean a Participant's interest in the Trust, as adjusted from time to time for contributions, distributions, income, gain, loss and expense.~~

~~(o)(s)~~ "Plan" means the Platte River Power Authority Defined Contribution Plan.

~~(p)(t)~~ "Plan Administrator" means the General Manager of Platte River Power Authority~~person or persons appointed by the Employer~~ in accordance with Article VIII whose duties and responsibilities are specified in ~~the~~this Plan.

~~(q)(u)~~ "Plan Committee" means the person or persons appointed by the Plan Administrator in accordance with Article VIII whose duties and responsibilities are specified in ~~the~~this Plan.

~~(r)(v)~~ "Plan Year" for the first Plan Year means the four-consecutive-month period beginning on the Effective Date of the Plan and ending December 31, 2010. Effective January 1, 2011, Plan Year means the 12-consecutive-month period ending each December 31.

~~{s}~~[w] “Qualified Military Service” means any service in the uniformed services (as defined in Chapter 43 of Title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

~~{t}~~[x] “Reemployment Commencement Date” means the date on which an Eligible Employee performs an Hour of Service with the Employer as a Regular Employee after a Severance from Service Date.

~~{u}~~[y] “Regular Employee” means any person who is not designated as a Temporary Employee by the Employer.

~~{v}~~[z] “Required Beginning Date” means April 1 of the calendar year following the calendar year in which occurs the later of [1] the date the Participant attains age ~~70½, 70½~~, or [2] the date the Participant retires from employment with the Employer.

~~{w}~~[aa] “Retirement” means Termination of Employment after attainment of Normal Retirement Age.

~~{d}~~[bb] “Severance from Service Date” ~~means~~ ~~shall mean~~ the earlier of (i) the date an Employee Terminates Employment by reason of Retirement, death, Disability, resignation or dismissal, or (ii) the first anniversary of the first date of a period in which an Employee remains absent from service (with or without pay) with the Employer for any reason other than Retirement, death, Disability, resignation or dismissal, such as vacation, holiday, sickness, leave of absence or layoff.

~~{e}~~[cc] “Spouse” ~~means~~ ~~shall mean~~:

[i] With respect to administration of the Plan for periods prior to ~~June 26~~~~September 16~~, 2013, the Spouse or surviving Spouse of the Participant, as determined in accordance with the Colorado Uniform Marriage Act.

[ii] With respect to administration of the Plan for periods on and after ~~June 26~~~~September 16~~, 2013, ~~the Spouse or surviving Spouse of the Participant, provided that such any individuals who are lawfully married under any state law or the law of any foreign country, including individuals married to a person of the same sex who were legally married in a state or foreign country that recognizes such marriages, but who are domiciled in a state that does not limited to, recognize such marriages; and similarly~~

~~[A] — “marriage” will be read to include a same-sex marriage that is legally recognized as a marriage under any state law;~~ ~~however~~

~~[iii]
[B] — neither term includes persons of the same or opposite sex who are in a formal relationship recognized by a state that is not deemed a~~

~~marriage under state law (e.g., domestic partnership or civil union), regardless of whether persons in those relationships have the same rights and obligations as persons who are married under state law.~~

A former Spouse and a former Domestic Partner will be treated as the Spouse or the surviving Spouse to the extent required under a qualified domestic relations order as defined in Code § 414(p).

~~Except as provided herein, the term "Spouse" shall, for all purposes under this Plan, include the Domestic Partner or surviving Domestic Partner of the Participant if:~~

- ~~(a) The Employer obtains a determination from the Internal Revenue Service that the treatment of a Domestic Partner as a Spouse shall not cause the Plan to fail to constitute a plan satisfying the qualification requirements of Code Section 401(a), provided that a Domestic Partner shall be treated as a Spouse hereunder only from and after the effective date of such Internal Revenue Service determination;~~
- ~~(b) The Internal Revenue Service issues a ruling or regulation providing that treatment of a Domestic Partner as a Spouse shall not cause the Plan to fail to constitute a plan satisfying the qualification requirements of Code Section 401(a), provided that a Domestic Partner shall be treated as a Spouse hereunder only from and after the effective date of such Internal Revenue Service ruling or regulation;~~
- ~~(c) A final non-appealable order of the Colorado Supreme Court, the Colorado Court of Appeals, or a Federal Court is entered, which order is binding against the State of Colorado, holding that Domestic Partners should be treated for all purposes under the laws of the State of Colorado as married for purposes of the Colorado Uniform Marriage Act; or~~
- ~~(d) The state of Colorado, whether through legislative act or by way of constitutional amendment, recognizes Domestic Partners for all purposes under the laws of the State of Colorado as married for purposes of the Colorado Uniform Marriage Act.~~

~~[f][dd]~~ "Temporary Employee" means any person designated by the Employer as hired to work for a limited period of time or until a specified task is accomplished. Temporary Employees include, but are not limited to, those hired to perform seasonal work or to work a variable-hour schedule and internships.

~~[g][ee]~~ "Termination of Employment" means the date on which an individual ceases to be an Eligible Employee of the Employer whether by termination of employment, Disability, death or Retirement.

~~(h)~~~~(ff)~~ “Trust” means the trust established pursuant to Article IX of this Plan.

~~(*)~~~~(gg)~~ “Trustee” means the person or persons appointed by the Employer as the Trustee of the Trust established by ~~the~~this Plan and any duly appointed and qualified successor.

~~(h)~~~~(hh)~~ “Valuation Date” means each day on which U. S. financial markets are open.

~~(h)~~~~(ii)~~ “Years of Service” means the number of 12-month periods of service for the Employer, commencing on the Employment Commencement Date or Reemployment Commencement Date, and ending on the Severance from Service Date. An Employee also will receive credit for any period of severance of less than 12 consecutive months. Fractional periods of a year will be expressed in terms of days. A Participant will receive credit for the aggregate of all time periods beginning with the Participant’s Employment Commencement Date or Reemployment Commencement Date and ending on the applicable Severance from Service Dates.

2.2. Gender and Number. ~~—~~ Unless the context clearly requires otherwise, the masculine pronoun whenever used will include the feminine and neuter pronoun, the singular will include the plural, and the plural will include the singular.

ARTICLE III. PARTICIPATION AND SERVICE

- 3.1. Participation.— Any Eligible Employee of the Employer hired on or after the Effective Date of the Plan shall be enrolled as a Participant of ~~the~~this Plan as of his Employment Commencement Date, which shall be the date a person becomes an Eligible Employee as defined under Section 2.1~~[if]~~.
- 3.2. Participation Upon Reemployment.— An Eligible Employee or former Participant shall become a Participant immediately upon his Reemployment Commencement Date.
- 3.3. Change of Employment Category.— A Temporary Employee who is not eligible to participate in the Plan solely because he is designated as a Temporary Employee will become a Participant immediately upon becoming a Regular Employee and satisfying the other eligibility requirements for the Plan. A Regular Employee participating in the Plan will cease to be eligible for Employer Contributions upon ceasing to be a Regular Employee.
- 3.4. Duration of Participation.— A Participant will continue to be an Active Participant until Termination of Employment. After Termination of Employment, an Inactive Participant will be a Participant for as long as the Participant has an undistributed ~~Participant~~ Account balance.
- 3.5. Military Service.— Notwithstanding any provision of ~~the~~this Plan to the contrary, contributions, benefits, and service credit with respect to Qualified Military Service will be provided in accordance with Code Section 414(u).
- [a] Following a period of Qualified Military Service, Participants who cannot return to active employment due to death or Disability while performing Qualified Military Service shall be treated as having been rehired on the date before death or Disability, and subsequently terminated on the date of death or Disability, for purposes of calculating Employer Contributions under ~~the~~this Plan. If this subsection [a] applies: [i] Employer Contributions will be provided for the period of Qualified Military Service up to the date of death or Disability; and [ii] Matching Contributions shall be based on the average deferral rate of the Employee in the 457(b) plan maintained by the Employer for the lesser of [A] the 12-month period of service with the Employer immediately prior to the Qualified Military Service or [B] the actual length of continuous service with the Employer. All Employees of the Employer who die or become Disabled as a result of performing Qualified Military Service must accrue such benefits on a reasonably equivalent basis.
- [b] If a Participant dies while performing Qualified Military Service, the Participant's Account will become fully vested as if the Participant had resumed employment with the Employer on the day preceding the Participant's death and then terminated employment on account of death~~and then died.~~

[c] Differential Wage Payments:

- [i] An individual receiving a differential wage payment, as defined in Code Section 3401(h)(2), shall be treated as an Employee of the Employer making the payment.
- [ii] The differential wage payment shall be treated as Compensation for purposes of Code Section 415 and any other Code Section that references the definition of Compensation under Code Section 415.
- [iii] The Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

This paragraph [c] applies only if all Employees of the Employer performing Qualified Military Service while on active duty for a period of more than 30 days are entitled to receive differential wage payments on reasonably equivalent terms. ~~and, if eligible to participate in the Plan, to make contributions based on the differential wage payments on reasonably equivalent terms.~~

ARTICLE IV. CONTRIBUTIONS

4.1. Employer Contributions.

- [a] Matching Contributions.— The Employer shall contribute to the Plan on behalf of the Participant an amount equal to fifty percent of the Participant's contributions to the 457(b) plan maintained by the Employer, taking into account only such Participant contributions up to six percent of the Participant's Earnings. Earnings prior to the date on which an Eligible Employee becomes a Participant in the Plan shall be excluded. Matching contributions shall be allocated on the basis of Earnings paid and Participant contributions made during each payroll period. The percentage limitations will be applied separately to Earnings in each payroll period for which contributions are allocated.
- [b] Non-Elective Contributions.— The Employer shall contribute to the Plan on behalf of the Participant an amount equal to a percentage of the Participant's Earnings plus a percentage of Excess Earnings. The percentages of Earnings and Excess Earnings are determined based upon the number of Years of Service the Participant has completed as follows:

Years of Service	Percent of Earnings	Percent of Excess Earnings
Fewer than 5	5%	5%
5 or more Years of Service but fewer than 10	7%	5.7%
10 or more Years of Service but fewer than 15	10%	5.7%
15 or more Years of Service but fewer than 20	13%	5.7%
20 or more Years of Service but fewer than 25	16%	5.7%
25 or more Years of Service	19%	5.7%

Earnings prior to the date on which an Eligible Employee becomes a Participant in the Plan shall be excluded. Non-elective contributions will be allocated on the basis of Earnings paid during each payroll period and, to the extent the Participant's Earnings for the Plan Year exceed the Social Security taxable wage base for the Plan Year, the portion of Excess Earnings paid during each payroll period. Any change in the applicable percentages based on years of service will be effective for the entire payroll period in which the required number of Years of Service is completed.

- [c] The Employer Contributions for the Participant shall be paid by the Employer to the Trustee within 60 days after the last day of the Plan Year.

4.2. Return of Employer Contributions.— A contribution by the Employer to the Plan shall be returned to the Employer, at the Employer's discretion, under any of the following circumstances:

- [a] If a contribution is made by the Employer by a mistake of fact, including a mistaken excess contribution, within one year of its payment to the Plan; or
- [b] If qualification of the Plan is denied, within one year after the date of denial of qualification of the Plan.

The Employer shall state by written request to the Trustee the amount of the contribution to be returned and the reason for such return. Such amount shall not include any earnings attributable to the contribution and shall be reduced by any losses attributable to the contribution. Upon sending such request to the Trustee, the Employer simultaneously shall send to the Plan Committee a copy of the request. The Trustee shall return such contribution to the Employer immediately upon receipt of the written request by the Employer. All contributions by the Employer to the Plan are declared to be conditioned upon the qualification of the Plan under Section 401 of the Code.

ARTICLE V. LIMITATIONS ON CONTRIBUTIONS AND ALLOCATIONS

5.1. Definitions. For purposes of ~~this~~ Article V, the following terms will be defined as follows:

- [a] “Annual Additions” means the sum of the following amounts credited to a Participant’s Account for the Limitation Year:
 - [i] Employer Contributions;
 - [ii] employee contributions;
 - [iii] forfeitures;
 - [iv] amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer are treated as annual additions to a defined contribution plan. Also, amounts derived from contributions paid or accrued in taxable years ending after December 31, 1985, which are attributable to post-retirement medical benefits, allocated to the separate ~~Participant~~ Account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer are treated as annual additions to a defined contribution plan; and
 - [v] allocations under a simplified employee pension plan.

For this purpose, any excess amount applied under Section 5.2 to reduce Employer Contributions in the Limitation Year will be considered Annual Additions for such Limitation Year. The term “Annual Additions” will not include: [A] a restorative payment (as defined in Section 1.415(c)-(b)(2)(ii)(C) of the Treasury Regulations; [B] the direct transfer of a benefit or employee contributions from a qualified plan to ~~thethis~~ Plan; [C] an eligible rollover ~~contributiondistribution described in Section 4.2~~; [D] repayments of loans made to a Participant from the Plan; and [E] repayments of contributions to a governmental plan (as described in Code Section 415(k)(3)), as well as Employer restoration of benefits that are required pursuant to the repayments.

~~[ii]~~ “Employer” for purposes of this Article, means the Employer that adopts ~~thethis~~ Plan.

[b] “Limitation Year” means the 12-month period commencing on January 1 and ending on the following December 31, ~~all members of such Employer’s Aggregated Employer Group (after applying Code Section 415(h)).~~

[c] “Compensation” for purposes of limiting Annual Additions and combined benefits and contributions under this Article, means a Participant’s earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of

employment with the Employer (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and excluding the following:

- [i] Employer contributions to a plan of deferred compensation to the extent contributions are not included in gross income of the Employee for the taxable year in which contributed;
- [ii] Employer contributions on behalf of an Employee to a Simplified Employee Pension Plan to the extent such contributions are deductible under Section 219(b)(7) of the Code;
- [iii] any distributions from a plan of deferred compensation whether or not includable in the gross income of the Employee when distributed; or
- [iv] other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of a 403(b) annuity contract (whether or not the contributions are excludable from the gross income of the employee).

For purposes of this Article, compensation for a ~~Limitation Year~~limitation year includes only the compensation that is actually paid to the Participant during the ~~Limitation Year~~limitation year and compensation that is includable in the Participant's gross income during the ~~Limitation Year~~limitation year. "Compensation" for purposes of this paragraph shall include Participant salary deferral contributions described in Section 402(g)(3) of the Code, any amounts which are not included in the Participant's gross income by reason of Sections 125 (cafeteria plans) and 457 (deferrals to governmental plans) of the Code, and, for Limitation Years beginning after January 1, 2001, elective amounts that are not includable in the gross income of the Participant by reason of Section 132(f)(4). Deemed Section 125 compensation (within the meaning of Section 1.415(c)-2(g)(6)(ii) of the Treasury Regulations) will not be counted for purposes of determining amounts not included in the Participant's gross income by reason of Section 125 of the Code).

Payments made within two-and-one-half months after a Participant's severance from employment (within the meaning of Code Section 401(k)(2)(B)(i)(I)) will constitute "Compensation" if such payments would have been paid to the Participant prior to and absent his or her severance from employment and if such payments represent:

- [A] Remuneration for services performed by the Participant during the Participant's regular working hours;
- [B] Remuneration for services performed by the Participant outside the Participant's regular working hours;

- [C] Commissions;
- [D] Bonuses or similar remuneration; and
- [E] Accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if he or she had continued employment.

Payments not described above in [A] through [E] of this paragraph do not constitute “Compensation” even if paid within two-and-one-half months following a Participant’s severance from employment except for payments to an individual not currently performing services for the Employer by reason of Qualified Military Service to the extent such payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer in lieu of entering Qualified Military Service.

- 5.2. Limitation on Annual Additions.— To the extent permitted under Treasury Regulation Section 1.415(c)-1 and other guidance issued by the IRS, if the Annual Addition to any ~~Participant~~-Account attributable to all defined contribution plans (including money purchase pension plans, profit sharing plans, and welfare benefit funds of the Employer), would exceed (notwithstanding catch-up contributions permitted under Code Section 414(v)), the lesser of [a] \$40,000, as adjusted cost of living increases under Code Section 415(d), or [b] 100% of such Participant’s Compensation (except that the limit referred to in [b] shall not apply to any contribution for medical benefits after a Participant’s separation from service within the meaning of Code Sections 401(h) or 419A(f)(2) which otherwise would be treated as an annual addition), then the excess amount will be disposed of in accordance with the Employee Plans Compliance Resolution System, as set forth in Revenue Procedure ~~2018-42~~~~2008-50~~ or any superseding guidance, ~~including, but not limited to, the preamble of the final regulations issued under Code Section 415.~~

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, the limitation described in Section 5.2 will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short limitation year}}{12}$$

If the Plan is terminated as of a date other than the last day of the Limitation Year, the Plan is deemed to have been amended to change its Limitation Year and the limitation described in Section 5.2 shall be prorated for the resulting short Limitation Year.

- 5.3. Limitation on Combined Benefits and Contributions of All Defined Contribution Plans.~~Limitation on Combined Benefits and Contributions of All Defined Contribution Plans.~~— This section applies if, in addition to ~~the~~this Plan, the Participant is covered under another qualified ~~pre-approved~~~~prototype~~ defined contribution plan maintained by the Employer, a welfare benefit fund, as defined

in Code Section 419(e), maintained by the Employer, a simplified employee pension, or an individual medical account, as defined in Code Section 415(1)(2), maintained by the Employer, that provides an Annual Addition during any Limitation Year. The Annual Additions that may be credited to a Participant's Account under ~~the~~this Plan for any such Limitation Year will not exceed the limitation described in Section 5.2 reduced by the Annual Additions credited to a Participant's Account under the other pre-approved defined contribution plans, ~~and~~ welfare benefit funds, individual medical accounts and simplified employee pensions for the same Limitation Year. If the Annual Additions with respect to the Participant under other pre-approved defined contribution ~~plans~~, Plans and welfare benefit funds, individual medical accounts and simplified employee pensions maintained by the Employer are less than the limitation described in Section 5.2 and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under ~~the~~this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the limitation described in Section 5.2. If the Annual Additions with respect to the Participant under such other pre-approved defined contribution plans, ~~and~~ welfare benefit funds, individual medical accounts and simplified employee pensions in the aggregate are equal to or greater than the limitation described in Section 5.2, no amount will be contributed or allocated to the Participant's Account under the Plan for the Limitation Year. ~~this Plan for the Limitation Year. If a Participant's Annual Additions under this Plan and such other plans would result in an excess amount for a Limitation Year, the excess amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or an individual medical account will be deemed to have been allocated first regardless of the actual allocation date. If an excess amount is allocated to a Participant on an allocation date of this Plan that coincides with an allocation date of another plan, the excess amount attributed to this Plan will be the product of the total excess amount allocated as of such date multiplied by a fraction, the numerator of which is the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan and the denominator of which is the total Annual Additions allocated on the Participant's behalf for the Limitation Year as of such date under this and all the other qualified prototype defined contribution plans.~~

Any excess amount attributed to ~~the~~this Plan will be disposed of in the manner described in Section 5.2.

ARTICLE VI. DETERMINATION OF ACCOUNTS AND VESTING

6.1. Determination of Participants' Accounts.

- [a] Participants' Accounts. The ~~TrusteePlan Committee~~ shall maintain an account for each Participant showing the dollar value of his current account in the Trust, as of each valuation date, attributable to any contributions made by the Employer and posted to the Participant's Account and net earnings on such contributions. The ~~TrusteePlan Committee~~ shall distribute, or cause to be distributed, to each Participant at least annually a statement, either in writing or in another format approved by the Plan ~~AdministratorCommittee~~, setting forth the current value of such Participant's Account and such other information as the Plan Administrator shall determine.

- [b] Valuation.— As of each Valuation Date net earnings, losses, and changes in the fair market value of each separate investment fund available under the Plan will be computed and allocated on an investment fund basis to the Participants in the ratio that the total dollar value of the interest (whether or not vested) of each Participant in each investment fund, including the portions resulting from posted contributions, bears to the aggregate dollar value of all such Participants in each investment fund as of the last previous Valuation Date.

- [c] Allocation of Employer Contributions and Forfeitures.— At least annually as of the last day in each Plan Year, and more frequently as the Plan ~~AdministratorCommittee~~ may determine, the Plan ~~AdministratorCommittee~~ shall allocate to ~~eachParticipant~~ Account any amounts contributed by the Employer to the Trust for the period then ended in the manner provided in ~~Article IVSection 4.1~~. Forfeitures ~~that are~~ used to reduce Employer contributions shall be allocated along with Employer Non-Elective Contributions.

- [d] Suspense Account for Unallocated Forfeitures.— In the event that the amount of forfeitures used to reduce the Employer's contributions and to be allocated to any Participant's Account would exceed the annual addition limitations, a separate suspense account shall be established to hold such unallocated forfeitures for any year or years provided that:
 - [i] no Employer Contributions may be made at any time when their allocation would be precluded by Section 415 of the Code;
 - [ii] investment gains and losses and other income are not allocated to the suspense account; and
 - [iii] the amounts in the suspense account are allocated under Subsection [c] as of each allocation date on which forfeitures may be allocated until the suspense account is exhausted.

In the event of Plan termination, the balance of such suspense account may revert to the Employer.

- 6.2. General Rules.— A Participant shall have a vested interest in his or her ~~Participant~~ Account attributable to Employer Contributions in accordance with the following vesting schedule:

Number of Years of Service	Vested Percentage
Less than 3	0%
3 or more	100%

Notwithstanding the above, a Participant's entire ~~Account~~~~account~~ will become fully vested and nonforfeitable if he or she reaches Normal Retirement Age, dies or suffers a Disability while employed with the Employer.

- 6.3. Full Vesting Upon Plan Termination.— Upon the termination or partial termination of ~~the~~~~this~~ Plan, the accounts of all Participants affected, as of the date such termination or partial termination occurred, shall be fully vested. The temporary suspension of Employer contributions shall not constitute a termination or partial termination of ~~the~~~~this~~ Plan and shall not require full vesting.
- 6.4. Service Included in Determination of Vested Interest.— All Years of Service with the Employer will be included for the purpose of determining a Participant's vested interest.
- 6.5. Amendment of Vesting Schedule.— Notwithstanding any right of the Employer reserved hereunder to amend ~~the~~~~this~~ Plan, no amendment to the Plan may have the effect of decreasing a Participant's vested interest in the Plan as of the later of the date the amendment is adopted or becomes effective.

ARTICLE VII. DISTRIBUTIONS AND WITHDRAWALS

7.1. Distribution from the Trust upon Retirement or Termination of Employment. Upon a Participant's Retirement or Termination of Employment, the Participant's vested ~~Account~~~~account~~ will be distributable to the Participant, or, in the case of death, to the Participant's beneficiary. The distributable amount will be determined as of the Valuation Date coincident with or next preceding the distribution. The Participant must consent to any distribution of the ~~Participant~~ Account balance prior to Normal Retirement Age.

7.2. Time and Form of Distributions from the Trust.

- [a] Distributions to a Participant from the Trust will be made as soon as practicable following the Participant's Termination of Employment and, if applicable, the Participant's consent to distribution. Notwithstanding any provision of ~~the~~~~this~~ Plan to the contrary, if not distributed earlier, the Participant's vested ~~Account~~~~account~~ will commence to be distributed on the Participant's Required Beginning Date.
- [b] All distributions from the Participant's vested ~~Account~~~~account~~ will be made in one or more of the following forms:
 - [i] Lump sum distribution;
 - [ii] Partial lump sum distributions; or
 - [iii] Installment distributions on a monthly, quarterly or annual basis, provided such payments are equal to or greater than required to satisfy the minimum distribution requirements of Section 7.6.

The Participant will be provided with the election to choose the distribution form(s) in which the Participant will receive his or her Plan benefits. If no election is made by the Participant, the ~~Participant's vested Account~~~~distribution~~ will be ~~distributed~~~~made~~ in a single lump sum ~~distribution~~~~cash payment~~.

7.3. Death.

- [a] Payment of Death Benefits. If a Participant dies before receiving distribution of his entire ~~vested~~~~Participant~~ Account, any unpaid balance will be distributed to the Participant's beneficiary in the distribution form elected by the Participant (or if no election is made by the Participant, in a single lump sum~~—cash~~ payment) as soon as practicable after the Participant's death. The distributable amount will be determined as of the Valuation Date coincident with or next preceding the distribution. Provided, however, that if the Participant's surviving Spouse is the Participant's sole ~~designated~~ beneficiary, the surviving Spouse may elect to defer distributions to a date no later than December 31 of the calendar year in which the Participant would have attained age 70 ~~1/2~~~~1/2~~.

[b] Beneficiary Designation.

- [i] The beneficiary of each married Participant will be the Participant's surviving Spouse unless the Spouse consents in writing or, if permitted by the Plan AdministratorCommittee, electronically to the designation of another beneficiary or beneficiaries. The beneficiary of each Participant who is a party to a civil union will be the Participant's Domestic Partner unless the Domestic Partner consents in writing or, if permitted by the Plan AdministratorCommittee, electronically to the designation of another beneficiary or beneficiaries. The beneficiary designation of a married Participant or a Participant who is a party to a civil union may be changed from time to time; provided, however, that the Participant may not name a beneficiary other than the Participant's Spouse or Domestic Partner without the written consent of the Spouse or Domestic Partner, or, if permitted by the Plan AdministratorCommittee, electronically. The consent must acknowledge the effect of the election and must be witnessed by a Plan representative designated by the Plan AdministratorCommittee or by a notary public.
- [ii] Subject to the Spousal and Domestic Partner consent rules as specified in Section 7.3(b)(i) the Participant will designate a beneficiary to receive any benefits payable upon his or her death on the form prescribed by and delivered to the Plan Administrator. Subject to the spousal consent and Domestic Partner consent rules as specified in Section 7.3[b][i], the Participant will have the right to change or revoke a designation at any time by filing a new designation or notice of revocation with the Plan Administrator.
- [iii] If a Participant fails to designate a beneficiary before his or her death, or if no ~~designated~~ beneficiary survives the Participant, the Plan Administrator will direct the Trustee to pay the benefit to the surviving Spouse or the Participant's surviving Domestic Partner at the date of the Participant's death. If the Participant does not have a surviving Spouse or surviving Domestic Partner at the date of the Participant's death, or if a Participant fails to designate a beneficiary, or if for any reason a designation is legally ineffective, or if all ~~designated~~ beneficiaries predecease or die simultaneously with the Participant, distribution will be made to the Participant's estate.

7.4. Rollover Distributions.

- [a] Direct Rollovers.— Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this part, a Distributee may elect, at the time and in the manner prescribed by the Plan AdministratorCommittee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover.

[b] Definitions. -

- [i] Eligible Rollover Distribution. - An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the ~~Distributeed~~distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the ~~Distributeed~~distributee or the joint lives (or joint life expectancies) of the ~~Distributeed~~distributee and the ~~Distributee's~~distributee's ~~designated~~ beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); any hardship distribution; the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities); and any other distribution(s) that is reasonably expected to total less than \$200 during a year. A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Sections 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
- [ii] Eligible Retirement Plan. - An Eligible Retirement Plan is an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from ~~the~~this Plan, an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), or a qualified plan described in Code Section 401(a), that accepts the ~~Distributee's~~distributee's Eligible Rollover Distribution. The definition of Eligible Retirement 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 relation order, as defined in Code Section 414(p). If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a designated Roth account, an Eligible Retirement Plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

[iii] Distributee.— A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving Spouse or surviving Domestic Partner and the employee's or former employee's Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the Spouse or former Spouse. Solely with respect to an eligible retirement plan which is an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b), a distributee also will include the employee's or former employee's surviving Domestic Partner or non-Spouse beneficiary.

[iv] Direct Rollover.— A direct rollover is a payment by the ~~Plan~~plan to the Eligible Retirement Plan specified by the ~~Distributee~~distributee.

7.5. Withdrawals While Employed. Withdrawals of vested ~~Participant~~Accounts of Active Participants are not permitted.

7.6. Required Distributions From the Trust.—

[a] Minimum Distributions.— Notwithstanding any other provisions of this Article, the following distribution rules will apply:

[i] General Rules:

[A] The Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the regulations under Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G).

[B] Limits on Distribution Periods. As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may be made in installments over a period not exceeding one of the following periods:

(i) the life of the Participant;

(ii) the joint lives of the Participant and a ~~Designated~~designated Beneficiary;

(iii) a period certain not extending beyond the life expectancy of the Participant; or

(iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a ~~Designated~~designated Beneficiary.

[ii] Time and Manner of Distribution.—

- [A] Required Beginning Date.— The Participant’s entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant’s Required Beginning Date~~required beginning date~~.
- [B] Death of Participant Before Distributions Begin.— If the Participant dies before distributions begin, the Participant’s entire vested Account~~account~~ will be distributed, or minimum distributions will begin to be distributed, no later than as follows:
- (i) If the Participant’s surviving Spouse is the Participant’s sole Designated Beneficiary~~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 at the option of the surviving Spouse by a date no later than December 31 of the calendar year in which the Participant would have attained age 70 $\frac{1}{2}$ ~~$\frac{1}{2}$~~ .
 - (ii) If the Participant’s surviving Spouse is not the Participant’s sole Designated Beneficiary~~designated beneficiary~~, then distributions to the Designated Beneficiary~~designated beneficiary~~ (including the surviving Domestic Partner of a Participant) will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (iii) If there is no Designated Beneficiary~~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.
 - (iv) If the Participant’s surviving Spouse is the Participant’s sole Designated Beneficiary~~designated beneficiary~~ and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse are required to begin, ~~this~~ Section 7.6[a][ii](B), other than Section 7.6[a][ii](B)(i), will apply as if the surviving Spouse were the Participant.

For purposes of ~~this~~ Section 7.6[a][ii](B) and Section 7.6[a][iv], unless Section 7.6[a][ii](B)(iv) applies, distributions are considered to begin on the Participant’s required beginning date. If Section 7.6[a][ii](B)(iv) applies, distributions are considered to begin on the

date distributions are required to begin to the surviving Spouse under Section 7.6[a][ii](B)(i).

[C] Forms of Distribution.— Unless the Participant's interest is distributed in a single-sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 7.2(b)(ii) or (iii), provided that all distributions shall be made no less rapidly than provided in Sections 7.6[a][iii] and 7.6[a][iv].

[iii] Required Minimum Distributions During Participant's Lifetime.—

[A] 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:

(i) the quotient obtained by dividing the Participant's Account ~~Balance~~~~balance~~ by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(ii) if the Participant's sole Designated Beneficiary~~designated beneficiary~~ for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account ~~Balance~~~~balance~~ by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-3, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.

[B] Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.— Required minimum distributions will be determined under ~~this~~ Section 7.6[a][iii] beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

[iv] Required Minimum Distributions After Participant's Death.—

[A] Death on or after Date Distributions Begin.—

(i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated~~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~~account—balance~~ by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated~~designated~~ Beneficiary, determined as follows:

- 1) 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.
 - 2) If the Participant's surviving Spouse is the Participant's sole Designated~~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.
 - 3) If the Participant's surviving Spouse is not the Participant's sole Designated~~designated~~ Beneficiary, the Participant's surviving Domestic Partner or the Designated~~designated~~ Beneficiary's remaining life expectancy is calculated using the age of the surviving Domestic Partner or Designated~~Beneficiary~~~~designated—beneficiary~~ in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary~~designated—beneficiary~~ as of the 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~~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.

[B] Death Before Date Distributions Begin.

- (i) 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 7.6[a][iv](A).
- (ii) 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.
- (iii) 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 7.6[a][ii](B)(i), ~~this~~ Section 7.6[a][iv](B) will apply as if the surviving Spouse were the Participant.

[v] Definitions.

- [A] Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving Spouse or surviving Domestic Partner) as the beneficiary of the Participant's Account under the Plan and who is the designated beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4.
- [B] 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 7.6[a][ii](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.

[C] Life Expectancy.— Life expectancy as computed by use of the single life table in Treasury Regulation Section 1.401(a)(9)-9, Q&A-1.

[D] Participant's Account Balance.— The ~~Participant~~ Account balance 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 ~~Participant~~ 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 ~~Participant~~ 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.

7.7. Withholding Taxes.— The Plan Administrator and the Trustee may withhold from any payment under ~~the~~this Plan any taxes required to be withheld with respect to benefits under ~~the~~this Plan and any sum the Plan Administrator or Trustee may reasonably estimate as necessary to cover any taxes for which they may be liable and which may be assessed with respect to a Participant's benefits under ~~the~~this Plan.

7.8. Forfeiture of Forfeitable ~~Participant~~ Account on Termination of Employment.— If a Participant's employment is terminated for any reason other than attainment of Normal Retirement Age while any part of the Participant's Account in the Trust is forfeitable, then that portion of the Participant's Account that is forfeitable will be forfeited by the Participant on the earlier of the date on which the Participant receives a distribution of the vested ~~Accountaeecount~~ or the 90th day after Severance from Service. If the value of the Participant's vested ~~Accountaeecount~~ balance is zero upon the Participant's termination of employment, the Participant will be deemed to have received a distribution of the vested ~~Accountaeecount~~ balance immediately upon termination of employment. A rehired Participant may not repay any portion of any distribution from the Plan made on account of

termination of employment. Any amount forfeited will remain in the Trust and will be allocated to reduce future Employer Non-Elective Contributions to the extent forfeitures are not used to pay Plan expenses.

ARTICLE VIII. PLAN ADMINISTRATOR AND PLAN COMMITTEE

8.1. Appointment of the Plan Administrator and Plan Committee.

- [a] The management of the Plan shall be vested in a Plan Administrator who shall be the General Manager of Platte River Power Authority.
- [b] The Plan Administrator will designate the maximum number of members the Plan Committee will have and will appoint the members of the Plan Committee. Each member will hold office until resignation, death, or removal by the Plan Administrator. If the Plan Administrator fails to appoint the Plan Committee, the Plan Administrator will be the Plan Committee. A member of the Plan Committee may resign at any time by giving notice to the Plan Administrator effective as stated in such notice, otherwise upon receipt of such notice. At any time, any member of the Plan Committee may be removed by the Plan Administrator without cause. As soon as practical following the death, resignation or removal of a member of the Plan Committee, the Plan Administrator, in his or her discretion, may appoint a successor. Notice of the appointment of a successor member of the Plan Committee will be given by the Plan Administrator to the Trustee and to the Employer.
- [c] Any person may serve in more than one capacity, including service as the Plan Administrator and Plan Committee member.
- [d] In the event that claims are made against the Plan Administrator or members of the Plan Committee related to the performance of their duties and within the scope of their employment, the Employer is responsible for the costs of defense and the payment of judgments and settlements in the manner provided by Section 24-10-110, C.R.S.

8.2. Organization and Operation of Offices of the Plan Administrator and Plan Committee.— The Plan Administrator and Plan Committee may adopt such procedures as each deems desirable for the conduct of its affairs and may appoint or employ a secretary or other agents, any of whom may be, but need not be, an officer or an Employee of the Employer. Any agent may be removed at any time by the person appointing or employing him.

8.3. Reporting and Disclosure.

- [a] General Requirements.— The Plan Administrator will be responsible for all applicable reporting and disclosure requirements of law.
- [b] Inspection of Documents.— The Plan Administrator is to make available for inspection copies of the Plan, and the agreements under which the Plan was established or is operated. Such documents will be available for examination by any Participant or beneficiary in the principal office of the Plan Administrator and in such other places as may be necessary to make available all pertinent information to all Participants.

- [c] Notice of Rollover Treatment.— When a qualifying rollover distribution is made, the Plan Administrator will provide to the recipient an explanation in writing or in another format ~~approved by the Plan Committee~~, that the distribution will not be taxed currently to the extent that it is transferred to another qualified plan within 60 days after the date on which the recipient received the distribution and a description of the income averaging and capital gains provisions, if applicable.

8.4. Duties and Powers of Plan Administrator.— Subject to such appeal rights as are set forth herein, the Plan Administrator shall have the administrative powers and duties specified in ~~the~~this Plan, which shall include but not be limited to the following powers and duties:

- [a] Interpretation of Plan. To interpret the Plan provisions and resolve all questions relating to the administration of the Plan, including the power to determine the rights or eligibility of Employees and Participants and their ~~beneficiaries~~Beneficiaries, and the amounts and values of their respective interests;
- [b] Rules. To adopt such rules and regulations as the Plan Administrator may deem reasonably necessary for the proper and efficient administration of the Plan and consistent with its purposes;
- [c] Enforcement. To enforce the Plan in accordance with its terms and with the Plan's rules and regulations and to consider and interpret the Plan, and settle and discharge disputes arising thereunder;
- [d] Claims. To make initial determinations of claims for benefits, or claims relating to eligibility to participate in the Plan
- [e] Records. To keep a record of all of Plan Administrator and Plan Committee proceedings and keep all such books of account, records, and other data as may be necessary or advisable in its judgment for the administration of ~~the~~this Plan and Trust, including records to reflect the affairs of ~~the~~this Plan, to determine the amount of vested interests of the respective Participants, and to determine the amount of all benefits payable under ~~the~~this Plan. The Plan Administrator, Plan Committee and the Employer may rely on and will not be liable because of any information that an Employee provides, either directly or indirectly. Subject to the requirements of law, any person dealing with the Plan Committee may rely on, and will incur no liability in relying on, a certificate or memorandum in writing signed by the Plan Committee as evidence of any action taken or resolution adopted by the Plan Committee.
- [f] Additional Powers. The Plan Administrator shall administer the Plan in accordance with its terms, and shall have all powers necessary to carry out the provisions of the Plan not otherwise reserved to the Employer, the Plan Committee or the Trustee.

8.5. Duties of Plan Committee. The Plan Committee shall have the administrative powers and duties specified in the Plan, which shall include but not be limited to the following powers and duties:

[a] Investment Duties

- [i] Prepare and maintain an investment policy statement.
- [ii] Select the Investment Consultant. Annually, review the fees and performance of the services provided by the Investment Consultant.
- [iii] Prudently select and provide investment options with different and distinct risk/return profiles so each Participant has the ability to diversify the investment of his or her account.
- [iv] Monitor and retain or replace investment managers and/or investment funds.
- [v] Review expenses associated with the Plan for reasonableness.
- [vi] Ensure against transactions which are prohibited pursuant to applicable law.

[b] Administrative Duties

- [i] Direct the Trustee concerning payments to be made out of the Trust.
- [ii] Schedule and coordinate periodic external audits (application of agreed upon procedures).
- [iii] Establish reasonable written procedures for determining the qualification status of a domestic relations order (QDRO) or other legal document served on the Plan.
- [iv] Arrange participant education and communications.
- [v] Participate in the selection, monitoring, and replacement of third-party advisors to the Plan, such as attorneys, consultants, actuaries, recordkeepers, and other providers of Plan's services.
- [vi] Make adjustments or correct defects under the Plan in a uniform and nondiscriminatory manner.
- [vii] Prepare restated Plan documents for changes in Plan design or applicable law and regulations, and submit the documents to the Plan Administrator and Board of Directors for adoption.

8.5.8.6. 8.5. ~~Claims Procedure.~~

- [a] ~~[a]~~—Filing and Initial Determination of Claim. Any Participant, beneficiary, or any duly authorized representative may file a claim for a Plan benefit to which the claimant believes that he or she is entitled. Such a claim must be in writing or in another format approved by the Plan ~~Administrator~~Committee and delivered to the Plan ~~Administrator~~Committee in person or by certified mail, postage prepaid. Within 90 days after receipt of such claim, the Plan ~~Administrator~~Committee will send to the claimant by certified mail, postage prepaid, notice of the granting or denying, in whole or in part, of such claim, unless special circumstances require an extension of time for processing the claim. In no event may the extension exceed 90 days from the end of the initial period. If such extension is necessary, the claimant will be given a notice in writing or in another format approved by the Plan ~~Administrator~~Committee to this effect prior to the expiration of the initial 90-day period. The Plan ~~Administrator~~Committee will have full discretion to deny or grant a claim in whole or in part. If notice of the denial of a claim is not furnished in accordance with this paragraph [a], the claim will be deemed denied and the claimant will be permitted to exercise his or her right of review pursuant to paragraphs [b] and [c] of this section.
- [b] ~~[b]~~—Request for Review of Claim Denial.— Within 60 days after receipt by the claimant of written notification of the denial in whole or in part of the claim, the claimant or the claimant's duly authorized representative, upon application in writing or in another format approved by the Plan Committee to the Plan ~~Administrator~~Committee in person, by certified mail, postage prepaid, or in another format approved by the Plan Committee, may request a hearing before the Plan Committee for a review of such denial, ~~may review pertinent documents, and may submit issues and comments in writing or in another format approved by the Plan Committee.~~ Upon ~~its~~ receipt of the request for a hearing review, the Plan ~~Administrator~~Committee will notify the Plan Committee and the Employer of the request.
- [c] Review by Plan Committee.~~[c]~~—~~Claims Reviewer.~~— Upon ~~its~~ receipt of notice of a request for a hearing review, the Plan Administrator shall set the date and time for the hearing, but shall not participate in the Plan Committee's review. In conducting the hearing, the Plan Committee shall consider any written statement, testimony or Employer will appoint a person other evidence presented by the claimant or the authorized representative in support of the claim, than a Plan Committee member to be the claims reviewer. The Plan Committee shall give the claimant and the claimant's authorized representative reasonable access to all will deliver to the claims reviewer all documents pertinent documents necessary for the preparation of the claim.
- [i] ~~to the review.~~ The Plan Committee shall, within 60 days after receipt of such appeal, conduct a hearing and provide such claimant claims reviewer will make a written determination which shall be delivered or mailed to the claimant by certified mail, postage prepaid, to the claimant's last known address. Provided, however, in the event that

special circumstances require an extension of time, the Plan Committee shall conduct a hearing and provide the claimant a written determination of the Plan Committee's prompt decision not later than 120 days after receipt of such appeal but, in such event, the Plan Committee shall furnish the claimant, within 60 days after the Plan Committee's receipt of such appeal, written notification of the extension explaining the circumstances requiring such extension.

~~{i}[ii]~~ on the review. The decision of the Plan Committee shall ~~on review~~ will be conveyed in writing to the claimant and shall include the specific reasons for the decision presented ~~written or in another format approved by the Plan Committee,~~ in a manner calculated to be understood by the claimant, and ~~shall contain~~ will include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based. The decision of the Plan Committee shall ~~on review~~ will be final and conclusive. If made not later than 60 days after the Plan Committee's receipt of a request for a review, unless special circumstances require an extension of time for processing, in which case a decision will be rendered not later than 120 days after receipt of a request for review. If such extension is necessary, the claimant will be given notice of the decision of the Plan Committee ~~extension,~~ in writing or another format approved by the Plan Committee, prior to the expiration of the initial 60-day period. If notice of the decision ~~on the review~~ is not furnished in accordance with this paragraph [c], the claim will be deemed denied and the claimant will be permitted to exercise his or her right to legal remedy pursuant to paragraph [d] of this section.

~~{e}[d]~~ ~~[d]~~ Legal Remedy. After exhaustion of the claims procedure as provided under ~~the~~ this Plan, nothing will prevent any person from pursuing any other legal remedy.

~~8.6. [e] Additional Powers. To do all other acts in the Plan Administrator's opinion necessary or desirable for the proper and advantageous administration of the Plan.~~

8.7. Qualified Domestic Relations Orders.— The Plan Committee will establish reasonable procedures for determining the qualification status of a domestic relations order pursuant to Section 14-10-113(6), C.R.S. Such procedures:

- [a] Will be in writing;
- [b] Will provide to each person specified in a domestic relations order as entitled to payment of Plan benefits notification of such procedures promptly upon receipt of the order by the Plan; and
- [c] Will permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee.

Within a reasonable period of time after receipt of such order, the Plan Administrator will determine if such order is a qualified domestic relations order and will notify the Participant and each alternate payee of such determination. During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined, the Plan Administrator shall place an administrative hold on the ~~Participant~~ Account to prevent any distribution of the assets. Should the domestic relations order be determined to not be a qualified domestic relations order under the Plan the Plan Administrator shall provide the Participant and Alternate Payee (or requesting third party) with information about why the order is not acceptable and those steps which must be taken to remediate the order to make it an acceptable domestic relations order under the Plan. An administrative hold on a Participant's Account under this section shall be released at the earliest of (1) the date the assigned assets have been transferred to the Alternate Payee's account, (2) the date a court order is received identifying that the assets in the account have been assigned to the Participant, (3) 18 months after the date the administrative hold was established, or (4) the date the court issues a notice of adverse interest or a joinder on the account. A former Spouse and a former Domestic Partner may be treated as a Spouse or the surviving Spouse to the extent required under a qualified domestic relations order satisfying the requirements defined in Code §414(p).

ARTICLE IX. POWERS AND DUTIES OF THE TRUSTEE

9.1. Investment of Plan Assets.— The duty of the Trustee is to hold in Trust the funds it receives. Except as otherwise provided in Section 9.2, the Trustee will have exclusive authority and discretion to manage and control the assets of the Plan and to manage, invest, and reinvest the Trust and the income from it under this Article, without distinction between principal and income. The Trustee will make payments and distributions from the Trust in accordance with the terms of ~~the~~this Plan and instructions of the Plan Committee. The Trustee will be responsible only for sums that it actually receives as Trustee plus net gains on such amount.

9.2. Participant Directed Investment.—

[a] General Rules.— Each Participant may direct the Trustee's investment of his or her ~~Account~~account in investments or categories of investments permitted by law and in accordance with the rules and procedures for Participant investment direction established by the Plan Committee and Trustee. Such rules may specify the percentage of a Participant's Account that may be invested as designated, any portion of a Participant's Account that will remain subject to investment direction by the Trustee, and whether a Participant may designate investment categories as provided in paragraph [c] below. The Trustee is under no duty to question any direction by a Participant or his or her duly authorized agent with respect to investments, or to make suggestions to the Participant or his or her duly authorized agent with respect to investments. If a Participant fails to direct the Trustee as to the investment of any portion of his or her ~~Participant~~Participant Account, that portion of his or her ~~Participant~~Participant Account will be invested in accordance with the default investment alternatives established by the Plan ~~Committee~~Administrator, or, if none, at the Trustee's discretion until the Trustee receives effective investment directions. The right to direct investments under this section will be the sole and exclusive investment power granted to Participants with respect to the Trust. The exercise of investment direction by a Participant will not cause the Participant to be a fiduciary solely by reason of such exercise, and neither the Trustee nor any other fiduciary of ~~the~~this Plan will be liable for any loss, or by reason of any breach, that results from exercise of investment direction by a Participant.

[b] Investment Categories.— The Trustee ~~will only~~may offer investment options designated by the Plan Committee. Investment categories ~~which~~ may include fixed income obligations of a secure nature, such as savings accounts, certificates of deposit, and fixed income government and corporate obligations. The investment categories also may include common stock, real property, commercial paper, preferred stocks, mutual funds, or other securities, rights, obligations, or property, real or personal, including shares or certificates of participation issued by regulated investment trusts and shares or units of participation in qualified common trust funds or pooled funds. ~~Participant~~—Accounts in investment categories offered by the Trustee may be commingled. Investment

categories may not include collectibles within the meaning of Code Section 408(m).

- [c] Investment Specifications.—Each Participant may designate the investment of his or her ~~Participant~~-Account, subject to rules established by the Trustee.
 - [d] Liquidation and Reinvestment.— Pursuant to rules established by the Trustee, any designation of investment by a Participant on its ~~effective date~~~~Effective Date~~ will cancel any prior designations of that Participant with respect to future contributions. Any Participant may instruct, on forms provided by the Trustee, that the Trustee, on the date designated on such form or as soon thereafter as practical, liquidate the Participant's interest in any category of investment and reinvest the proceeds of such liquidation in any other category designated by the Participant.
 - [e] Investment Right of Trustee.— Notwithstanding any instruction from any Participant for investment of funds as provided in this section, the Trustee will have the right to hold uninvested or invested in short-term fixed income investments any funds intended for investment or reinvestment as otherwise provided in this section from time to time and for such time as the Trustee may determine to be advisable.
 - [f] Expenses.— The compensation or fees of accountants, counsel, and other specialists as well as any costs of administering the ~~Plan~~~~plan~~, unless paid by the Employer, will be charged against the Participants' Accounts.
- 9.3. Records and Accounts of the Trustee.— The Trustee will keep all such records and accounts that may be necessary in the administration and conduct of ~~the~~~~this~~ Trust. The Trustee's records and accounts will be open to inspection by the Employer, Plan Administrator, and the Plan Committee at all reasonable times during business hours. All income, profits, recoveries, contributions, forfeitures, and any and all moneys, securities, and properties of any kind at any time received or held by the Trustee will be held for investment purposes as a commingled trust fund. Separate accounts or records may be maintained for operational and accounting purposes, but no such account or record will be considered as segregating any funds or property from any other funds or property contained in the commingled fund, except as otherwise provided.
- 9.4. Administrative Powers of the Trustee.— Subject to the requirements imposed by law, the Trustee will have all powers necessary or advisable to carry out the provisions of ~~the~~~~this~~ Plan and Trust and all inherent, implied, and statutory powers now or subsequently provided by law, including specifically the power to do any of the following:
- [a] To invest or reinvest any and all money or property of any description at any time held by the Trustee and constituting Plan assets without previous application to, or subsequent ratification of, any court, tribunal or commission, or any federal or state governmental agency. Such investment may be in real property and all interests in real property, in bonds, notes,

debentures, mortgages, commercial paper, preferred stocks, common stocks, or other securities, rights, obligations, or property, real or personal, including shares or certificates of participation issued by regulated investment companies or regulated investment trusts, shares or units of participation in qualified common trust funds, in qualified pooled funds, or in pooled investment funds of an insurance company qualified to do business in the state, in life insurance, group or individual term insurance, or endowment contracts and in certificates of deposit or savings accounts in a bank or other savings institution supervised by the United States or a state, and if the Trustee is a bank or similar financial institution supervised by the United States or a state, in its own deposits, savings accounts, and certificates of deposit;

- [b] To cause any securities or other property to be registered and held in its name as Trustee, or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer;
- [c] To sell, grant options to sell, exchange, pledge, encumber, mortgage, deed in trust, or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust on such terms and for such property or cash, or part cash and credit, as it may deem best; to retain, hold, maintain, or continue any securities or investments that it may hold as part of the Trust as long as it may deem advisable; and generally, in all respects, to do all things and exercise each and every right, power, and privilege in connection with and in relation to the Trust as could be done, exercised, or executed by an individual holding and owning such property in absolute and unconditional ownership;
- [d] To abandon, compromise, contest, and arbitrate claims and demands; to institute, compromise, and defend actions at law (but without obligation to do so); in connection with such powers, to employ counsel as the Trustee deems advisable; and to exercise such powers all at the risk and expense of the Trust;
- [e] To borrow money for ~~the~~this Trust on the terms and conditions the Trustee deems advisable, and to secure repayment by the mortgage or pledge of any assets of the Trust;
- [f] To vote in person or by proxy any shares of stock or rights held in the Trust; to participate in and to exchange securities or other property in reorganization, liquidation, or dissolution of any corporation, the securities of which are held in the Trust;
- [g] To pay any amount due on any loan or advance made to the Trust, to charge against and pay from the Trust all taxes of any nature levied, assessed, or imposed upon the Trust, and to pay all reasonable expenses and attorney fees necessarily incurred by the Trustee with respect to any of the foregoing matters; and

[h] For investment purposes, the Trustee may commingle the assets of ~~the~~this Trust with those of any other trust established by the Employer and qualified under Code Section 501(a), provided that adequate records segregating the assets of ~~the~~this Trust from those of another trust are maintained.

9.5. Advice of Counsel.— The Trustee may consult with legal counsel, who may be counsel for the Employer or Trustee's own counsel, with respect to the meaning or construction of the Plan and Trust or Trustee's obligation or duties. The Trustee will be protected from any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of counsel, to the extent permitted by law.

9.6. Appointment, Resignation, Removal, and Substitution of Trustee.— The Plan Administrator will appoint a Trustee or Trustees, each of which will hold office until resignation or removal by the Plan Administrator. The Trustee may resign at any time upon 90 days written notice to the Plan Administrator. Upon resignation of the Trustee, the Plan Administrator will appoint a successor Trustee that will have the same powers and duties as are conferred upon the Trustee appointed under ~~the~~this Plan. The resigning Trustee will deliver to its successor Trustee all property of the Trust, less a reasonable amount necessary to provide for its compensation, expenses, and any taxes or advances chargeable or payable out of the Trust. If the Trustee is an individual, death will be treated as a resignation, effective immediately. If any corporate Trustee at any time is merged, or consolidated with, or sells or transfers substantially all of its assets and business to another corporation, whether state or federal, or is reorganized or reincorporated in any manner, then the resulting or acquiring corporation will be substituted for the corporate Trustee without the execution of any instrument and without any action on the part of the Employer, Plan Administrator, any Participant or beneficiary, or any other person having or claiming to have an interest in the Trust or under the Plan.

ARTICLE X. PLAN ADMINISTRATION

- 10.1. Participants to Furnish Required Information. The provision of the Plan respecting any payment thereunder are conditional upon the Participant and beneficiary promptly furnishing true, full and complete information as the Plan Administrator may request for purposes of administering the Plan. Such information shall include the age and marital or civil union status of each Participant and beneficiary. The Employer, the Plan Administrator, Plan Committee, and anyone involved in the administration of the Plan shall be entitled to rely upon any certification, statement or representation made by an Employee, Participant, or beneficiary, and shall not be liable on account of any act or failure to act in reliance thereon. Any such certification, statement, or, representation furnished shall be binding upon the person furnishing the same; but it shall not be binding upon ~~and any~~ may be contested by, the Employer, the Plan Administrator, the Plan Committee, or any other person involved in the administration of the Plan.
- 10.2. Employer Obligation.— The adoption and maintenance of ~~the this~~ Plan will not be deemed to constitute a contract between the Employer and any Employee, ~~or~~ Participant, or beneficiary nor to be a consideration for, or an inducement or condition of, the employment of any person. Nothing in ~~the this~~ Plan will be deemed to give any Employee or Participant the right to be ~~retained in~~ retained in the employ of the Employer, or to interfere with the right of the Employer to discharge any Employee or Participant at any time, nor will it be deemed to give the Employer the right to require the Employee or Participant to remain in its employ, nor will it interfere with the right of any Employee or Participant to terminate employment at any time. In adopting ~~the this~~ Plan, the Employer makes no representations as to the amount of the contribution that ~~it they~~ will make for any year other than as set forth in the Plan. The Employer assumes no liability or responsibility for direct payment of benefits. All benefits payable under ~~the this~~ Plan will be paid or provided solely from the Plan assets.
- 10.3. Benefits Payable to Minors and ~~Persons Declared Legally Incompetent.~~Incompetents. Whenever any person entitled to payments under ~~the this~~ Plan shall be a minor or declared legally incompetent by a court ~~under other legal disability or in the sole judgment of law~~ the Plan Administrator shall otherwise be unable to apply such payments to his own best interest and advantage, the Plan Administrator may direct all or any portion of such payments to be made to the duly-appointed guardian, conservator or other duly-appointed legal representative of such person. The decision of the Plan Administrator to direct such payments will, in each such case, be final and binding upon all persons, and the Plan Administrator shall not be obliged to see to the proper application or expenditure of any payments so made. Any payment made pursuant to the power conferred upon the Plan Administrator shall operate as a complete discharge of the obligations of the Trustee, the Plan Administrator and the Employer.
- 10.4. Notification of Mailing Address.— Each Participant and beneficiary entitled to benefits shall file with the Trustee, in the manner designated by the Trustee, his or her address and each change of address. Any payment hereunder and any

communication addressed to a Participant, former Participant, or beneficiary at his last address filed with the Trustee (or, if no such address has been filed, then at his last address as indicated on the records of the Employer) shall be binding on such person for all purposes of the Plan, and neither the Plan Administrator nor the Trustee, nor the Employer, shall be obligated to ascertain the receipt of such payment.

- 10.5. Failure to Locate Participant. If the Plan Administrator, for any reason, is in doubt as to whether payments are being received by the person entitled thereto, he or she may take reasonable steps to locate the Participant or beneficiary. If the Plan Administrator is not furnished with satisfactory evidence of such person's proper mailing address, or with evidence of his death, and the Plan Administrator is unable to find any person to whom payment is due under the provisions of the Plan within five years of the date such payment of benefit was scheduled to have commenced, all retirement income and other benefit payments due shall be forfeited.
- 10.6. Evidence of Survival.— If the Trustee cannot make payment of any amount to, or on behalf of, a Participant within five years after such amount becomes payable because the identity or whereabouts of such Participant cannot be ascertained, the Trustee, at the end of such five-year period, may direct that all unpaid amounts that would have been payable to or on behalf of the Participant will be paid to the legal Spouse or Domestic Partner of the Participant if found and living at such time, or if the legal Spouse or Domestic Partner cannot be found or is not living at such time, in equal shares to such of the children of the Participant who can be found and are living at such time, or if none of the children can be found or if none are living at such time, to such other relative or relatives of the Participant as the Trustee may deem proper.
- 10.7. Data and Information for Benefits.— All persons claiming benefits under the Plan must furnish to the Plan ~~Administrator~~Committee or its designated agent documents, evidence, or information the Plan ~~Administrator~~Committee or agent considers necessary or desirable for the purpose of administering the Plan; and each person must furnish such information promptly and sign documents the Plan ~~Administrator~~Committee or its agent may require to be signed before any benefits become payable under the Plan. No determination of a fact shown by the official employment records of an Employer will be made contrary to the records unless those records are clearly proved to be erroneous as to such fact. Any determination made by the Plan ~~Administrator~~Committee within the scope of ~~his~~or her~~its~~ authority will be conclusive and binding on all persons having an interest in the Plan.
- 10.8. Effect of A Mistake.— In the event of a mistake or misstatement as to the eligibility, participation, or service of any Participant, or the amount of payments made or to be made to a Participant or beneficiary, the Plan ~~Administrator~~Committee will, if possible, cause payment to be withheld or accelerated or otherwise make adjustment of such amounts of payments as will in the Plan ~~Administrator's~~Committee's sole judgment result in the Participant or beneficiary receiving the proper amount of payments under ~~the~~this Plan.

- 10.9. Nonalienation of Benefits.— Except for assignments for child support purposes as provided for in Sections 14-10-118(1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, and except for income assignments for child support purposes pursuant to Section 14-14-111, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, and for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to Section ~~14-1014-10~~-113(6), C.R.S., none of the moneys, funds, individual accounts, or other benefits specified in ~~the~~this Plan shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process.

ARTICLE XI. TERMINATION AND AMENDMENTS

- 11.1. Termination of Plan.— The expectation of Employer is to continue ~~thethis~~ Plan indefinitely, but the continuance of the Plan is not assumed as a contractual obligation by the Employer, and the right is reserved to the Employer, by action of its Board of Directors, to terminate ~~thethis~~ Plan in whole or in part at any time. Upon the termination of ~~thethis~~ Plan until all benefit liabilities accrued as of the date of the Plan termination have been satisfied, no part of the ~~Planplan~~ assets shall revert to the Employer.
- 11.2. Amendments to Plan.— Subject to the provisions of Section 6.5, the Plan may be amended by the Employer in its discretion by resolution of the Board of Directors except that under no condition shall such amendment result in, or permit, the return or repayment to the Employer of any property held or acquired by the Trustee hereunder or the proceeds thereof, or result in, or permit, the distribution of any such property for the benefit of anyone other than the Participants and their ~~beneficiaries~~~~Beneficiaries~~. The Plan may not be amended to change the duties or responsibilities of the Trustee without the Trustee's written consent. Any permitted amendment may be made retroactively which, in the judgment of the Plan Committee, is necessary or advisable, and which is allowed by law. Each amendment of the Plan shall be made in writing and shall state the date to which it is either retroactively or prospectively effective.
- 11.3. Vesting and Distribution Upon Plan Termination. If the Plan is terminated the assets of the Plan will be distributed to the Participants and ~~beneficiaries~~~~Beneficiaries~~ of the Plan according to the distribution provisions of the Plan.
- 11.4. Successor Employer.— Unless the Plan has been terminated, a successor to the business of the Employer, by whatever form or manner resulting, may continue ~~thethis~~ Plan by executing appropriate documents, and a successor will succeed to all the rights, powers, and duties of the Employer. The employment of any Employee who is continued in the employ of the successor will not be deemed to have been terminated or severed for any purpose under ~~thethis~~ Plan.

ARTICLE XII. MISCELLANEOUS

- 12.1. Text to Control.— The headings of articles and sections are included solely for convenience of reference. If any conflict between any heading and the text of ~~the~~this Plan exists, the text shall control.
- 12.2. Severability.— If any provision of ~~the~~this Plan is illegal or invalid for any reason, the illegality or invalidity will not affect the remaining provisions. On the contrary, the remaining provisions will be fully severable, and ~~the~~this Plan will be construed and enforced as if the illegal or invalid provisions never had been inserted in the agreement.
- 12.3. Jurisdiction. ~~The. This~~ Plan will be construed and administered under the laws of the State of Colorado when the laws of that jurisdiction are not in conflict with federal substantive law.

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IN WITNESS WHEREOF, the Employer has caused this instrument to be executed by their duly authorized officers as of December ~~6, 2018~~12, 2013.

EMPLOYER

ATTEST:

PLATTE RIVER POWER AUTHORITY

~~Assistant~~ Secretary

By: _____

Title: General Manager

Date: _____

**ICMA-RC
Trustee**

By: _____

Title: _____

Date: _____

RESOLUTION NO. __-18

WHEREAS, the Platte River Power Authority (Platte River) maintains the Platte River Power Authority Defined Contribution Plan, as Amended and Restated Effective January 1, 2014 (Defined Contribution Plan) for the benefit of Platte River employees hired on or after September 1, 2010; and

WHEREAS, the Defined Contribution (“DC”) Plan Committee recommends that certain changes be made to the Defined Contribution Plan, effective as of January 1, 2019, for purposes of ensuring consistency with current model plan provisions issued by the IRS, incorporating minor edits to the current trustee arrangement with International City/County Management Association-RC, the Plan’s Trustee (“ICMA-RC”), incorporating updates to the definition of “Spouse” to comply with current State and Federal law, incorporating updates to clarify the duties of the Plan Administrator and Plan Committee, incorporating updates to the appeal process, and incorporating minor formatting edits; and

WHEREAS, the proposed Defined Contribution Plan updates do not impact or modify the way that contributions or distributions are managed under the Plan; and

WHEREAS, the Board of Directors of Platte River reserved the right to amend the Defined Contribution Plan pursuant to Section 11.2 of the Defined Contribution Plan, subject to the consent of the Trustee in the event that such amendments change the duties or responsibilities of the Trustee; and

WHEREAS, as Plan Trustee, ICMA-RC, has approved the recommended amendments; and

WHEREAS, the Board of Directors of Platte River deems it advisable to amend and restate the Defined Contribution Plan, effective as of January 1, 2019, to reflect the changes identified herein.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of Platte River Power Authority as follows:

- (1) That the Platte River Power Authority Defined Contribution Plan, as Amended and Restated Effective January 1, 2019, attached as **Exhibit A**, is hereby adopted effective as of January 1, 2019.
- (2) The appropriate officers of Platte River are authorized, directed, and empowered to execute such documents and to take such other actions as are necessary to effectuate the adoption of the Platte River Power Authority Defined Contribution Plan, as Amended and Restated Effective January 1, 2019, and to carry out the intent of this Resolution.

AS WITNESS, I have executed my name as Secretary and have affixed the corporate seal of the Platte River Power Authority this _____ day of _____, 2018.

Secretary

Exhibit A



PLATTE RIVER POWER AUTHORITY DEFINED CONTRIBUTION PLAN

As Amended and Restated

December 6, 2018

Effective Date of this Restatement

January 1, 2019

**PLATTE RIVER POWER AUTHORITY
FORT COLLINS, COLORADO**

History –

Adopted	March 25, 2010	Effective September 1, 2010
Amended and Restated	April 29, 2010	Effective September 1, 2010
Amended and Restated	August 25, 2010	Effective September 1, 2010
Amended and Restated	December 9, 2010	Effective September 1, 2010
Amendment Number One	September 22, 2011	Effective September 1, 2010
Amended and Restated	October 22, 2012	Effective January 1, 2012
Amended and Restated	December 12, 2013	Effective January 1, 2014
Amended and Restated	December 6, 2018	Effective January 1, 2019

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PLATTE RIVER POWER AUTHORITY

DEFINED CONTRIBUTION PLAN

ARTICLE I. THE PLAN

- 1.1 Establishment of the 2019 Plan. This document restates the Platte River Power Authority Defined Contribution Plan, effective (except as otherwise provided herein) as of January 1, 2019. The Plan is intended to qualify as a profit-sharing plan under Internal Revenue Code Section 401(a) and as a governmental plan under Code Section 414(d) and the Trust is intended to be exempt under Internal Revenue Code Section 501(a). The Plan and Trust are created for the exclusive benefit of Participants and their beneficiaries.
- 1.2 Applicability of the Plan. The provisions of the Plan are applicable only to Eligible Employees who become Participants on or after the Effective Date of the Plan.
- 1.3 Purpose of the Plan. The purpose of the Plan is to enable Participants to accumulate retirement savings.

ARTICLE II. DEFINITIONS

2.1 Definitions. Whenever used in the Plan, the following terms will have the meanings set forth below unless otherwise provided. When the defined meaning is intended, the term is capitalized.

- [a] “Account” means a Participant’s interest in the Trust, as adjusted from time to time for contributions, distributions, income, gain, loss and expense.
- [b] “Code” means the Internal Revenue Code of 1986, as it may be amended from time to time.
- [c] “Colorado Civil Union Act” means the Colorado Civil Union Act, as set forth in Colorado Senate Bill 13-011, signed by the governor of the State of Colorado on March 21, 2013, and codified at Section 14-15-101 et seq. of the Colorado Revised Statutes.
- [d] “Disability” means a physical or mental condition that renders a Participant incapable of continuing in the employment of the Employer and incapable of engaging in any substantial gainful employment. A Participant will not be Disabled unless a Participant qualifies for Social Security disability benefits.
- [e] “Domestic Partner” means a Party to a Civil Union as that term is defined in Section 103(5) of the Colorado Civil Union Act and any other person treated as Party to a Civil Union pursuant to C.R.S. Section 14-15-116.
- [f] “Earnings” means the Participant’s salary reported to the Participant on the Employee Status Notification then in effect. The maximum annual Earnings taken into account under the Plan for Plan Years beginning on and after the Effective Date of the Plan, shall not exceed \$245,000 as adjusted by the Secretary of the Treasury for increases in the cost-of-living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which annual Earnings are determined (determination period) that begins in the calendar year. If a determination period consists of fewer than 12 months, the annual limit on Earnings will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.
- [g] “Effective Date of the Plan” means September 1, 2010.
- [h] “Effective Date of this Restatement” means, January 1, 2019, except that any provision of the Plan that specifies or is required by law to have a different effective date shall have an effective date as of the latest of the date set forth in such provision, the date required by law, or the original Effective Date of the Plan.

- [i] “Eligible Employee” means any person employed as a Regular Employee whose Employment Commencement Date occurs on or after the Effective Date of the Plan, excluding Leased Employees, Employees whose first date of employment with the Employer in any status occurred prior to the Effective Date of the Plan and Employees who participate in the Platte River Power Authority Defined Benefit Plan.

For purposes of determining Eligible Employees only, any person who agrees with the Employer that such person’s services are to be performed as an independent contractor, temporary employee or leased employee shall not be considered an Eligible Employee for purposes of participating in the Plan, regardless of any classification as a common-law employee by the Internal Revenue Service or any government agency or any court of common jurisdiction.

- [j] “Employee” means any person receiving Earnings for regular personal services rendered to the Employer including officers and persons on authorized leaves of absence, but excluding independent contractors. The term “Employee” also will include any Leased Employee deemed to be an Employee of an Employer under Code Sections 414(n) or (o).
- [k] “Employer” means the Platte River Power Authority, a political subdivision and public corporation of the State of Colorado, and its successors or assigns.
- [l] “Employer Contributions” means the contributions made by the Employer on behalf of the Participant as described in Section 4.1.
- [m] “Employment Commencement Date” means the date on which the Employee first performs an Hour of Service with the Employer as a Regular Employee.
- [n] “Excess Earnings” means a Participant’s Earnings in excess of Social Security taxable wage under Code Section 3121(a)(1) for that Plan Year.
- [o] “Hour of Service” means each actual hour of service for which the Employer either directly or indirectly pays an Employee or for which the Employee is entitled to payment, for the performance of duties. The Plan Administrator credits hours of service under this paragraph to the Employee for the payroll period in which the Employee performs the duties, regardless of when paid.
- [p] “Leased Employee” means any person (other than an Employee of the Employer) who has performed services for the Employer (or for the Employer and related persons as determined under Code Section 414(n)(6)) under an agreement between the Employer and the leasing organization on a substantially full-time basis for a period of at least one year and the services are performed under the primary direction or control of the Employer. Any Leased Employee will be treated as an Employee of the Employer for purposes of the Plan and any contributions or benefits

provided by the leasing organizations that are attributable to the services performed for the Employer will be treated as provided under a plan maintained by the Employer, provided, however, that a Leased Employee will not be treated as employed by the Employer if Leased Employees do not constitute more than 20 percent of the Employer's non-highly compensated employees and the Leased Employee is covered by a money purchase pension plan maintained by the leasing organization that provides [i] a nonintegrated employer contribution of at least 10% of compensation, as defined in Code Section 415(c)(3), including amounts contributed pursuant to a salary reduction agreement that are excludable from the employee's gross income under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B) or 403(b); [ii] immediate participation (unless the individual has had compensation of less than \$1,000 in each of the preceding four Plan Years ending with the current Plan Year); and [iii] full and immediate vesting.

- [q] "Normal Retirement Age" means the later of the date on which the Participant attains age 65 or the date which is the third anniversary of the Participant's Employment Commencement Date.
- [r] "Participant" means any Eligible Employee who becomes a Participant in the Plan. Participation ceases upon distribution of a Participant's entire vested Participant Account balance. Unless otherwise specified, "Participant" means both "Active" and "Inactive" Participants. "Active Participant" means a Participant currently employed by the Employer or an affiliated Employer. "Inactive Participant" means a Participant who is not currently employed by the Employer or an affiliated Employer.
- [s] "Plan" means the Platte River Power Authority Defined Contribution Plan.
- [t] "Plan Administrator" means the General Manager of Platte River Power Authority in accordance with Article VIII whose duties and responsibilities are specified in the Plan.
- [u] "Plan Committee" means the person or persons appointed by the Plan Administrator in accordance with Article VIII whose duties and responsibilities are specified in the Plan.
- [v] "Plan Year" for the first Plan Year means the four-consecutive-month period beginning on the Effective Date of the Plan and ending December 31, 2010. Effective January 1, 2011, Plan Year means the 12-consecutive-month period ending each December 31.
- [w] "Qualified Military Service" means any service in the uniformed services (as defined in Chapter 43 of Title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

- [x] “Reemployment Commencement Date” means the date on which an Eligible Employee performs an Hour of Service with the Employer as a Regular Employee after a Severance from Service Date.
- [y] “Regular Employee” means any person who is not designated as a Temporary Employee by the Employer.
- [z] “Required Beginning Date” means April 1 of the calendar year following the calendar year in which occurs the later of [1] the date the Participant attains age 70½, or [2] the date the Participant retires from employment with the Employer.
- [aa] “Retirement” means Termination of Employment after attainment of Normal Retirement Age.
- [bb] “Severance from Service Date” means the earlier of (i) the date an Employee Terminates Employment by reason of Retirement, death, Disability, resignation or dismissal, or (ii) the first anniversary of the first date of a period in which an Employee remains absent from service (with or without pay) with the Employer for any reason other than Retirement, death, Disability, resignation or dismissal, such as vacation, holiday, sickness, leave of absence or layoff.
- [cc] “Spouse” means:
 - [i] With respect to administration of the Plan for periods prior to June 26, 2013, the Spouse or surviving Spouse of the Participant, as determined in accordance with the Colorado Uniform Marriage Act.
 - [ii] With respect to administration of the Plan for periods on and after June 26, 2013, the Spouse or surviving Spouse of the Participant, provided that such individuals are lawfully married under any state law or the law of any foreign country, including, but not limited to, a same-sex marriage that is legally recognized as a marriage under any state law.
 - [iii] A former Spouse and a former Domestic Partner will be treated as the Spouse or the surviving Spouse to the extent required under a qualified domestic relations order as defined in Code § 414(p).
- [dd] “Temporary Employee” means any person designated by the Employer as hired to work for a limited period of time or until a specified task is accomplished. Temporary Employees include, but are not limited to, those hired to perform seasonal work or to work a variable-hour schedule and internships.
- [ee] “Termination of Employment” means the date on which an individual ceases to be an Eligible Employee of the Employer whether by termination of employment, Disability, death or Retirement.

- [ff] “Trust” means the trust established pursuant to Article IX of this Plan.
- [gg] “Trustee” means the person or persons appointed by the Employer as the Trustee of the Trust established by the Plan and any duly appointed and qualified successor.
- [hh] “Valuation Date” means each day on which U. S. financial markets are open.
- [ii] “Years of Service” means the number of 12-month periods of service for the Employer, commencing on the Employment Commencement Date or Reemployment Commencement Date, and ending on the Severance from Service Date. An Employee also will receive credit for any period of severance of less than 12 consecutive months. Fractional periods of a year will be expressed in terms of days. A Participant will receive credit for the aggregate of all time periods beginning with the Participant’s Employment Commencement Date or Reemployment Commencement Date and ending on the applicable Severance from Service Dates.

2.2 Gender and Number. Unless the context clearly requires otherwise, the masculine pronoun whenever used will include the feminine and neuter pronoun, the singular will include the plural, and the plural will include the singular.

ARTICLE III. PARTICIPATION AND SERVICE

- 3.1 Participation. Any Eligible Employee of the Employer hired on or after the Effective Date of the Plan shall be enrolled as a Participant of the Plan as of his Employment Commencement Date, which shall be the date a person becomes an Eligible Employee as defined under Section 2.1[i].
- 3.2 Participation Upon Reemployment. An Eligible Employee or former Participant shall become a Participant immediately upon his Reemployment Commencement Date.
- 3.3 Change of Employment Category. A Temporary Employee who is not eligible to participate in the Plan solely because he is designated as a Temporary Employee will become a Participant immediately upon becoming a Regular Employee and satisfying the other eligibility requirements for the Plan. A Regular Employee participating in the Plan will cease to be eligible for Employer Contributions upon ceasing to be a Regular Employee.
- 3.4 Duration of Participation. A Participant will continue to be an Active Participant until Termination of Employment. After Termination of Employment, an Inactive Participant will be a Participant for as long as the Participant has an undistributed Account balance.
- 3.5 Military Service. Notwithstanding any provision of the Plan to the contrary, contributions, benefits, and service credit with respect to Qualified Military Service will be provided in accordance with Code Section 414(u).
- [a] Following a period of Qualified Military Service, Participants who cannot return to active employment due to death or Disability while performing Qualified Military Service shall be treated as having been rehired on the date before death or Disability, and subsequently terminated on the date of death or Disability, for purposes of calculating Employer Contributions under the Plan. If this subsection [a] applies: [i] Employer Contributions will be provided for the period of Qualified Military Service up to the date of death or Disability; and [ii] Matching Contributions shall be based on the average deferral rate of the Employee in the 457(b) plan maintained by the Employer for the lesser of [A] the 12-month period of service with the Employer immediately prior to the Qualified Military Service or [B] the actual length of continuous service with the Employer. All Employees of the Employer who die or become Disabled as a result of performing Qualified Military Service must accrue such benefits on a reasonably equivalent basis.
- [b] If a Participant dies while performing Qualified Military Service, the Participant's Account will become fully vested as if the Participant had resumed employment with the Employer on the day preceding the Participant's death and then terminated employment on account of death.
- [c] Differential Wage Payments:

- [i] An individual receiving a differential wage payment, as defined in Code Section 3401(h)(2), shall be treated as an Employee of the Employer making the payment.
- [ii] The differential wage payment shall be treated as Compensation for purposes of Code Section 415 and any other Code Section that references the definition of Compensation under Code Section 415.
- [iii] The Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

This paragraph [c] applies only if all Employees of the Employer performing Qualified Military Service while on active duty for a period of more than 30 days are entitled to receive differential wage payments on reasonably equivalent terms.

ARTICLE IV. CONTRIBUTIONS

4.1 Employer Contributions.

- [a] Matching Contributions. The Employer shall contribute to the Plan on behalf of the Participant an amount equal to fifty percent of the Participant's contributions to the 457(b) plan maintained by the Employer, taking into account only such Participant contributions up to six percent of the Participant's Earnings. Earnings prior to the date on which an Eligible Employee becomes a Participant in the Plan shall be excluded. Matching contributions shall be allocated on the basis of Earnings paid and Participant contributions made during each payroll period. The percentage limitations will be applied separately to Earnings in each payroll period for which contributions are allocated.
- [b] Non-Elective Contributions. The Employer shall contribute to the Plan on behalf of the Participant an amount equal to a percentage of the Participant's Earnings plus a percentage of Excess Earnings. The percentages of Earnings and Excess Earnings are determined based upon the number of Years of Service the Participant has completed as follows:

Years of Service	Percent of Earnings	Percent of Excess Earnings
Fewer than 5	5%	5%
5 or more Years of Service but fewer than 10	7%	5.7%
10 or more Years of Service but fewer than 15	10%	5.7%
15 or more Years of Service but fewer than 20	13%	5.7%
20 or more Years of Service but fewer than 25	16%	5.7%
25 or more Years of Service	19%	5.7%

Earnings prior to the date on which an Eligible Employee becomes a Participant in the Plan shall be excluded. Non-elective contributions will be allocated on the basis of Earnings paid during each payroll period and, to the extent the Participant's Earnings for the Plan Year exceed the Social Security taxable wage base for the Plan Year, the portion of Excess Earnings paid during each payroll period. Any change in the applicable percentages based on years of service will be effective for the entire payroll period in which the required number of Years of Service is completed.

- [c] The Employer Contributions for the Participant shall be paid by the Employer to the Trustee within 60 days after the last day of the Plan Year.

4.2 Return of Employer Contributions. A contribution by the Employer to the Plan shall be returned to the Employer, at the Employer's discretion, under any of the following circumstances:

- [a] If a contribution is made by the Employer by a mistake of fact, including a mistaken excess contribution, within one year of its payment to the Plan; or
- [b] If qualification of the Plan is denied, within one year after the date of denial of qualification of the Plan.

The Employer shall state by written request to the Trustee the amount of the contribution to be returned and the reason for such return. Such amount shall not include any earnings attributable to the contribution and shall be reduced by any losses attributable to the contribution. Upon sending such request to the Trustee, the Employer simultaneously shall send to the Plan Committee a copy of the request. The Trustee shall return such contribution to the Employer immediately upon receipt of the written request by the Employer. All contributions by the Employer to the Plan are declared to be conditioned upon the qualification of the Plan under Section 401 of the Code.

ARTICLE V. LIMITATIONS ON CONTRIBUTIONS AND ALLOCATIONS

5.1 Definitions. For purposes of Article V, the following terms will be defined as follows:

- [a] “Annual Additions” means the sum of the following amounts credited to a Participant’s Account for the Limitation Year:
 - [i] Employer Contributions;
 - [ii] employee contributions;
 - [iii] forfeitures;
 - [iv] amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer are treated as annual additions to a defined contribution plan. Also, amounts derived from contributions paid or accrued in taxable years ending after December 31, 1985, which are attributable to post-retirement medical benefits, allocated to the separate Account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer are treated as annual additions to a defined contribution plan; and
 - [v] allocations under a simplified employee pension plan.

For this purpose, any excess amount applied under Section 5.2 to reduce Employer Contributions in the Limitation Year will be considered Annual Additions for such Limitation Year. The term “Annual Additions” will not include: [A] a restorative payment (as defined in Section 1.415(c)-(b)(2)(ii)(C) of the Treasury Regulations; [B] the direct transfer of a benefit or employee contributions from a qualified plan to the Plan; [C] an eligible rollover contribution; [D] repayments of loans made to a Participant from the Plan; and [E] repayments of contributions to a governmental plan (as described in Code Section 415(k)(3)), as well as Employer restoration of benefits that are required pursuant to the repayments.

- [b] “Employer” for purposes of this Article, means the Employer that adopts the Plan.
- [c] “Limitation Year” means the 12-month period commencing on January 1 and ending on the following December 31.
- [d] “Compensation” for purposes of limiting Annual Additions and combined benefits and contributions under this Article, means a Participant’s earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the Employer (including, but not limited to, commissions

paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and excluding the following:

- [i] Employer contributions to a plan of deferred compensation to the extent contributions are not included in gross income of the Employee for the taxable year in which contributed;
- [ii] Employer contributions on behalf of an Employee to a Simplified Employee Pension Plan to the extent such contributions are deductible under Section 219(b)(7) of the Code;
- [iii] any distributions from a plan of deferred compensation whether or not includable in the gross income of the Employee when distributed; or
- [iv] other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of a 403(b) annuity contract (whether or not the contributions are excludable from the gross income of the employee).

For purposes of this Article, compensation for a Limitation Year includes only the compensation that is actually paid to the Participant during the Limitation Year and compensation that is includable in the Participant's gross income during the Limitation Year. "Compensation" for purposes of this paragraph shall include Participant salary deferral contributions described in Section 402(g)(3) of the Code, any amounts which are not included in the Participant's gross income by reason of Sections 125 (cafeteria plans) and 457 (deferrals to governmental plans) of the Code, and, for Limitation Years beginning after January 1, 2001, elective amounts that are not includable in the gross income of the Participant by reason of Section 132(f)(4). Deemed Section 125 compensation (within the meaning of Section 1.415(c)-2(g)(6)(ii) of the Treasury Regulations) will not be counted for purposes of determining amounts not included in the Participant's gross income by reason of Section 125 of the Code).

Payments made within two-and-one-half months after a Participant's severance from employment (within the meaning of Code Section 401(k)(2)(B)(i)(I)) will constitute "Compensation" if such payments would have been paid to the Participant prior to and absent his or her severance from employment and if such payments represent:

- [A] Remuneration for services performed by the Participant during the Participant's regular working hours;
- [B] Remuneration for services performed by the Participant outside the Participant's regular working hours;
- [C] Commissions;

[D] Bonuses or similar remuneration; and

[E] Accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if he or she had continued employment.

Payments not described above in [A] through [E] of this paragraph do not constitute “Compensation” even if paid within two-and-one-half months following a Participant’s severance from employment except for payments to an individual not currently performing services for the Employer by reason of Qualified Military Service to the extent such payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer in lieu of entering Qualified Military Service.

- 5.2 Limitation on Annual Additions. To the extent permitted under Treasury Regulation Section 1.415(c)-1 and other guidance issued by the IRS, if the Annual Addition to any Account attributable to all defined contribution plans (including money purchase pension plans, profit sharing plans, and welfare benefit funds of the Employer), would exceed (notwithstanding catch-up contributions permitted under Code Section 414(v)), the lesser of [a] \$40,000, as adjusted cost of living increases under Code Section 415(d), or [b] 100% of such Participant’s Compensation (except that the limit referred to in [b] shall not apply to any contribution for medical benefits after a Participant’s separation from service within the meaning of Code Sections 401(h) or 419A(f)(2) which otherwise would be treated as an annual addition), then the excess amount will be disposed of in accordance with the Employee Plans Compliance Resolution System, as set forth in Revenue Procedure 2018-42 or any superseding guidance.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, the limitation described in Section 5.2 will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short limitation year}}{12}$$

If the Plan is terminated as of a date other than the last day of the Limitation Year, the Plan is deemed to have been amended to change its Limitation Year and the limitation described in Section 5.2 shall be prorated for the resulting short Limitation Year.

- 5.3 Limitation on Combined Benefits and Contributions of All Defined Contribution Plans. This section applies if, in addition to the Plan, the Participant is covered under another qualified pre-approved defined contribution plan maintained by the Employer, a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer, a simplified employee pension, or an individual medical account, as defined in Code Section 415(1)(2), maintained by the Employer, that provides an Annual Addition during any Limitation Year. The Annual Additions that may be credited to a Participant’s Account under the Plan for any such Limitation Year will not exceed the limitation described in Section

5.2 reduced by the Annual Additions credited to a Participant's Account under the other pre-approved defined contribution plans, welfare benefit funds, individual medical accounts and simplified employee pensions for the same Limitation Year. If the Annual Additions with respect to the Participant under other pre-approved defined contribution plans, welfare benefit funds, individual medical accounts and simplified employee pensions maintained by the Employer are less than the limitation described in Section 5.2 and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under the Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the limitation described in Section 5.2. If the Annual Additions with respect to the Participant under such other pre-approved defined contribution plans, welfare benefit funds, individual medical accounts and simplified employee pensions in the aggregate are equal to or greater than the limitation described in Section 5.2, no amount will be contributed or allocated to the Participant's Account under the Plan for the Limitation Year.

Any excess amount attributed to the Plan will be disposed of in the manner described in Section 5.2.

ARTICLE VI. DETERMINATION OF ACCOUNTS AND VESTING

6.1 Determination of Participants' Accounts.

- [a] Participants' Accounts. The Trustee shall maintain an account for each Participant showing the dollar value of his current account in the Trust, as of each valuation date, attributable to any contributions made by the Employer and posted to the Participant's Account and net earnings on such contributions. The Trustee shall distribute, or cause to be distributed, to each Participant at least annually a statement, either in writing or in another format approved by the Plan Administrator, setting forth the current value of such Participant's Account and such other information as the Plan Administrator shall determine.

- [b] Valuation. As of each Valuation Date net earnings, losses, and changes in the fair market value of each separate investment fund available under the Plan will be computed and allocated on an investment fund basis to the Participants in the ratio that the total dollar value of the interest (whether or not vested) of each Participant in each investment fund, including the portions resulting from posted contributions, bears to the aggregate dollar value of all such Participants in each investment fund as of the last previous Valuation Date.

- [c] Allocation of Employer Contributions and Forfeitures. At least annually as of the last day in each Plan Year, and more frequently as the Plan Administrator may determine, the Plan Administrator shall allocate to each Account any amounts contributed by the Employer to the Trust for the period then ended in the manner provided in Article IV. Forfeitures that are used to reduce Employer contributions shall be allocated along with Employer Non-Elective Contributions.

- [d] Suspense Account for Unallocated Forfeitures. In the event that the amount of forfeitures used to reduce the Employer's contributions and to be allocated to any Participant's Account would exceed the annual addition limitations, a separate suspense account shall be established to hold such unallocated forfeitures for any year or years provided that:
 - [i] no Employer Contributions may be made at any time when their allocation would be precluded by Section 415 of the Code;
 - [ii] investment gains and losses and other income are not allocated to the suspense account; and
 - [iii] the amounts in the suspense account are allocated under Subsection [c] as of each allocation date on which forfeitures may be allocated until the suspense account is exhausted.

In the event of Plan termination, the balance of such suspense account may revert to the Employer.

- 6.2 General Rules. A Participant shall have a vested interest in his or her Account attributable to Employer Contributions in accordance with the following vesting schedule:

Number of Years of Service	Vested Percentage
Less than 3	0%
3 or more	100%

Notwithstanding the above, a Participant's entire Account will become fully vested and nonforfeitable if he or she reaches Normal Retirement Age, dies or suffers a Disability while employed with the Employer.

- 6.3 Full Vesting Upon Plan Termination. Upon the termination or partial termination of the Plan, the accounts of all Participants affected, as of the date such termination or partial termination occurred, shall be fully vested. The temporary suspension of Employer contributions shall not constitute a termination or partial termination of the Plan and shall not require full vesting.
- 6.4 Service Included in Determination of Vested Interest. All Years of Service with the Employer will be included for the purpose of determining a Participant's vested interest.
- 6.5 Amendment of Vesting Schedule. Notwithstanding any right of the Employer reserved hereunder to amend the Plan, no amendment to the Plan may have the effect of decreasing a Participant's vested interest in the Plan as of the later of the date the amendment is adopted or becomes effective.

ARTICLE VII. DISTRIBUTIONS AND WITHDRAWALS

7.1 Distribution from the Trust upon Retirement or Termination of Employment. Upon a Participant's Retirement or Termination of Employment, the Participant's vested Account will be distributable to the Participant, or, in the case of death, to the Participant's beneficiary. The distributable amount will be determined as of the Valuation Date coincident with or next preceding the distribution. The Participant must consent to any distribution of the Account balance prior to Normal Retirement Age.

7.2 Time and Form of Distributions from the Trust.

- [a] Distributions to a Participant from the Trust will be made as soon as practicable following the Participant's Termination of Employment and, if applicable, the Participant's consent to distribution. Notwithstanding any provision of the Plan to the contrary, if not distributed earlier, the Participant's vested Account will commence to be distributed on the Participant's Required Beginning Date.
- [b] All distributions from the Participant's vested Account will be made in one or more of the following forms:
 - [i] Lump sum distribution;
 - [ii] Partial lump sum distributions; or
 - [iii] Installment distributions on a monthly, quarterly or annual basis, provided such payments are equal to or greater than required to satisfy the minimum distribution requirements of Section 7.6.

The Participant will be provided with the election to choose the distribution form(s) in which the Participant will receive his or her Plan benefits. If no election is made by the Participant, the Participant's vested Account will be distributed in a single lump sum distribution.

7.3 Death.

- [a] Payment of Death Benefits. If a Participant dies before receiving distribution of his entire vested Account, any unpaid balance will be distributed to the Participant's beneficiary in the distribution form elected by the Participant (or if no election is made by the Participant, in a single lump sum payment) as soon as practicable after the Participant's death. The distributable amount will be determined as of the Valuation Date coincident with or next preceding the distribution. Provided, however, that if the Participant's surviving Spouse is the Participant's sole beneficiary, the surviving Spouse may elect to defer distributions to a date no later than December 31 of the calendar year in which the Participant would have attained age 70 ¹/₂.
- [b] Beneficiary Designation.

- [i] The beneficiary of each married Participant will be the Participant's surviving Spouse unless the Spouse consents in writing or, if permitted by the Plan Administrator, electronically to the designation of another beneficiary or beneficiaries. The beneficiary of each Participant who is a party to a civil union will be the Participant's Domestic Partner unless the Domestic Partner consents in writing or, if permitted by the Plan Administrator, electronically to the designation of another beneficiary or beneficiaries. The beneficiary designation of a married Participant or a Participant who is a party to a civil union may be changed from time to time; provided, however, that the Participant may not name a beneficiary other than the Participant's Spouse or Domestic Partner without the written consent of the Spouse or Domestic Partner, or, if permitted by the Plan Administrator, electronically. The consent must acknowledge the effect of the election and must be witnessed by a Plan representative designated by the Plan Administrator or by a notary public.
- [ii] Subject to the Spousal and Domestic Partner consent rules as specified in Section 7.3(b)(i) the Participant will designate a beneficiary to receive any benefits payable upon his or her death on the form prescribed by and delivered to the Plan Administrator. Subject to the spousal consent and Domestic Partner consent rules as specified in Section 7.3[b][i], the Participant will have the right to change or revoke a designation at any time by filing a new designation or notice of revocation with the Plan Administrator.
- [iii] If a Participant fails to designate a beneficiary before his or her death, or if no beneficiary survives the Participant, the Plan Administrator will direct the Trustee to pay the benefit to the surviving Spouse or the Participant's surviving Domestic Partner at the date of the Participant's death. If the Participant does not have a surviving Spouse or surviving Domestic Partner at the date of the Participant's death, or if a Participant fails to designate a beneficiary, or if for any reason a designation is legally ineffective, or if all beneficiaries predecease or die simultaneously with the Participant, distribution will be made to the Participant's estate.

7.4 Rollover Distributions.

- [a] Direct Rollovers. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this part, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover.
- [b] Definitions.

- [i] Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); any hardship distribution; the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities); and any other distribution(s) that is reasonably expected to total less than \$200 during a year. A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Sections 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- [ii] Eligible Retirement Plan. An Eligible Retirement Plan is an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the Plan, an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), or a qualified plan described in Code Section 401(a), that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement 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 relation order, as defined in Code Section 414(p). If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a designated Roth account, an Eligible Retirement Plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

- [iii] Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving Spouse or surviving Domestic Partner and the employee's or former employee's Spouse or former Spouse who is the alternate payee

under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the Spouse or former Spouse. Solely with respect to an eligible retirement plan which is an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b), a distributee also will include the employee's or former employee's surviving Domestic Partner or non-Spouse beneficiary.

- [iv] Direct Rollover. A direct rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

7.5 Withdrawals While Employed. Withdrawals of vested Accounts of Active Participants are not permitted.

7.6 Required Distributions From the Trust.

- [a] Minimum Distributions. Notwithstanding any other provisions of this Article, the following distribution rules will apply:

- [i] General Rules:

- [A] The Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the regulations under Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G).

- [B] Limits on Distribution Periods. As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may be made in installments over a period not exceeding one of the following periods:

- (i) the life of the Participant;
- (ii) the joint lives of the Participant and a Designated Beneficiary;
- (iii) a period certain not extending beyond the life expectancy of the Participant; or
- (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a Designated Beneficiary.

- [ii] Time and Manner of Distribution.

- [A] Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

[B] Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire vested Account will be distributed, or minimum distributions will begin to be distributed, no later than as follows:

- (i) 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 at the option of the surviving Spouse by a date no later than December 31 of the calendar year in which the Participant would have attained age 70 $\frac{1}{2}$.
- (ii) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary (including the surviving Domestic Partner of a Participant) will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (iii) 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.
- (iv) 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 are required to begin, Section 7.6[a][ii](B), other than Section 7.6[a][ii](B)(i), will apply as if the surviving Spouse were the Participant.

For purposes of Section 7.6[a][ii](B) and Section 7.6[a][iv], unless Section 7.6[a][ii](B)(iv) applies, distributions are considered to begin on the Participant's required beginning date. If Section 7.6[a][ii](B)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 7.6[a][ii](B)(i).

[C] Forms of Distribution. Unless the Participant's interest is distributed in a single-sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 7.2(b)(ii) or (iii), provided that all distributions shall be made

no less rapidly than provided in Sections 7.6[a][iii] and 7.6[a][iv].

[iii] Required Minimum Distributions During Participant's Lifetime.

[A] 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:

- (i) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- (ii) 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 Treasury Regulation Section 1.401(a)(9)-9, Q&A-3, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.

[B] Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under Section 7.6[a][iii] beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

[iv] Required Minimum Distributions After Participant's Death.

[A] Death on or after Date Distributions Begin.

- (i) 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:

- 1) 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.
 - 2) 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.
 - 3) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, the Participant's surviving Domestic Partner or the Designated Beneficiary's remaining life expectancy is calculated using the age of the surviving Domestic Partner or Designated Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of the 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.

[B] Death Before Date Distributions Begin.

- (i) 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 7.6[a][iv](A).

- (ii) 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.
- (iii) 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 7.6[a][ii](B)(i), Section 7.6[a][iv](B) will apply as if the surviving Spouse were the Participant.

[v] Definitions.

- [A] Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving Spouse or surviving Domestic Partner) as the beneficiary of the Participant's Account under the Plan and who is the designated beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4.
- [B] 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 7.6[a][ii](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.

[C] Life Expectancy. Life expectancy as computed by use of the single life table in Treasury Regulation Section 1.401(a)(9)-9, Q&A-1.

[D] Participant's Account Balance. The Account balance 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.

7.7 Withholding Taxes. The Plan Administrator and the Trustee may withhold from any payment under the Plan any taxes required to be withheld with respect to benefits under the Plan and any sum the Plan Administrator or Trustee may reasonably estimate as necessary to cover any taxes for which they may be liable and which may be assessed with respect to a Participant's benefits under the Plan.

7.8 Forfeiture of Forfeitable Account on Termination of Employment. If a Participant's employment is terminated for any reason other than attainment of Normal Retirement Age while any part of the Participant's Account in the Trust is forfeitable, then that portion of the Participant's Account that is forfeitable will be forfeited by the Participant on the earlier of the date on which the Participant receives a distribution of the vested Account or the 90th day after Severance from Service. If the value of the Participant's vested Account balance is zero upon the Participant's termination of employment, the Participant will be deemed to have received a distribution of the vested Account balance immediately upon termination of employment. A rehired Participant may not repay any portion of any distribution from the Plan made on account of termination of employment. Any amount forfeited will remain in the Trust and will be allocated to reduce future Employer Non-Elective Contributions to the extent forfeitures are not used to pay Plan expenses.

ARTICLE VIII. PLAN ADMINISTRATOR AND PLAN COMMITTEE

8.1 Appointment of the Plan Administrator and Plan Committee.

- [a] The management of the Plan shall be vested in a Plan Administrator who shall be the General Manager of Platte River Power Authority.
- [b] The Plan Administrator will designate the maximum number of members the Plan Committee will have and will appoint the members of the Plan Committee. Each member will hold office until resignation, death, or removal by the Plan Administrator. If the Plan Administrator fails to appoint the Plan Committee, the Plan Administrator will be the Plan Committee. A member of the Plan Committee may resign at any time by giving notice to the Plan Administrator effective as stated in such notice, otherwise upon receipt of such notice. At any time, any member of the Plan Committee may be removed by the Plan Administrator without cause. As soon as practical following the death, resignation or removal of a member of the Plan Committee, the Plan Administrator, in his or her discretion, may appoint a successor. Notice of the appointment of a successor member of the Plan Committee will be given by the Plan Administrator to the Trustee and to the Employer.
- [c] Any person may serve in more than one capacity, including service as the Plan Administrator and Plan Committee member.
- [d] In the event that claims are made against the Plan Administrator or members of the Plan Committee related to the performance of their duties and within the scope of their employment, the Employer is responsible for the costs of defense and the payment of judgments and settlements in the manner provided by Section 24-10-110, C.R.S.

8.2 Organization and Operation of Offices of the Plan Administrator and Plan Committee. The Plan Administrator and Plan Committee may adopt such procedures as each deems desirable for the conduct of its affairs and may appoint or employ a secretary or other agents, any of whom may be, but need not be, an officer or an Employee of the Employer. Any agent may be removed at any time by the person appointing or employing him.

8.3 Reporting and Disclosure.

- [a] General Requirements. The Plan Administrator will be responsible for all applicable reporting and disclosure requirements of law.
- [b] Inspection of Documents. The Plan Administrator is to make available for inspection copies of the Plan, and the agreements under which the Plan was established or is operated. Such documents will be available for examination by any Participant or beneficiary in the principal office of the Plan Administrator and in such other places as may be necessary to make available all pertinent information to all Participants.

- [c] Notice of Rollover Treatment. When a qualifying rollover distribution is made, the Plan Administrator will provide to the recipient an explanation in writing or in another format , that the distribution will not be taxed currently to the extent that it is transferred to another qualified plan within 60 days after the date on which the recipient received the distribution and a description of the income averaging and capital gains provisions, if applicable.

8.4 Duties and Powers of Plan Administrator. Subject to such appeal rights as are set forth herein, the Plan Administrator shall have the administrative powers and duties specified in the Plan, which shall include but not be limited to the following powers and duties:

- [a] Interpretation of Plan. To interpret the Plan provisions and resolve all questions relating to the administration of the Plan, including the power to determine the rights or eligibility of Employees and Participants and their beneficiaries, and the amounts and values of their respective interests;
- [b] Rules. To adopt such rules and regulations as the Plan Administrator may deem reasonably necessary for the proper and efficient administration of the Plan and consistent with its purposes;
- [c] Enforcement. To enforce the Plan in accordance with its terms and with the Plan's rules and regulations and to consider and interpret the Plan, and settle and discharge disputes arising thereunder;
- [d] Claims. To make initial determinations of claims for benefits, or claims relating to eligibility to participate in the Plan
- [e] Records. To keep a record of all of Plan Administrator and Plan Committee proceedings and keep all such books of account, records, and other data as may be necessary or advisable in its judgment for the administration of the Plan and Trust, including records to reflect the affairs of the Plan, to determine the amount of vested interests of the respective Participants, and to determine the amount of all benefits payable under the Plan. The Plan Administrator, Plan Committee and the Employer may rely on and will not be liable because of any information that an Employee provides, either directly or indirectly. Subject to the requirements of law, any person dealing with the Plan Committee may rely on, and will incur no liability in relying on, a certificate or memorandum in writing signed by the Plan Committee as evidence of any action taken or resolution adopted by the Plan Committee.
- [f] Additional Powers. The Plan Administrator shall administer the Plan in accordance with its terms, and shall have all powers necessary to carry out the provisions of the Plan not otherwise reserved to the Employer, the Plan Committee or the Trustee.

8.5 Duties of Plan Committee. The Plan Committee shall have the administrative powers and duties specified in the Plan, which shall include but not be limited to the following powers and duties:

[a] Investment Duties

- [i] Prepare and maintain an investment policy statement.
- [ii] Select the Investment Consultant. Annually, review the fees and performance of the services provided by the Investment Consultant.
- [iii] Prudently select and provide investment options with different and distinct risk/return profiles so each Participant has the ability to diversify the investment of his or her account.
- [iv] Monitor and retain or replace investment managers and/or investment funds.
- [v] Review expenses associated with the Plan for reasonableness.
- [vi] Ensure against transactions which are prohibited pursuant to applicable law.

[b] Administrative Duties

- [i] Direct the Trustee concerning payments to be made out of the Trust.
- [ii] Schedule and coordinate periodic external audits (application of agreed upon procedures).
- [iii] Establish reasonable written procedures for determining the qualification status of a domestic relations order (QDRO) or other legal document served on the Plan.
- [iv] Arrange participant education and communications.
- [v] Participate in the selection, monitoring, and replacement of third-party advisors to the Plan, such as attorneys, consultants, actuaries, recordkeepers, and other providers of Plan's services.
- [vi] Make adjustments or correct defects under the Plan in a uniform and nondiscriminatory manner.
- [vii] Prepare restated Plan documents for changes in Plan design or applicable law and regulations, and submit the documents to the Plan Administrator and Board of Directors for adoption.

8.6 Claims Procedure.

- [a] Filing and Initial Determination of Claim. Any Participant, beneficiary, or any duly authorized representative may file a claim for a Plan benefit to which the claimant believes that he or she is entitled. Such a claim must be in writing or in another format approved by the Plan Administrator and delivered to the Plan Administrator in person or by certified mail, postage prepaid. Within 90 days after receipt of such claim, the Plan Administrator will send to the claimant by certified mail, postage prepaid, notice of the granting or denying, in whole or in part, of such claim, unless special circumstances require an extension of time for processing the claim. In no event may the extension exceed 90 days from the end of the initial period. If such extension is necessary, the claimant will be given a notice in writing or in another format approved by the Plan Administrator to this effect prior to the expiration of the initial 90-day period. The Plan Administrator will have full discretion to deny or grant a claim in whole or in part. If notice of the denial of a claim is not furnished in accordance with this paragraph [a], the claim will be deemed denied and the claimant will be permitted to exercise his or her right of review pursuant to paragraphs [b] and [c] of this section.

- [b] Request for Review of Claim Denial. Within 60 days after receipt by the claimant of written notification of the denial in whole or in part of the claim, the claimant or the claimant's duly authorized representative, upon application in writing or in another format approved by the Plan Committee to the Plan Administrator in person, by certified mail, postage prepaid, or in another format approved by the Plan Committee, may request a hearing before the Plan Committee for a review of such denial. Upon receipt of the request for a hearing, the Plan Administrator will notify the Plan Committee and the Employer of the request.

- [c] Review by Plan Committee. Upon receipt of notice of a request for a hearing, the Plan Administrator shall set the date and time for the hearing, but shall not participate in the Plan Committee's review. In conducting the hearing, the Plan Committee shall consider any written statement, testimony or other evidence presented by the claimant or the authorized representative in support of the claim. The Plan Committee shall give the claimant and the claimant's authorized representative reasonable access to all pertinent documents necessary for the preparation of the claim.
 - [i] The Plan Committee shall, within 60 days after receipt of such appeal, conduct a hearing and provide such claimant a written determination which shall be delivered or mailed to the claimant by certified mail, postage prepaid, to the claimant's last known address. Provided, however, in the event that special circumstances require an extension of time, the Plan Committee shall conduct a hearing and provide the claimant a written determination of the Plan Committee's decision not later than 120 days after receipt of such appeal but, in such event, the Plan Committee shall furnish the claimant, within 60 days after the Plan Committee's receipt of

such appeal, written notification of the extension explaining the circumstances requiring such extension.

- [ii] The decision of the Plan Committee shall be conveyed in writing to the claimant and shall include the specific reasons for the decision presented in a manner calculated to be understood by the claimant, and shall contain references to the pertinent Plan provisions on which the decision is based. The decision of the Plan Committee shall be final and conclusive. If notice of the decision of the Plan Committee is not furnished in accordance with this paragraph [c], the claim will be deemed denied and the claimant will be permitted to exercise his or her right to legal remedy pursuant to paragraph [d] of this section.

- [d] Legal Remedy. After exhaustion of the claims procedure as provided under the Plan, nothing will prevent any person from pursuing any other legal remedy.

8.7 Qualified Domestic Relations Orders. The Plan Committee will establish reasonable procedures for determining the qualification status of a domestic relations order pursuant to Section 14-10-113(6), C.R.S. Such procedures:

- [a] Will be in writing;
- [b] Will provide to each person specified in a domestic relations order as entitled to payment of Plan benefits notification of such procedures promptly upon receipt of the order by the Plan; and
- [c] Will permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee.

Within a reasonable period of time after receipt of such order, the Plan Administrator will determine if such order is a qualified domestic relations order and will notify the Participant and each alternate payee of such determination. During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined, the Plan Administrator shall place an administrative hold on the Account to prevent any distribution of the assets. Should the domestic relations order be determined to not be a qualified domestic relations order under the Plan the Plan Administrator shall provide the Participant and Alternate Payee (or requesting third party) with information about why the order is not acceptable and those steps which must be taken to remediate the order to make it an acceptable domestic relations order under the Plan. An administrative hold on a Participant's Account under this section shall be released at the earliest of (1) the date the assigned assets have been transferred to the Alternate Payee's account, (2) the date a court order is received identifying that the assets in the account have been assigned to the Participant, (3) 18 months after the date the administrative hold was established, or (4) the date the court issues a notice of adverse interest or a joinder on the account. A former Spouse and a former Domestic Partner may be treated as a

Spouse or the surviving Spouse to the extent required under a qualified domestic relations order satisfying the requirements defined in Code §414(p).

ARTICLE IX. POWERS AND DUTIES OF THE TRUSTEE

9.1 Investment of Plan Assets. The duty of the Trustee is to hold in Trust the funds it receives. Except as otherwise provided in Section 9.2, the Trustee will have exclusive authority and discretion to manage and control the assets of the Plan and to manage, invest, and reinvest the Trust and the income from it under this Article, without distinction between principal and income. The Trustee will make payments and distributions from the Trust in accordance with the terms of the Plan and instructions of the Plan Committee. The Trustee will be responsible only for sums that it actually receives as Trustee plus net gains on such amount.

9.2 Participant Directed Investment.

[a] General Rules. Each Participant may direct the Trustee's investment of his or her Account in investments or categories of investments permitted by law and in accordance with the rules and procedures for Participant investment direction established by the Plan Committee and Trustee. Such rules may specify the percentage of a Participant's Account that may be invested as designated, any portion of a Participant's Account that will remain subject to investment direction by the Trustee, and whether a Participant may designate investment categories as provided in paragraph [c] below. The Trustee is under no duty to question any direction by a Participant or his or her duly authorized agent with respect to investments, or to make suggestions to the Participant or his or her duly authorized agent with respect to investments. If a Participant fails to direct the Trustee as to the investment of any portion of his or her Account, that portion of his or her Account will be invested in accordance with the default investment alternatives established by the Plan Committee, or, if none, at the Trustee's discretion until the Trustee receives effective investment directions. The right to direct investments under this section will be the sole and exclusive investment power granted to Participants with respect to the Trust. The exercise of investment direction by a Participant will not cause the Participant to be a fiduciary solely by reason of such exercise, and neither the Trustee nor any other fiduciary of the Plan will be liable for any loss, or by reason of any breach, that results from exercise of investment direction by a Participant.

[b] Investment Categories. The Trustee will only offer investment options designated by the Plan Committee. Investment categories may include fixed income obligations of a secure nature, such as savings accounts, certificates of deposit, and fixed income government and corporate obligations. The investment categories also may include common stock, real property, commercial paper, preferred stocks, mutual funds, or other securities, rights, obligations, or property, real or personal, including shares or certificates of participation issued by regulated investment trusts and shares or units of participation in qualified common trust funds or pooled funds. Accounts in investment categories offered by the Trustee may be commingled.

Investment categories may not include collectibles within the meaning of Code Section 408(m).

- [c] Investment Specifications. Each Participant may designate the investment of his or her Account, subject to rules established by the Trustee.
 - [d] Liquidation and Reinvestment. Pursuant to rules established by the Trustee, any designation of investment by a Participant on its effective date will cancel any prior designations of that Participant with respect to future contributions. Any Participant may instruct, on forms provided by the Trustee, that the Trustee, on the date designated on such form or as soon thereafter as practical, liquidate the Participant's interest in any category of investment and reinvest the proceeds of such liquidation in any other category designated by the Participant.
 - [e] Investment Right of Trustee. Notwithstanding any instruction from any Participant for investment of funds as provided in this section, the Trustee will have the right to hold uninvested or invested in short-term fixed income investments any funds intended for investment or reinvestment as otherwise provided in this section from time to time and for such time as the Trustee may determine to be advisable.
 - [f] Expenses. The compensation or fees of accountants, counsel, and other specialists as well as any costs of administering the Plan, unless paid by the Employer, will be charged against the Participants' Accounts.
- 9.3 Records and Accounts of the Trustee. The Trustee will keep all such records and accounts that may be necessary in the administration and conduct of the Trust. The Trustee's records and accounts will be open to inspection by the Employer, Plan Administrator, and the Plan Committee at all reasonable times during business hours. All income, profits, recoveries, contributions, forfeitures, and any and all moneys, securities, and properties of any kind at any time received or held by the Trustee will be held for investment purposes as a commingled trust fund. Separate accounts or records may be maintained for operational and accounting purposes, but no such account or record will be considered as segregating any funds or property from any other funds or property contained in the commingled fund, except as otherwise provided.
- 9.4 Administrative Powers of the Trustee. Subject to the requirements imposed by law, the Trustee will have all powers necessary or advisable to carry out the provisions of the Plan and Trust and all inherent, implied, and statutory powers now or subsequently provided by law, including specifically the power to do any of the following:
- [a] To invest or reinvest any and all money or property of any description at any time held by the Trustee and constituting Plan assets without previous application to, or subsequent ratification of, any court, tribunal or commission, or any federal or state governmental agency. Such investment may be in real property and all interests in real property, in bonds, notes, debentures, mortgages, commercial paper, preferred stocks, common

stocks, or other securities, rights, obligations, or property, real or personal, including shares or certificates of participation issued by regulated investment companies or regulated investment trusts, shares or units of participation in qualified common trust funds, in qualified pooled funds, or in pooled investment funds of an insurance company qualified to do business in the state, in life insurance, group or individual term insurance, or endowment contracts and in certificates of deposit or savings accounts in a bank or other savings institution supervised by the United States or a state, and if the Trustee is a bank or similar financial institution supervised by the United States or a state, in its own deposits, savings accounts, and certificates of deposit;

- [b] To cause any securities or other property to be registered and held in its name as Trustee, or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer;
- [c] To sell, grant options to sell, exchange, pledge, encumber, mortgage, deed in trust, or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust on such terms and for such property or cash, or part cash and credit, as it may deem best; to retain, hold, maintain, or continue any securities or investments that it may hold as part of the Trust as long as it may deem advisable; and generally, in all respects, to do all things and exercise each and every right, power, and privilege in connection with and in relation to the Trust as could be done, exercised, or executed by an individual holding and owning such property in absolute and unconditional ownership;
- [d] To abandon, compromise, contest, and arbitrate claims and demands; to institute, compromise, and defend actions at law (but without obligation to do so); in connection with such powers, to employ counsel as the Trustee deems advisable; and to exercise such powers all at the risk and expense of the Trust;
- [e] To borrow money for the Trust on the terms and conditions the Trustee deems advisable, and to secure repayment by the mortgage or pledge of any assets of the Trust;
- [f] To vote in person or by proxy any shares of stock or rights held in the Trust; to participate in and to exchange securities or other property in reorganization, liquidation, or dissolution of any corporation, the securities of which are held in the Trust;
- [g] To pay any amount due on any loan or advance made to the Trust, to charge against and pay from the Trust all taxes of any nature levied, assessed, or imposed upon the Trust, and to pay all reasonable expenses and attorney fees necessarily incurred by the Trustee with respect to any of the foregoing matters; and

- [h] For investment purposes, the Trustee may commingle the assets of the Trust with those of any other trust established by the Employer and qualified under Code Section 501(a), provided that adequate records segregating the assets of the Trust from those of another trust are maintained.
- 9.5 Advice of Counsel. The Trustee may consult with legal counsel, who may be counsel for the Employer or Trustee's own counsel, with respect to the meaning or construction of the Plan and Trust or Trustee's obligation or duties. The Trustee will be protected from any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of counsel, to the extent permitted by law.
- 9.6 Appointment, Resignation, Removal, and Substitution of Trustee. The Plan Administrator will appoint a Trustee or Trustees, each of which will hold office until resignation or removal by the Plan Administrator. The Trustee may resign at any time upon 90 days written notice to the Plan Administrator. Upon resignation of the Trustee, the Plan Administrator will appoint a successor Trustee that will have the same powers and duties as are conferred upon the Trustee appointed under the Plan. The resigning Trustee will deliver to its successor Trustee all property of the Trust, less a reasonable amount necessary to provide for its compensation, expenses, and any taxes or advances chargeable or payable out of the Trust. If the Trustee is an individual, death will be treated as a resignation, effective immediately. If any corporate Trustee at any time is merged, or consolidated with, or sells or transfers substantially all of its assets and business to another corporation, whether state or federal, or is reorganized or reincorporated in any manner, then the resulting or acquiring corporation will be substituted for the corporate Trustee without the execution of any instrument and without any action on the part of the Employer, Plan Administrator, any Participant or beneficiary, or any other person having or claiming to have an interest in the Trust or under the Plan.

ARTICLE X. PLAN ADMINISTRATION

- 10.1 Participants to Furnish Required Information. The provision of the Plan respecting any payment thereunder are conditional upon the Participant and beneficiary promptly furnishing true, full and complete information as the Plan Administrator may request for purposes of administering the Plan. Such information shall include the age and marital or civil union status of each Participant and beneficiary. The Employer, the Plan Administrator, Plan Committee, and anyone involved in the administration of the Plan shall be entitled to rely upon any certification, statement or representation made by an Employee, Participant, or beneficiary, and shall not be liable on account of any act or failure to act in reliance thereon. Any such certification, statement, or, representation furnished shall be binding upon the person furnishing the same; but it shall not be binding upon and may be contested by, the Employer, the Plan Administrator, the Plan Committee, or any other person involved in the administration of the Plan.
- 10.2 Employer Obligation. The adoption and maintenance of the Plan will not be deemed to constitute a contract between the Employer and any Employee, Participant, or beneficiary nor to be a consideration for, or an inducement or condition of, the employment of any person. Nothing in the Plan will be deemed to give any Employee or Participant the right to be retained in the employ of the Employer, or to interfere with the right of the Employer to discharge any Employee or Participant at any time, nor will it be deemed to give the Employer the right to require the Employee or Participant to remain in its employ, nor will it interfere with the right of any Employee or Participant to terminate employment at any time. In adopting the Plan, the Employer makes no representations as to the amount of the contribution that it will make for any year other than as set forth in the Plan. The Employer assumes no liability or responsibility for direct payment of benefits. All benefits payable under the Plan will be paid or provided solely from the Plan assets.
- 10.3 Benefits Payable to Minors and Persons Declared Legally Incompetent. Whenever any person entitled to payments under the Plan shall be a minor or declared legally incompetent by a court of law, the Plan Administrator may direct all or any portion of such payments to be made to the duly-appointed guardian, conservator or other duly-appointed legal representative of such person. The decision of the Plan Administrator to direct such payments will, in each such case, be final and binding upon all persons, and the Plan Administrator shall not be obliged to see to the proper application or expenditure of any payments so made. Any payment made pursuant to the power conferred upon the Plan Administrator shall operate as a complete discharge of the obligations of the Trustee, the Plan Administrator and the Employer.
- 10.4 Notification of Mailing Address. Each Participant and beneficiary entitled to benefits shall file with the Trustee, in the manner designated by the Trustee, his or her address and each change of address. Any payment hereunder and any communication addressed to a Participant, former Participant, or beneficiary at his last address filed with the Trustee (or, if no such address has been filed, then at his last address as indicated on the records of the Employer) shall be binding

on such person for all purposes of the Plan, and neither the Plan Administrator nor the Trustee, nor the Employer, shall be obligated to ascertain the receipt of such payment.

- 10.5 Failure to Locate Participant. If the Plan Administrator, for any reason, is in doubt as to whether payments are being received by the person entitled thereto, he or she may take reasonable steps to locate the Participant or beneficiary. If the Plan Administrator is not furnished with satisfactory evidence of such person's proper mailing address, or with evidence of his death, and the Plan Administrator is unable to find any person to whom payment is due under the provisions of the Plan within five years of the date such payment of benefit was scheduled to have commenced, all retirement income and other benefit payments due shall be forfeited.
- 10.6 Evidence of Survival. If the Trustee cannot make payment of any amount to, or on behalf of, a Participant within five years after such amount becomes payable because the identity or whereabouts of such Participant cannot be ascertained, the Trustee, at the end of such five-year period, may direct that all unpaid amounts that would have been payable to or on behalf of the Participant will be paid to the legal Spouse or Domestic Partner of the Participant if found and living at such time, or if the legal Spouse or Domestic Partner cannot be found or is not living at such time, in equal shares to such of the children of the Participant who can be found and are living at such time, or if none of the children can be found or if none are living at such time, to such other relative or relatives of the Participant as the Trustee may deem proper.
- 10.7 Data and Information for Benefits. All persons claiming benefits under the Plan must furnish to the Plan Administrator or its designated agent documents, evidence, or information the Plan Administrator or agent considers necessary or desirable for the purpose of administering the Plan; and each person must furnish such information promptly and sign documents the Plan Administrator or its agent may require to be signed before any benefits become payable under the Plan. No determination of a fact shown by the official employment records of an Employer will be made contrary to the records unless those records are clearly proved to be erroneous as to such fact. Any determination made by the Plan Administrator within the scope of his or her authority will be conclusive and binding on all persons having an interest in the Plan.
- 10.8 Effect of A Mistake. In the event of a mistake or misstatement as to the eligibility, participation, or service of any Participant, or the amount of payments made or to be made to a Participant or beneficiary, the Plan Administrator will, if possible, cause payment to be withheld or accelerated or otherwise make adjustment of such amounts of payments as will in the Plan Administrator's sole judgment result in the Participant or beneficiary receiving the proper amount of payments under the Plan.
- 10.9 Nonalienation of Benefits. Except for assignments for child support purposes as provided for in Sections 14-10-118(1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, and except for income assignments for child support purposes pursuant to Section 14-14-111, C.R.S., for writs of garnishment that

are the result of a judgment taken for arrearages for child support or for child support debt, and for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to Section 14-10-113(6), C.R.S., none of the moneys, funds, individual accounts, or other benefits specified in the Plan shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process.

ARTICLE XI. TERMINATION AND AMENDMENTS

- 11.1 Termination of Plan. The expectation of Employer is to continue the Plan indefinitely, but the continuance of the Plan is not assumed as a contractual obligation by the Employer, and the right is reserved to the Employer, by action of its Board of Directors, to terminate the Plan in whole or in part at any time. Upon the termination of the Plan until all benefit liabilities accrued as of the date of the Plan termination have been satisfied, no part of the Plan assets shall revert to the Employer.
- 11.2 Amendments to Plan. Subject to the provisions of Section 6.5, the Plan may be amended by the Employer in its discretion by resolution of the Board of Directors except that under no condition shall such amendment result in, or permit, the return or repayment to the Employer of any property held or acquired by the Trustee hereunder or the proceeds thereof, or result in, or permit, the distribution of any such property for the benefit of anyone other than the Participants and their beneficiaries. The Plan may not be amended to change the duties or responsibilities of the Trustee without the Trustee's written consent. Any permitted amendment may be made retroactively which, in the judgment of the Plan Committee, is necessary or advisable, and which is allowed by law. Each amendment of the Plan shall be made in writing and shall state the date to which it is either retroactively or prospectively effective.
- 11.3 Vesting and Distribution Upon Plan Termination. If the Plan is terminated the assets of the Plan will be distributed to the Participants and beneficiaries of the Plan according to the distribution provisions of the Plan.
- 11.4 Successor Employer. Unless the Plan has been terminated, a successor to the business of the Employer, by whatever form or manner resulting, may continue the Plan by executing appropriate documents, and a successor will succeed to all the rights, powers, and duties of the Employer. The employment of any Employee who is continued in the employ of the successor will not be deemed to have been terminated or severed for any purpose under the Plan.

ARTICLE XII. MISCELLANEOUS

- 12.1 Text to Control. The headings of articles and sections are included solely for convenience of reference. If any conflict between any heading and the text of the Plan exists, the text shall control.
- 12.2 Severability. If any provision of the Plan is illegal or invalid for any reason, the illegality or invalidity will not affect the remaining provisions. On the contrary, the remaining provisions will be fully severable, and the Plan will be construed and enforced as if the illegal or invalid provisions never had been inserted in the agreement.
- 12.3 Jurisdiction. The Plan will be construed and administered under the laws of the State of Colorado when the laws of that jurisdiction are not in conflict with federal substantive law.

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IN WITNESS WHEREOF, the Employer has caused this instrument to be executed by their duly authorized officers as of December 6, 2018.

EMPLOYER

ATTEST:

PLATTE RIVER POWER AUTHORITY

Secretary

By: _____

Title: _____ General Manager _____

Date: _____

**ICMA-RC
Trustee**

By: _____

Title: _____

Date: _____



Platte River

Power Authority

Estes Park • Fort Collins • Longmont • Loveland

Memorandum

Date: November 28, 2018
To: Board of Directors
From: Joe Wilson, General Counsel
Caroline Schmiedt, Deputy General Counsel
Paul Crosby, Manager of Operations Technology & CIP
Subject: **Fiber Management Intergovernmental Agreement**

Platte River constructed a fiber optic system within and connecting the owner communities for purposes of electric operations. Pursuant to Resolution No. 21-97, excess fiber was installed in the network because the incremental costs of installing additional fiber were insignificant relative to the costs of installing the fibers necessary for Platte River communications. Upon completion of the fiber network Platte River transferred the excess fibers in the Longmont local loop to Longmont, but retained ownership of the other local loops and leased dark fiber for the benefit of the three owner communities that did not take title to the excess fibers. See Resolution 09-98. Through Resolution No. 16-17, the board adopted a fiber optic accounting policy that sets forth the financial responsibility of Platte River for the fiber network going forward.

To enable the owner communities to take ownership and control of the local fiber optic loops, four resolutions were approved by the board at its September 27, 2018 meeting. Resolution Nos. 14-18, 15-18 and 17-18 authorize the General Manager to transfer title of the local fiber optic loops to Estes Park, Fort Collins and Loveland respectively. Resolution No. 16-18 authorizes the general manager to complete the full transfer of the local loop assets by specifically including transfer of associated assets to Longmont.

A condition precedent to the transfer of local loop assets to the owner communities is the execution of an intergovernmental agreement addressing fiber management. The attached Fiber Management IGA has been reviewed by staff members of the owner communities following a series of meetings and discussions with Platte River staff. It defines the rights and obligations of the parties pertinent to the continued operations and maintenance of the loop fiber and contains protocols applicable to all parties that are accessing the fiber assets. The Fiber Management IGA provides for the creation of two committees to be composed of representatives of the parties – one committee to address technical issues and the other an executive committee with policy responsibility. The initial set of protocols included in the Fiber Management IGA reflect the efforts to date by staff members likely to compose the technical committee. The protocols will be further developed to provide more detail regarding fiber system standards and system-wide fiber optic documentation. As set forth in the IGA, the protocols will be reviewed and updated periodically by the technical committee.

Upon request, Platte River will continue to lease excess fiber on the local loop for the benefit of the requesting municipality. The long-haul excess fiber will continue to be owned by Platte River and leased for the benefit of the communities. Revenue from long-haul leases will be used for easement acquisition and technology upgrades to the long-haul fiber. In the future, it is contemplated that the ownership of the excess fiber in the long-haul may be transferred to the communities.



The Fiber Management IGA may be executed in counterparts and shall be effective between Platte River and a municipality once executed by both.

Staff recommends approval of the attached resolution approving the Fiber Management IGA.

Attachments

Intergovernmental Agreement for Fiber Management
Between
Town of Estes Park
City of Fort Collins
City of Longmont
City of Loveland
And
Platte River Power Authority

THIS INTERGOVERNMENTAL AGREEMENT FOR FIBER MANAGEMENT (“Agreement”) is made and entered into by and between The Town of Estes Park (“Estes Park”), the City of Fort Collins (“Fort Collins”), the City of Longmont (“Longmont”), the City of Loveland (“Loveland”), collectively (the “Municipalities”), individually (a “Municipality”) and Platte River Power Authority (“Platte River”).

1. Background.

Platte River constructed and maintains a fiber optic network in and around the Municipalities and between them to ensure high quality, reliable communications critical to real-time operation of its electric system. The fiber optic network includes the cables and fiber bundles on local fiber loops within the Municipalities, as well as the long-haul cables and fiber bundles that interconnect these local Municipal loops. Installation of the fiber optic network was necessary to replace and upgrade the communication systems used for Platte River’s operational control of the transmission substations through which Platte River delivers power to the Municipalities. As installed, the fiber optic network includes more fiber than that required for Platte River’s purposes. At the time of installation, the Platte River Board of Directors determined that the incremental costs associated with installing the excess fiber were insignificant. The excess fiber was intended to be dedicated to the Municipalities to be used for their telecommunications purposes. To further the telecommunications purposes of each Municipality, Platte River has conveyed to each Municipality ownership of the excess fiber within their respective local fiber loops. The cost of the excess fiber has been fully depreciated and applied to the equity interests held by each respective Municipality.

To ensure the reliability of its electric system, Platte River must remain responsible for managing the fiber optic network including operations, maintenance and capital replacement services and costs, including the excess fibers regardless of fiber strand ownership. To this end, Platte River adopted an accounting policy through Resolution No. 16-17 that places certain cost responsibilities with Platte River for replacement, operations and maintenance expenses on the fiber optic network in recognition of the importance of the fiber system for electric reliability. Platte River is also willing to perform other services as directed by a Municipality, including but not limited to negotiating dark fiber leases. This Agreement sets forth the terms and conditions whereby Platte River will provide fiber optic network management and related services to the Municipalities.

2. Definitions.

Dark Fiber – Excess Fiber within the Fiber Optic Network that is not in use.

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Excess Fiber – Fiber optic strands contained within the Fiber Optic Network that are in excess of the twelve (12) strands (or more in some instances) required for Platte River's electric operations.

Fiber Cable – The cable within the Fiber Optic Network that contains the Platte River Fiber and the Excess Fiber.

Fiber Optic Network – Consists of cables and fiber bundles on the local fiber loops within the electric service area of the Municipalities, as well as the long-haul cables and fiber bundles that interconnect the Municipalities, irrespective of ownership of the individual fibers, which contain fibers that are utilized to operate the bulk electric system. The Fiber Optic Network does not include the Fiber Laterals not owned by Platte River spliced onto the Fiber Optic Network.

Fiber Optic Network Accounting Policy – The policy adopted by Platte River through Resolution No. 16-17 to establish cost responsibility and accounting treatment for the Fiber Optic Network, attached as **Exhibit B**, as such policy may be updated from time to time.

Fiber Laterals – Fiber Optic cables connected to the Fiber Optic Network for the purpose of serving specific uses, which may be owned in whole or in part by Platte River, a Municipality, or other users under leases of Excess Fiber.

Local Loop – The cables and fiber bundles located on the local fiber ring within the electric service area of a Municipality.

Long-Haul – The cables and fiber bundles located on the long-haul sections of the Fiber Optic Network that interconnect the Local Loops.

Platte River Fiber – Generally twelve (12) strands of fiber located within a single buffer tube within the Fiber Optic Network which are required for Platte River's electric operations. There may be instances where Platte River owns additional strands or additional buffer tubes in the Fiber Optic Network.

System-wide Fiber Maintenance Protocol – The set of system-wide fiber optic practices and standards for the Fiber Optic Network, equipment, splicing, and the conditions of hand holes and splice cases adopted by Platte River the initial version of which is attached as **Exhibit A**, as may be updated from time to time by the Technical Committee.

3. Term.

This Agreement may be executed by the parties hereto in counterparts and will be effective as between Platte River and each Municipality upon execution ("Effective Date"). This Agreement will remain in effect between Platte River and a Municipality that has executed the Agreement for as long as the Municipality continues to use the Excess Fiber located within the Fiber Cable and until terminated as set forth in Section 12 herein. If a Municipality intends to discontinue use of the Excess Fiber, that Municipality will provide one-year written notice of its intent to Platte River.

4. Administration.

Two committees will provide assistance in the implementation of this Agreement. Matters coming before the committees will be resolved by majority vote.

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- A. The Technical Committee consists of one representative each from Estes Park, Fort Collins, Longmont, Loveland, and Platte River, each of whom shall have one vote. Each Municipality shall appoint a representative who has technical experience in fiber management. The committee will meet no less frequently than once each calendar year in the fourth quarter, or such other time as the parties may mutually agree and will provide technical support and input regarding Platte River's management of the Fiber Optic Network. The Technical Committee shall have the authority to review and update the System-wide Fiber Maintenance Protocol ("Protocol"). Provided, however, that Platte River shall have the final decision-making authority with respect to aspects of the Protocol that impact the reliability of Platte River's electric system. The agenda for the annual meeting may also include consideration of Platte River's fiber management and other issues involving the operation and management of the Fiber Optic Network.
- B. The Executive Committee consists of the utility or broadband directors of each of the four Municipalities and Platte River's General Manager, each of whom shall have one vote. Provided, however, that Platte River shall have the final decision-making authority with respect to decisions of the Executive Committee that impact the reliability of Platte River's electric system. The Executive Committee will meet as necessary or as requested by members of the Executive Committee. The Executive Committee will evaluate Platte River's fiber management, provide policy direction to Platte River relating to the leasing of Excess Fiber on the Long-Haul and operation of the Long-Haul Fiber Account, resolve any disputes that arise in the management of the Fiber Optic Network and address any other policy issues that require executive decision-making authority.

5. Management of the Fiber Optic Network – Platte River's Role and Responsibilities.

In order to prevent or minimize controllable outages the parties hereto acknowledge that it is crucial that a single entity take a holistic system-wide view when managing physical work being performed on the Fiber Optic Network. Platte River will perform the following system-wide management activities:

- a. Coordinate and communicate with the impacted Municipalities when fiber work is performed to ensure that two or more activities are not performed simultaneously thereby opening the fiber loop in multiple places at one time.
- b. Coordinate and communicate with the impacted Municipalities, Platte River's Power System Operations, Substation Engineering, and Telecommunications when fiber work is performed to ensure that no other operational conditions are present which could be compounded by a fiber outage.
- c. In consultation with the Technical Committee, set system-wide fiber optic standards for equipment, splicing, and the conditions of hand holes and splice cases (the "System-wide Fiber Maintenance Protocol"), the initial version of which is attached hereto as **Exhibit A** and incorporated herein, as amended from time to time.
- d. Communicate with the impacted Municipalities and Platte River's Electric Operations so that they know when work is being performed on the Fiber Optic Network.
- e. In consultation with the Technical Committee, ensure that common standards are implemented across the entire Fiber Optic Network and ensure that only qualified entities perform work on the Fiber Optic Network.

- f. Platte River will be responsible for locating the Fiber Optic Network.

Each Municipality shall have the right to perform, with its own forces or through qualified third parties, such physical work as it deems necessary or appropriate to the maintenance, use, and enhancement of its Local Loop and related portions of the Fiber Optic Network, subject to coordination by Platte River in accordance with the forgoing provisions and the System-wide Fiber Maintenance Protocol.

6. Cost Responsibility.

Costs associated with the Fiber Optic Network shall be allocated as set forth in Platte River's Fiber Optic Network Accounting Policy, attached hereto as **Exhibit B** and incorporated herein, as amended from time to time.

Administrative expenses in the amount of ten percent (10%) of the lease revenues collected shall be deducted by Platte River from lease revenues due to the Municipalities to cover Platte River's costs incurred in leasing Excess Fiber on behalf of the Municipalities. The ten percent (10%) fee shall be reviewed and modified periodically by Platte River, as necessary, to ensure that it remains a reasonable estimate of Platte River's actual administrative expenses. No administrative fee shall be assessed for leases that have been pre-paid prior to execution of this Agreement.

Costs to repair damage to the Fiber Optic Network shall be borne by the entity legally responsible for causing such damage.

7. Reliability Standards.

The parties hereto acknowledge that as a "Transmission Operator" (defined by the Glossary of Terms Used in NERC Reliability Standards), Platte River must comply with NERC Standard TOP-001. The parties hereto further acknowledge that Platte River shall follow its adopted outage coordination procedure for TOP-001, as amended from time to time.

8. Role and Responsibilities of the Municipalities.

Each Municipality shall comply with the System-wide Fiber Maintenance Protocol set forth in **Exhibit A** hereto, as amended from time to time by the Technical Committee. No work shall be performed on the Fiber Optic Network by a Municipality without compliance with the System-wide Fiber Maintenance Protocol. Additional temporary and/or limited-area protocols may be agreed upon between Platte River and a Municipality if required to address unique circumstances that affect the Local Loop in that Municipality.

9. Excess Fiber Leasing.

In October 1998, the Platte River Board of Directors adopted Resolution 17-98 which authorized the General Manager to negotiate dark fiber leases on behalf of the Municipalities. Since that time, Platte River has been leasing dark fiber within the Local Loops in Fort Collins, Loveland and Estes Park to third parties and returning the revenue associated therewith to the Municipality within whose electric service area the leased dark fiber is located. Platte River has retained revenue from leases of dark fiber within the Long-Haul to cover its operating expenses.

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As requested by a Municipality, Platte River may perform the following tasks on behalf of the Municipalities:

- a. Negotiate and execute leases, or extensions of current leases, of Excess Fiber located within its Local Loop with telecommunications providers and other entities. The terms and conditions set forth in such leases shall be acceptable to the requesting Municipality. Local Loop lease rates shall be determined independently by the requesting Municipality. At any time, a Municipality may choose to assume responsibility for leasing its own fiber within its Local Loop; and
- b. Pay the net revenues from Local Loop leases (gross revenues less administrative expenses deducted in accordance with Section 6 of this Agreement) quarterly to the Municipality within whose electric service area the leased Excess Fiber is located; and
- c. In consultation with, and consistent with the policy direction given by the Executive Committee, negotiate and execute leases, or extensions of current leases, of Excess Fiber within the Long-Haul with telecommunications providers and other entities. To the extent possible the terms and conditions set forth in such leases shall be consistent with leases of fiber located within the Local Loops, and shall be acceptable to the Executive Committee. Long-Haul lease rates shall be determined independently by Platte River; and
- d. So long as Platte River retains ownership of the Excess Fiber within the Long-Haul, net revenues (gross revenues less administrative expenses deducted in accordance with Section 6 of this Agreement) from Long-Haul Leases shall be maintained in an account to be managed by Platte River for the benefit of the Municipalities (the "Long-Haul Fiber Account"). The Long-Haul Fiber Account shall be used by Platte River, in a manner consistent with the policy direction provided by the Executive Committee, to pay for expenses associated with the Long-Haul which are not covered in the Fiber Optic Network Accounting Policy, including, but not limited to easement acquisition and technology upgrades to, or expansion of, the Long-Haul. Expenses shall not exceed the balance in the account. In the event that ownership of the Excess Fiber within the Long-Haul is transferred to the Municipalities, funds remaining in the Long-Haul Fiber Account shall be transferred with such ownership in the same proportion (i.e., if ownership is transferred to each Municipality equally, the account balance shall be distributed equally); and
- e. Perform related fiber leasing tasks at the request of a Municipality including, but not limited to, customer management and billing, customer notices, and response to customer questions.

10. Additional Tasks.

In addition to the leasing of Excess Fiber tasks set forth in Section 9 above, Platte River will perform the following tasks within the Fiber Optic Network upon request of a Municipality:

- a. Fiber optic design
 - (i.) Design fiber circuits that meet the customer's needs
 - (ii.) Provide quotes for proposed fiber work
- b. Fiber optic splicing

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- (i.) Build splice diagrams for accepted work
 - (ii.) Fiber work coordination
 - (iii.) Customer notifications
 - (iv.) Equipment maintenance and calibration
 - (v.) Traffic control
 - (vi.) Document completed work
- c. Fiber optic locating of laterals
- d. Fiber optic database & documentation maintenance
- e. Fiber optic system maintenance, troubleshooting, and repair
 - (i.) Responding to fiber cuts
 - (ii.) Replacing damaged vaults
 - (iii.) Troubleshooting fiber performance issues
 - (iv.) Replacing damaged patch panels
 - (v.) Rebuilding splice cases
- f. Coordinating capital improvements
 - (i.) Procurement
 - (ii.) Project management

Payment for the above tasks shall be made by the requesting Municipality upon billing by Platte River, which billing shall not occur more frequently than monthly and shall identify the tasks performed during the billing period. Platte River will bill the requesting Municipality for labor at the current hourly labor rate and benefits for the Platte River staff performing the work. Platte River will bill the requesting Municipality for equipment use and the actual costs of any contracted labor or parts used in work performed under this Agreement.

Alternatively, each Municipality may perform such work with respect to its Local Loop and other related portions of the Fiber Optic Network through its own forces or a qualified contractor, subject to coordination by Platte River in accordance with Section 5 above and the System-wide Fiber Maintenance Protocol.

11. Confidentiality.

If a party to this Agreement provides confidential information to another party which is identified as such, the receiving party shall, to the extent authorized by law, protect the confidential information from disclosure to third parties with the same degree of care afforded its own confidential and proprietary information. Neither party shall, however, be required to hold confidential any information which becomes publicly available other than through the recipient, which is required to be disclosed by a governmental or judicial order, or by statute, is independently developed by the receiving party, or which becomes available to the receiving party without known restrictions from a third party. Documents and other materials supplied to a party to this Agreement may potentially become public records subject to inspection by outside parties pursuant to the Colorado Open Records Act, C.R.S. § 24-72-200.1, et seq., as amended.

12. Termination.

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This Agreement shall terminate between Platte River and a Municipality when either party no longer uses its fiber located within the existing Fiber Cable for a period of twelve (12) consecutive months including any third-party leases. After termination no party shall reuse fiber located within the existing Fiber Cable until such party has provided written acknowledgement that such reuse is subject to the terms of this Agreement. Upon receipt of the notice required under Section 3, the Municipality shall be responsible for the actual costs, if any, associated with reconfiguration of the Local Loop, which costs may include disconnecting any laterals that are no longer necessary. Alternatively, a Municipality may request that Platte River vacate the existing Fiber Cable and, if Platte River agrees to relocate, the Municipality shall build a new fiber route according to Platte River's specifications at its cost for the Platte River Fiber (notwithstanding anything to the contrary in the Fiber Optic Network Accounting Policy). The parties may negotiate the transfer of title of unused or vacated fiber, which may include transfer of title in lieu of costs, if any, associated with reconfiguration. If this Agreement is terminated by one Municipality as set forth herein, Platte River shall have a continuing obligation to provide services under this Agreement to the other Municipalities.

13. Notices.

All notices, requests, demands, and other communications under this Agreement shall be in writing and duly given upon delivery, if delivered personally, or upon depositing in the U.S. Mail, postage prepaid and certified, return receipt requested, and addressed to the proper party as follows:

City of Fort Collins
300 LaPorte Avenue
Fort Collins, CO 80522
Attn: City Manager

City of Longmont
Civic Center Complex
350 Kimbark
Longmont, CO 80501
Attn: City Attorney
Attn: LPC General Manager

Platte River Power Authority
2000 E. Horsetooth Road
Fort Collins, CO 80525
Attn: General Manager/CEO

Town of Estes Park
170 MacGregor Ave
Estes Park, CO 80517
Attn: Utilities Director

City of Loveland
500 E 3rd Street
Loveland, CO 80537
Attn: _____

14. Assignment.

Neither the Municipalities nor Platte River shall assign or transfer any interest in this Agreement, the Excess Fiber or the Fiber Optic Network without the prior written consent of the other parties. This provision shall survive the termination of this Agreement.

15. Provisions Construed as to Fair Meaning.

The provisions of this Agreement shall be construed as to their fair meaning and not for or against any party based upon attribution of the language in question.

16. Headings for Convenience.

All headings, captions and titles are for convenience and reference only and of no meaning in the interpretation of effect of this Agreement.

17. Compliance with Ordinances and Regulations.

Platte River and the Municipalities shall perform their obligations under this Agreement in strict compliance with all federal, state and Municipal laws, rules, statutes, charter provisions, ordinances, and regulations applicable to their performance under this Agreement.

18. No Implied Representations.

No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Agreement.

19. No Third-Party Beneficiaries.

None of the terms or conditions in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the Municipalities or Platte River receiving services or benefits under this Agreement shall be only an incidental beneficiary.

20. Indemnification.

- A. To the extent allowed by law, in connection with the obligations of each Municipality under this Agreement, each Municipality agrees to indemnify and hold harmless Platte River, and its officers and employees, against all liabilities, claims and demands which arise from any negligent act or omission of the Municipality's officers or employees which occurred during the performance of their duties and within the scope of their employment. In addition, to the extent allowed by law each Municipality agrees to indemnify Platte River, and its officers and employees, from all costs and expenses related to defending such liabilities, claims and demands, including but not limited to, litigation costs and reasonable attorney's fees, whether any such liabilities, claims and demands are groundless, frivolous, false or fraudulent. However, each Municipality and Platte River acknowledge and agree that all such liabilities, claims and demands shall be subject to any notice requirements, defenses, immunities and limitations to liability that the Municipality and its officers and employees may have under the Colorado Governmental Immunity Act (C.R.S. §24-10-101, et seq.) and under any other law.
- B. To the extent allowed by law, in connection with the obligations of Platte River this Agreement, Platte River agrees to indemnify and hold harmless the Municipalities, and their officers and employees, against all liabilities, claims and demands which arise from any negligent act or omission of Platte River's officers or employees which occurred during the performance of their duties and within the scope of their employment. In addition, to the extent allowed by law Platte River agrees to indemnify the Municipalities, and their officers and employees, from all costs and expenses related to defending such liabilities, claims and demands, including but not limited to, litigation costs and reasonable attorney's fees, whether any such liabilities, claims and demands are groundless, frivolous, false or fraudulent. However, Platte River and each Municipality acknowledge and agree that all such liabilities, claims and demands shall be subject to any notice requirements, defenses, immunities and limitations to liability that Platte River and its officers and employees may have under the Colorado Governmental Immunity Act (C.R.S. §24-10-101, et seq.) and under any other law.

- C. In no event will any party be liable to another party for consequential, incidental, or punitive damages.

21. Expenditure Not to Exceed Appropriation.

The financial obligations of the parties hereto under this Agreement are contingent upon the annual appropriation, budgeting and availability of specific funds to discharge those obligations. Nothing in this Agreement shall create a multiple-fiscal year debt or other financial obligation or fiscal obligation of any kind payable in a fiscal year beyond the fiscal year for which funds are so appropriated for the payment of current expenditures.

22. Integrated Agreement and Amendments.

This Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. The parties shall only amend this Agreement in writing with the proper official signatures attached hereto.

23. Waiver.

No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.

24. Severability.

Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provisions of this Agreement.

25. Governing Law and Enforceability.

This Agreement shall be governed and construed in accordance with the binding laws of the State of Colorado, venue shall be in the County of Larimer, State of Colorado. In addition, the parties hereto recognize that there are legal constraints imposed upon the Municipalities and Platte River by constitutions, statutes, rules and regulations of the State of Colorado, and of the United States, and imposed upon them by Municipal Charter and Municipal Code, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall either of the parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner to be effective and valid under applicable law.

26. Binding Effect.

This Agreement shall be binding upon the parties and their respective successors and assigns.

27. Counterparts.

This Agreement may be executed by the parties hereto in counterparts.

In Witness Whereof, the parties execute this Agreement as of the dates set forth in the signature blocks below.

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PLATTE RIVER POWER AUTHORITY

By: _____
General Manager/CEO
Date: _____

APPROVED AS TO FORM:

By: _____
Deputy General Counsel

ATTEST:

By: _____
Secretary

TOWN OF ESTES PARK, COLORADO

By: _____
Mayor
Date: _____

ATTEST:

By: _____
Town Clerk

CITY OF FORT COLLINS, COLORADO

By: _____
City Manager
Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Deputy City Attorney

CITY OF LOVELAND, COLORADO

By: _____
City Manager
Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

CITY OF LONGMONT, COLORADO

By: _____
Mayor
Date: _____

ATTEST:

By: _____
City Clerk

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APPROVED AS TO FORM AND SUBSTANCE:

Director of Longmont Power & Communications

APPROVED AS TO FORM:

Assistant City Attorney

PROOFREAD:

EXHIBIT A

System-wide Fiber Maintenance Protocol Initial Version

Approved by Technical Committee November 7, 2018

1 Purpose

This protocol governs maintenance activities that are performed on the fiber system to ensure work is planned, coordinated, scheduled, and performed in a manner that does not negatively affect the underlying critical services that rely on the fiber system.

2 Scope

Fiber work is defined as a planned fiber cut or planned fiber disconnect.

What: This protocol applies to fiber work that is performed on infrastructure with fibers owned by both Platte River and a third party. This protocol does not apply to work being performed in meet-me vaults or on lateral cables.

Who: This protocol applies to all fiber optic cable owners and their employees and contractors that oversee or perform work on infrastructure with fibers owned by both Platte River and a third party.

3 Fiber Maintenance Protocol

3.1 Central system-wide Local Loop and long-haul fiber work coordination

The fiber system extends from north to south between Fort Collins and Longmont and from east to west between Loveland and Estes Park. The fiber system enables the monitoring, control, and teleprotection of the bulk electric system in and among Estes Park, Fort Collins, Longmont, and Loveland in addition to supporting local municipal services and commercial communication connectivity.

Many of the fiber strands located within each cable are interconnected with other cables to create circuits that extend across the entire fiber system. Work that is performed anywhere on the fiber system can negatively affect underlying communication rings that extend beyond the electric service area where the work is being performed. Work that is not coordinated may unintentionally open a ring and interrupt critical communication. Therefore, it is essential that all work performed on the fiber system be coordinated, reviewed, assessed for its effect on system-wide communications, and scheduled with all parties to reduce the risk to critical communications.

These protocols must be followed to better understand and manage risk to fiber optic dependent communication services.

3.1.1 Fiber work assessments

Fiber optic communication services can be divided into two broad categories: the logical ring and the physical ring. The physical ring includes the fiber optic vault, splice enclosure, splice trays, fiber cable, buffer tubes and fiber optic strand. The logical ring includes the equipment and logical circuits used to light up and transfer data over the physical fiber optic strands.

Some logical and physical rings are protected from a single equipment failure or a single fiber cut. These systems with multiple equipment failures and/or fiber cuts will open both rings and affect communication services. The logical ring is dependent on the physical ring. A single equipment failure in conjunction with a single fiber cut can open the logical ring in two locations resulting in the loss of communication services.

An assessment must be performed by affected municipalities and Platte River to determine if the proposed work may disrupt any communications services.

Physical ring – Assess the proposed fiber work:

1. Determine how the fiber work may impact services
2. Verify the integrity of the existing physical ring
3. Verify that a physical ring will not be opened by two or more planned cuts or disconnects being performed on the fiber system at the same time

Logical ring – Assess the proposed fiber work and proposed equipment work to evaluate if the fiber work and equipment work will conflict such that the logical network ring will not be opened by one or more planned cuts or disconnects being performed simultaneously on either physical or logical ring.

3.1.1.1 Bulk Electric System (BES) assessment

The fiber system is critical to the operation of the bulk electric transmission system. The fiber system supports SCADA and relay protection.

An assessment is required to evaluate if the proposed fiber optic work will have an adverse effect on the bulk electric system.

3.1.1.2 System-wide assessment on customer dark fiber circuits

Multiple entities in addition to the municipalities and Platte River rely on the reliable operation of the fiber system.

An assessment is required to evaluate if the proposed fiber optic work will have an adverse effect on customer connectivity. Customers must be notified if it is determined that their circuit will be affected by the fiber work. The work must be coordinated with the affected fiber customers.

3.1.1.3 Municipal Assessment

An assessment is required to evaluate if the proposed fiber optic work will have an adverse effect on municipal connectivity.

3.1.2 Work Approval

Entities that are performing non-emergency work and plan on cutting or disconnecting fiber strands on the fiber system must notify Platte River's Power System Operations, according to the Platte River Outage Coordination Procedure, and affected municipalities of proposed scheduled work and receive approval from all parties. A response for non-Platte River fiber cuts or disconnects must be given within four (4) business days or

approval is assumed. Platte River fiber cuts and disconnects must be handled according to the Platte River Outage Coordination Procedure.

Power System Operators and the municipalities have the authority to either approve or delay scheduled fiber work.

The municipalities and Platte River can designate time periods when the risk is too high to perform any fiber optic work. Entities will be required to reschedule the non-emergency fiber optic work.

3.1.3 System-wide work scheduling

Fiber work must be scheduled and coordinated so that it does not conflict with other work that is being performed on the fiber system so that the risk of a communication interruption is reduced.

4 Fiber System Standards [to be reviewed by the Technical Committee]

The fiber system is comprised of many interconnected parts that must all work together. Fiber optic strands are delicate and difficult to work with. Fiber technicians depend on a consistent, clean, and orderly fiber implementation to perform their work. Uncommon materials and equipment, incorrect labels, or untidy workmanship can make performing fiber work difficult and presents greater risk to the fiber system.

The installation of common materials allows for consistency amongst different inventories and the ability to share parts in a time of need. Consistent equipment and system configurations allows technicians to be better prepared when providing mutual aid and responding to outages or assisting with large jobs.

The proper maintenance of the fiber system will increase its longevity by protecting each fiber system component. A properly maintained fiber system results in a reduction in component replacements and lower costs over the long-term. Splice cases that have not been properly maintained become difficult to work on. Eventually the splice will be rebuilt which results in a reduction in fiber cable length. The issue then cascades as it eventually leads to a cable replacement. The practice of not scoping and cleaning patch panel connectors and fiber jumpers causes damaged to the connector which reduces light carrying capacity and leads to a patch panel replacement. This too can cascade into a cable replacement.

The following standards must be met when installing or maintaining the fiber system:

- Scope & clean connectors
- Use standardized equipment
- Use ultra-low loss fiber
- Accept a maximum of .03 dB loss for splices
- Components must be labeled
- Hand hole layout
- Splice case layout
- Fiber testing and acceptance requirements
- Limit the number of splice cases in a hand-hole
- Maintain hand-holes and splice cases in a consistent, orderly, and clean state

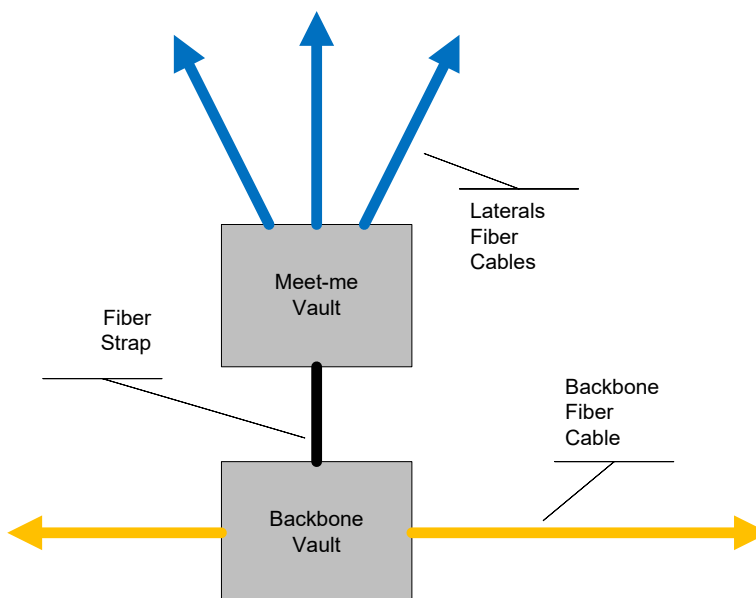
5 Meet-me Vaults

Meet-me vaults are preferred means of construction to allow a connection of customer laterals to the Local Loop without compromising or increasing risk to the Local Loop fiber cable.

The Local Loop is only accessed once to install the fiber strap which is a short fiber optic cable that connects two splice cases. From that point on, all customer laterals and all work associated with connecting customer laterals happen within the meet-me vault. This provides many benefits including:

- Reduction in risk to the Local Loop fiber cable because customer work is not performed directly on the Local Loop
- Fiber strands that contain critical traffic can remain protected in the Local Loop vault
- Outages resulting from work in the meet-me vault are localized to the customers in that vault. This allows for:
 - Easier coordination with affected customers
 - Fewer customer notifications
 - Increased confidence for the fiber technician to know which customers will be affected
- It is much easier to rebuild a meet-me vault
- An accident, like dropping a vault lid onto the fiber, affect a subset of the customers
- The Local Loop is only accessed once to install the meet-me vault. This helps ensure the integrity of the Local Loop is not compromised over time through continuous access.
- Initial splicing and re-splicing reduces fiber strand length. This is confined to the meet-me vault.

Meet-me vaults should be utilized whenever possible.



6 System-wide fiber optic documentation [to be determined by the Technical Committee].

EXHIBIT B

Fiber Optic Accounting Policy

 Platte River Power Authority	Policy	Version #: 1.0 Original Effective Date: 12/07/2017 Next Review Date: 12/07/2022
	Fiber Optic Network Accounting Policy	Page 1 of 2

Purpose:

To establish cost responsibility and accounting treatment for the fiber optic network primarily installed for electric operation communications. For purposes of this policy the term "fiber optic network" includes the cables and fiber bundles on the local fiber rings within the municipalities as well as the long-haul cables and fiber bundles that interconnect the municipalities, irrespective of ownership of the individual fibers. Fiber optic network does not include the fiber laterals spliced onto the fiber optic network.

Without the fiber optic cables connecting transmission substations, Platte River could not monitor, control, or protect the transmission system. The fiber optic network contains excess capacity beyond that necessary for Platte River operations, and this excess capacity is dedicated for municipal uses. Platte River requires a fiber optic network for electric operations independent of the other benefits provided by the extra capacity. It is for this reason, and in recognition that the cost to add the extra capacity was immaterial and would have little to no impact on the rate setting process, that Platte River is proposing the accounting treatment detailed in this policy.

Policy:

This policy covers expenses incurred for the installation of capital fiber assets as well as ongoing operations and maintenance costs.

Capital Costs

Platte River will assume all capital costs for newly installed fiber optic cables or for any replacement after the initial installation of the fiber optic network as a capital asset, regardless of fiber strand ownership. The replacement asset will be depreciated as a Platte River asset and will be recovered through Platte River's rates in the same manner as other capital assets.

If portions of the fiber optic network require replacement, Platte River will assume the costs for replacing the fiber optic network and Platte River owned laterals only. The cost for re-splicing other laterals into the system will be borne by the owner of the lateral.

The accounting treatment applied in 1998 for the costs of the original fiber optic assets will remain the same, which assets will be fully depreciated in 2018.

As discussed with Platte River's auditors, this policy does not require the use of GASB Statement No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989, FASB and AICPA Pronouncements*, Regulated Operations, paragraph 476-500, treatment because the incremental cost to install additional fiber strands beyond those needed for Platte River communications would have little to no impact on the rate setting process.

Operations and Maintenance Costs

Costs associated with operations and maintenance of the fiber optic network will be borne by Platte River. The relocation costs of the fiber optic network, or any portion thereof, will be borne by the entity requesting the relocation. The cost for splicing laterals into the system will be borne by the owner of the lateral cable.

Implementing Parties and Assigned Responsibilities:

 Platte River Power Authority	<h1 style="text-align: center;">Policy</h1>	Version #: 1.0 Original Effective Date: 12/07/2017 Next Review Date: 12/07/2022
		Fiber Optic Network Accounting Policy Page 2 of 2

The Controller reviews and implements this policy. During review, the incremental cost will be assessed, in conjunction with the auditors, for materiality and impacts on the rate setting process. Necessary revisions will be brought before the Platte River Board of Directors.

Associated Items (if applicable):

September 2017 Fiber Asset Ownership Whitepaper
 Fiber optic network asset accounting treatment procedure and Resolution No. 16-17.

Definitions (if applicable):

Document Owner: Controller	Original Effective Date: 12/07/2017
Authority: Board of Directors	Review Frequency: Every 5 years
Counsel Review: General Counsel or Associate General Counsel	Current Effective Date: 12/07/2017

Version	Date	Action	Author	Change Tracking (new, review, revision)
1.0	12/07/2017	Original Policy by Board Resolution No. 16-17	Shelley Nywall	New

RESOLUTION NO. __-18

WHEREAS Platte River constructed a fiber optic network (the “Fiber Optic Network”) to ensure high quality, reliable communications critical to real-time operation of its electric system in and around Platte River’s owner communities of Estes Park, Fort Collins, Longmont and Loveland, Colorado (the “Municipalities”); and

WHEREAS, due to the insignificant incremental cost of installing fiber beyond the operational needs of Platte River, as installed Platte River’s Fiber Optic Network includes more fiber than required for Platte River’s purposes (the “Excess Fiber”); and

WHEREAS, Platte River has authorized the General Manager to convey to the Municipalities ownership of the Excess Fiber within their respective local fiber loops; and

WHEREAS, to ensure the reliability of its electric system, Platte River must remain responsible for managing the Fiber Optic Network regardless of fiber strand ownership; and

WHEREAS, the Municipalities and Platte River desire to set forth the terms and conditions whereby Platte River will provide Fiber Optic Network management and related services to the Municipalities; and

WHEREAS, Platte River is willing to perform such Fiber Optic Network services under the terms contained in the Intergovernmental Agreement for Fiber Management mutually drafted by the parties; and

WHEREAS the Municipalities and Platte River are empowered pursuant to C.R.S. § 29-1-203 to enter into intergovernmental agreements through which the parties may cooperate in the provision of a service or function lawfully authorized to each.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Platte River that the Intergovernmental Agreement for Fiber Management (the “Fiber Management IGA”) between Platte River Power Authority and the Municipalities for Fiber Optic Network management and related services, in substantially the form presented, is approved and the General Manager is

empowered to approve minor changes in form or substance to the Fiber Management IGA and to execute such Fiber Management IGA on behalf of Platte River.

AS WITNESS, I have executed my name as Secretary and have affixed the corporate seal of the Platte River Power Authority this _____ day of _____, 2018.

Secretary



Platte River

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Memorandum

Date: November 28, 2018
To: Board of Directors
From: Jason Frisbie, General Manager and CEO
Alyssa Clemens Roberts, Chief Strategy Officer
Subject: **Resource Diversification Policy Approval**

In May of 2018 the board of directors instructed staff to begin drafting a resource diversification policy. An initial draft of the policy was brought to the board in July and discussed and edited at the August, September and October board meetings. In October two versions of the policy were brought to the board and the board provided guidance to their preferred policy. The December board packet includes the board selected resource diversification policy as well as a resolution placing the resource diversification policy into effect.

 Platte River Power Authority	<h1 style="text-align: center;">Policy</h1>	Version #: 1.0 Original Effective Date: 12/06/2018 Next Review Date: 12/01/2020
		TITLE: Resource Diversification Policy Page 1 of 3

Purpose:

This policy is established to provide guidance for resource planning, portfolio diversification and carbon reduction.

Policy:

The board of directors (the board) directs the general manager/CEO to proactively work toward the goal of reaching a 100 percent non-carbon resource mix by 2030, while maintaining Platte River's three pillars of providing reliable, environmentally responsible and financially sustainable electricity and services.

The board recognizes the following advancements must occur in the near term to achieve the 2030 goal and to successfully maintain Platte River's three pillars:

- An organized regional market must exist with Platte River as an active participant
- Battery storage performance must mature and the costs must decline
- Utilization of storage solutions to include thermal, heat, water and end user available storage
- Transmission and distribution infrastructure investment must be increased
- Transmission and distribution delivery systems must be more fully integrated
- Improved distributed generation resource performance
- Technology and capabilities of grid management systems must advance and improve
- Advanced capabilities and use of active end user management systems
- Generation, transmission and distribution rate structures must facilitate systems integration

Resource planning is an ongoing process and Platte River continuously evaluates opportunities to add non-carbon resources. Platte River reviews its generation portfolio annually as part of the budgeting and planning process. This process sets the foundation for developing an integrated resource plan (IRP) submitted to the Western Area Power Administration every five years as required. The resource planning process includes evaluating the progress of energy storage, distributed power sources and new technologies.

As a leader in the utility industry in Colorado for many years, Platte River will continue to move forward to meet the resource needs and wants of the four owner communities. The board recognizes the integration of non-carbon resources and new technologies will shape the future of Platte River's and the four owner communities' energy supply.

Implementing Parties and Assigned Responsibilities:

The chief strategy officer reviews this policy and necessary revisions are brought before the Platte River Board of Directors.

 Platte River Power Authority	<h1>Policy</h1>	Version #: 1.0 Original Effective Date: 12/06/2018 Next Review Date: 12/01/2020
		TITLE: Resource Diversification Policy Page 2 of 3

Associated Items (if applicable):
Definitions (if applicable):
Reliable

Platte River will provide wholesale electric power to its owner communities with the highest possible power quality and transmission service availability while providing the lowest amount of energy supply disruptions. Platte River will abide by North America Energy Regulatory Corporation (NERC) regulatory conventions for reserve requirements and reliability standards using a planning reserve margin of 15 percent and a loss of load expectation (LOLE) of 1 day in 10 years. Platte River will continue to exceed NERC reliability standards by consistently providing power delivery and transmission service to our owner communities by meeting our goal of an annual availability factor of 99.97 percent or greater.

Environmentally responsible

Platte River will provide energy products and services to its owner communities while proactively minimizing environmental impacts. Platte River will meet or exceed all federal, state and local environmental regulatory requirements and will continue to work with its owner communities to respect, protect and enhance the ecosystems along the Front Range for future generations.

Financially sustainable

Platte River's strategic financial plan (SFP) is designed to provide long-term financial viability, manage financial risk and support Platte River's mission, vision and values. Financial metrics have been established in consideration of rating agency guidelines. To manage financial assets and risk, staff will continue to implement and maintain prudent business practices in the management of reserves, maintain the enterprise risk management program and comply with financial policies. Rates shall be established to generate adequate cash flows and maintain access to low-cost capital while providing wholesale rate stability. Platte River will continue to establish and offer competitive rates and services to provide value to our four owner communities.

Document Owner: Chief Strategy Officer

Original Effective Date: 12/06/2018

Authority: Board of Directors

Review Frequency: Annually

Counsel Review: General Counsel or Associate General Counsel

Current Effective Date: 12/06/2018

 Platte River Power Authority	Policy		Version #: 1.0 Original Effective Date: 12/06/2018 Next Review Date: 12/01/2020
	TITLE: Resource Diversification Policy		Page 3 of 3

Version	Date	Action	Author	Change Tracking (new, review, revision)
1.0	12/06/2018	Original Policy or Board Resolution __-18	Alyssa Clemensen Roberts	New

DRAFT

RESOLUTION NO. __-18

WHEREAS, Platte River is aggressively engaged in an effort to diversify and de-carbonize its generation resource portfolio; and

WHEREAS, in May of 2018 the board of directors instructed staff to create a draft policy that would reflect the direction the organization is undertaking to diversify and de-carbonize its generation resources; and

WHEREAS, an initial draft was brought to the board at the July 2018 meeting and based on input from the board new drafts of the policy language were presented and discussed at the August, September and October meetings of the board; and

WHEREAS, the board is of the opinion that the Resource Diversification Policy, as included in the board packet, represents the goals and direction for the organization as it seeks to diversify and de-carbonize its generation resource portfolio.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Platte River Power Authority that the Resource Diversification Policy is adopted.

AS WITNESS, I have executed my name as Secretary and have affixed the corporate seal of the Platte River Power Authority this _____ day of _____, 2018.

Secretary



Platte River

Power Authority

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Memorandum

Date: November 28, 2018
To: Board of Directors
From: Jason Frisbie, General Manager and CEO
Dave Smalley, Deputy General Manager and Chief Financial Officer
Wade Hancock, Financial Planning Manager
Subject: **Rate Design Introduction**

Platte River is undergoing a rate strategy and rate design study. This involves a comprehensive review of its current rate making practices to recognize and address the significant existing and anticipated changes occurring in the electric utility industry.

The first phase of the study was completed at the August 2018 board of directors meeting when the board adopted, through resolution, Platte River's rate setting policy. The rate setting policy, along with the rate setting reference document, describes an approach to rate making including objectives to be achieved both in the near-term and over the long-term planning horizons. The rate setting policy and rate setting reference document are included in the board packet for your reference.

The concepts of the rate setting policy have been used for the project's second phase, rate strategy implementation, which includes the development of rate designs that achieve the board adopted objectives. At the December board meeting, NewGen Strategies and Solutions, Platte River's rate consultants facilitating the study, will provide an overview of the rate concepts and designs considered for implementation in 2020. Specific achievements of the second phase and proposed rate design include the following:

- Provide balance among the goals and objectives established by the rate setting policy and rate setting reference document.
- Platte River will unbundle production and transmission, as well as unbundle intermittent energy (wind and solar) from dispatchable energy resources (coal, hydro, natural gas, market power purchases). The increased wholesale transparency will help facilitate increased retail transparency and increased retail service offerings such as 100 percent renewable energy supply.
- The cost of service and rates modeling effort achieves a more transparent rate making approach that provides more flexibility to establish future service offerings and firmly establishes a foundation for consistency among the tariff offerings:
 - Tariff—Schedule 4: Wholesale Transmission Service will no longer be separately calculated using prior year actuals but, instead, is a component of the overall projected revenue requirement used to establish all other tariffs.
 - Tariff—Schedule 7: Renewable Energy Service premium charges would be eliminated as Platte River's unbundled wholesale rate will provide the ability for retail service offerings.

-
- Valuation and pricing methodologies for stand-by service and distributed generation resources would be established.

Platte River has introduced the proposed rate structure concepts to the owner community rate staffs and other key staff to allow ample time for analysis and to facilitate the conversion from wholesale to retail service offerings and pricing. This process will continue over the coming months.

Tariff approval of a revised rate structure is anticipated to occur no later than October 2019 with a January 1, 2020 effective date.

Attachments

 Platte River Power Authority	<h1>Policy</h1>	Version #: 1.0 Original Effective Date: 08/30/2018 Next Review Date: 08/01/2023
	TITLE: Rate Setting Policy	Page 1 of 2

Purpose:

Service offerings and supporting rate structures should complement the strategic objectives, underlying policies, and values of the organization. When in alignment, pricing signals and associated economic incentives are well understood by all stakeholders vested in the utility's success. This framework, or philosophy, describes an approach to rate making including objectives to be achieved both in the near-term and over the long-term planning horizons. Important benefits of a rate setting policy include increased transparency in the rate setting process and a common understanding of the reasoning and justification behind Platte River's proposed service offerings and rates. This document and its future revisions are intended to serve as a "living document" to provide a long-term perspective and focus on ratemaking as Platte River's owner communities, management, staff and other important stakeholders address critical issues in a dynamic and rapidly evolving utility environment.

Policy:

It is the policy of Platte River to establish service offerings and supporting rate structures that complement the strategic objectives, underlying policies and values of an organization. To that effect, the board directs the general manager/ceo to develop and maintain the Rate Setting Reference Document which will include rate-related goals important to the rate setting process and guiding rate principles that service offerings and supporting rate structures should achieve.

Implementing Parties and Assigned Responsibilities:

The financial planning manager reviews this policy and necessary revisions are brought before the Platte River Board of Directors.

Associated Items (if applicable):

Resolution 13-18
 Rate Setting Reference Document
 Rate Design Philosophy Whitepaper prepared by NewGen Strategies & Solutions, LLC

Definitions (if applicable):

N/A

 Platte River Power Authority	<h1>Policy</h1>	Version #: 1.0 Original Effective Date: 08/30/2018 Next Review Date: 08/01/2023
		TITLE: Rate Setting Policy Page 2 of 2

Document Owner: Financial Planning Manager	Original Effective Date: 08/30/2018
Authority: Board of Directors	Review Frequency: Every 5 years
Counsel Review: General Counsel or Associate General Counsel	Current Effective Date: 08/30/2018

Version	Date	Action	Author	Change Tracking (new, review, revision)
1.0	08/30/2018	Rate Setting Policy	Wade Hancock	New

Rate Setting Reference Document

Report on the Rate Setting Policy

Overview

The Rate Setting Reference Document accompanies Platte River's board adopted rate setting policy. Service offerings and supporting rate structures should maintain Platte River's three pillars of providing reliable, environmentally responsible and financially sustainable electricity and services as well as complement the strategic objectives, underlying policies and values of the organization. When in alignment, pricing signals and associated economic incentives are well understood by all stakeholders vested in the utility's success. This framework, or philosophy, describes an approach to rate making including objectives to be achieved both in the near-term and over the long-term planning horizons. Important benefits of a rate setting policy include increased transparency in the rate setting process and creating a common understanding of the reasoning and justification behind Platte River's proposed service offerings and rates. This document and its future revisions are intended to serve as a "living document" to provide a long-term perspective and focus on ratemaking as Platte River's owner communities, management, staff and other important stakeholders address critical issues in a dynamic and rapidly evolving utility environment.

It is the policy of Platte River to establish service offerings and supporting rate structures that complement the strategic objectives, underlying policies, and values of the organization. To that effect, the general manager/ceo will direct staff to develop and maintain the Rate Setting Reference Document, which will include rate-related goals important to the rate setting process and guiding rate principles which service offerings and supporting rate structures should achieve.

Platte River Rate-Related Goals

Platte River has identified the following goals important to the rate setting process. These goals are as follows:

- **Improve Value Added of Platte River in Support of Owner Communities**

The definition and perception of value may vary between owner communities, but for Platte River, value is defined by providing the highest quality products and services to the owner communities, at a price, when compared to other alternatives, that clearly offers the "best deal" or the highest value added for services rendered.

- **Offer a Desirable Portfolio of Services and Rates That Meet Owner Communities' Needs**

Platte River's objective is to offer choices that allow owner communities to meet their objectives. Given that each owner community has unique objectives, some objectives may conflict with each other. With its best efforts, Platte River will accommodate owner communities' needs while establishing services and rates within Platte River's stated financial goals and underlying cost of service principles.

- **Better Align Wholesale TOU Pricing Signals with Cost of Service and Owner Community Retail Pricing Signals**

Under Platte River's current Tariff—Schedule 1: Firm Resale Power Service (Tariff 1) rate structure, demand-related costs are recovered monthly based on the owner communities' contribution to the Platte River system peak, or coincident peak. From a TOU perspective,

the Tariff 1 rate structure concentrates the entire demand-related costs into a single hour each month. This rate structure, when translated into retail TOU rates offerings of the owner communities, may send a distorted TOU pricing signal associated with Platte River's demand-related costs at the time of the Platte River system peak. Given increasing interest and use of TOU retail rates by the owner communities, Platte River will consider wholesale rate structures that appropriately consider and quantify the cost of service at different time periods throughout the day and year.

- **Send Pricing Signals that Result in System Benefits**

Similar to the perception of value, the definition and perception of System Benefits may vary between Platte River owner communities. For the purposes of rate design, Platte River defines System Benefits as:

- The encouragement of efficient use of utility infrastructure to maximize short- and long-run marginal cost savings.
- Short-run marginal cost savings means maximize opportunities in the daily wholesale power market.
- Long-run marginal costs are typically defined as those costs associated with infrastructure improvements within a five- to ten-year planning horizon (beyond the scope of annual or short-term budgeting, for example). A reduction in long-run marginal costs may be determined by the delay or avoidance of future capital-intensive infrastructure additions, such as a power plant. Utilizing a net present value approach, the reduction in future costs or delay of the anticipated need for such investment results in savings to Platte River.
- Service offerings and associated rate design can send a price signal to owner communities, and through the owner communities to end-use customers to encourage the efficient use of utility investment. By creating a pricing system that encourages users to have a higher system load factor, Platte River will utilize its existing investment in a more efficient manner. As a result of greater efficiency, the average system costs can be reduced and passed to the owner communities in the form of potentially lower rates.
- Cost based recovery of all product and service offerings that align with Platte River strategic initiatives and meet owner community needs.

Guiding Principles

To accomplish the above described goals, Platte River is frequently evaluating current service offerings and rate structures. Platte River's service offerings and supporting rate structures should balance the following:

- **Maintain Utility Financial Strength and Viability to the Benefit of the Owner Communities**

A financially strong utility offers owner communities flexibility and options when faced with financial uncertainty, price volatility, and market threats and opportunities.

For Platte River, the Strategic Financial Plan provides direction to create long-term financial sustainability, manage financial risk and support Platte River's mission, vision

and values. The priorities of the SFP are to generate adequate cash flows, maintain access to low-cost capital, provide wholesale rate stability and maintain sufficient liquidity for operational stability.

- **Adequate Recovery of Fixed Costs**

Fixed cost recovery is a focus of Credit Rating Agencies' determination of credit worthiness of a utility. Credit Rating Agencies also recognize that rate design is a strong and effective risk management tool for Platte River. Rate structures that adequately recover fixed costs and reduce operational and credit risk will thereby improve Platte River's credit ratings.

- **Rates Must Be Fair, Equitable and Defensible**

Fairness, equity and defensibility are measured against sound economic principles as described in the subsequent supporting principle in consideration of Platte River board's policy.

- **Rates Will Be Based on Sound Economic Principles and Business Practices**

Service offerings and supporting rate structures should appropriately reflect cost of service principles that align with Platte River's strategic plan and desired System Benefits. Supporting utility economics should consider Platte River's embedded costs and its short- and long-run marginal costs.

- **Rates Structures Should Be Stable Over the Long Run**

To the extent practically possible, changes to existing rate structures should be phased-in gradually over time to minimize adverse economic impacts on owner communities and their customers. Further, adopted rate structures should be evaluated frequently so that future changes are made in a timely fashion with lessened impact on owner communities.

- **Rate Offerings Should Be Flexible**

Platte River's business environment is rapidly changing given the increasing importance of renewable resources and technological improvements that enable an increasingly diverse portfolio of distributed generation and demand response options. Additionally, the changing owner community loads and the openness to new approaches and business models by the retail customer are impacting Platte River's business environment. To meet these challenges, Platte River should offer to its owner communities (and through the owner communities to their customers) a variety of desired and flexible service options. These service offerings should be forward looking and be soundly based on cost of service methodology, as well as anticipated changes in Platte River's costs, owner community loads and anticipated responses to service offerings.

- **Service Offerings Should Demonstrate High Value to Owners**

Services and rates should be offered at a competitive price compared to similar services provided by other wholesale electric utilities in the region.

- **Platte River Should Continue to Effectively Manage Generation Risk**

Platte River's long-term strategic plan contemplates a transitioning generation portfolio that moves away from primarily baseload coal generating assets to increasing renewable and distributed generation options, which will impact Platte River's cost of service. Rate

design must adequately address these changes in cost structure to effectively provide an effective risk management tool for the owner communities.

- **Improve Pricing Signals to Owner Communities and Their Customers**

Rate structures send pricing signals that incentivize a response in the form of changes in energy usage. In this sense, the pricing signal itself is the incentive, rather than a rebate or credit from Platte River. For Platte River, these signals should encourage System Benefits and provide the owner communities valuable information so that they can translate the wholesale rate to their retail customers in a manner best suited for each owner community. Specific attributes of improved pricing signals are:

- *Transparency* – the various services provided by Platte River to the owner communities embedded within a rate structure should be easily identified.
- *Ease of understanding* – the desired incentives and financial impact of changes in energy usage should be easy to understand.
- *Reward behavior that yields System Benefits* – an effective incentive must be consistent with economic reward.
- *Align with other programs* – rate structures should complement other programs offered by Platte River to the owner communities.
- *TOU cost-based rate pricing signal* – rate design options should support owner community TOU applications (retail rates). For such circumstances, Platte River rates should send appropriate pricing signals that are supported by cost of service.



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Memorandum

Date: November 28, 2018
To: Board of Directors
From: Jason Frisbie, General Manager and CEO
Andy Butcher, Chief Operating Officer
Pat Connors, VP of Power Supply
Subject: 75 MW wind option status

The Roundhouse wind PPA includes an option for Platte River to increase its purchase amount from 150 MW of nameplate wind up to 225 MW of nameplate wind, which option must be exercised by December 31, 2018. Platte River staff will provide an update on its plans for increasing our Roundhouse wind purchase amount and possibly modifying the option period.



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Memorandum

Date: November 28, 2018
To: Board of Directors
From: Jason Frisbie, General Manager and CEO
Joe Wilson, General Counsel
Subject: **Organic Contract/Power Supply Agreements Renewal Process**

A whitepaper on the issues and status of the revisions being proposed by staff for the Organic Contract and the Power Supply Agreements was distributed to the board in the October board packet. During the December board meeting, staff will discuss new developments and the process going forward.



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Memorandum

Date: November 28, 2018
To: Board of Directors
From: Jason Frisbie, General Manager and CEO
Alyssa Clemens Roberts, Chief Strategy Officer
Brad Decker, Resource Planning Manager
Subject: **IRP update**

Platte River staff will make a progress report on the 2020 Integrated Resource Planning process, including updates on the community listening sessions, summary of findings from customer surveys, and efforts towards developing key planning assumptions and supporting studies.



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Memorandum

Date: November 28, 2018
To: Board of Directors
From: Jason Frisbie, General Manager and CEO
Dave Smalley, Chief Financial Officer and Deputy General Manager
Jeff Menard, Headquarters Campus Project Manager
Subject: **HQ Campus Update**

During the December board meeting, owners' representatives Will Welch and Stuart Lumsden will provide an update on the headquarters campus project construction progress to date. Staff will be available to answer questions.

No materials for this section.

No materials for this section.



Memorandum

Date: November 28, 2018
To: Board of Directors
From: Joseph B. Wilson, General Counsel
Subject: **PLATTE RIVER LEGAL AND GOVERNMENTAL AFFAIRS REPORT – DECEMBER 2018 BOARD MEETING**

The following legal issues and governmental/legislative matters were addressed during the reporting period; **bold-faced type** is used to highlight **recent or significant developments**.

LEGAL ISSUES:

CURRENT OR THREATENED LITIGATION

El Paso Electric Co. vs. Federal Energy Regulatory Commission (FERC) — Over the last seven years Platte River has been engaged in a regional transmission planning process under the auspices of WestConnect, a planning organization formed by the utility participants. The WestConnect footprint covers a vast area generally corresponding with boundaries of the states of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming. The planning effort was implemented in response to FERC Order 1000 issued in 2011. Order 1000 requires FERC-jurisdictional utilities to create regional transmission planning organizations with authority to plan transmission expansions and allocate costs to the beneficiaries of the new transmission projects. Unlike the Eastern Interconnection (generally all areas of the United States east of Colorado excluding most of Texas), the Western Interconnection contains a much larger population of non-jurisdictional utilities—of which Platte River is one. In the WestConnect footprint the breakdown of the transmission-owning utilities includes ten non-jurisdictional utilities and eleven jurisdictional entities. This heavy presence of non-jurisdictionals accounts for the slower market development in the western United States.

Non-jurisdictionals are concerned about the mandatory cost allocation provisions of Order 1000. To address this concern, WestConnect developed a transmission planning and development format that included two classes of participants, jurisdictional transmission owners were grouped into one class and non-jurisdictionals were allowed to enroll as “Coordinating Transmission Owners” (CTOs). CTOs could opt-out of cost allocation, although incentives were provided for their participation in future developments. FERC approved this planning/development format.

El Paso Electric Co. and a number of other jurisdictional utilities challenged the FERC decisions approving the WestConnect process. These utilities argued that FERC approval violated the mandate that FERC approve only rates that were “just and reasonable” and, that absent a strong correlation with cost causation, rates would necessarily be unjust and unreasonable. On August 8, 2016 the Fifth Circuit Court of Appeals agreed with El Paso and remanded the case to the FERC.

The non-jurisdictional participants in WestConnect collectively filed a joint petition requesting the Fifth Circuit reconsider its August 8 order, which was denied.

The proceedings on remand before the FERC were delayed by the resignation of Chairman Norman Bay, which deprived the FERC of a quorum. The FERC lacked a quorum for over six months, but with a quorum restored the FERC ruled on the remand during its meeting of November 16, 2017. The FERC re-affirmed its decision to accept the WestConnect cost allocation proposal. In so doing it reiterated the unique jurisdictional characteristics of the Western Interconnect and explained that the WestConnect proposal being approved contained sufficient incentives for non-jurisdictionals to accept cost allocation responsibilities. The Commissioners also noted that they could resort to their authority under Section 211A of the Federal Power Act if non-jurisdictionals' refusal to participate in cost allocation would result in rates that were not just and reasonable.

The FERC denied the jurisdictional utilities' request for rehearing of the November 16, 2017 order during their June meeting. On August 17, 2018 El Paso Electric Company filed a review action with the Fifth Circuit Court of Appeals. Platte River is not a party to the action, but may coordinate with other affected non-jurisdictionals on the filing of an *amicus* brief.

In October, El Paso Electric and a number of jurisdictional utilities proposed to terminate the existing WestConnect agreement and enter into a new Order 1000 planning agreement for jurisdictional utilities only, eliminating the CTO provisions of the existing agreement. Nonjurisdictional utilities could still participate in the planning process by voluntarily agreeing to accept the mandatory cost allocation provisions and becoming "enrolled transmission owners" ("ETOs"). If the jurisdictional utilities pursue this route, it would render the issues in the Fifth Circuit appeal largely moot. If the nonjurisdictional utilities refused to accept mandatory cost allocation, it would mean that the western planning regional would potentially become balkanized among jurisdictional and nonjurisdictional utilities.

Several conference calls have taken place among the jurisdictional and nonjurisdictional utilities over the past month to discuss this issue. The parties propose to hold the Fifth Circuit appeal in abeyance for a period of time to facilitate these discussions. A motion to delay the briefing schedule is pending.

Mercury Control Technology Patent Dispute – On June 5, 2018, Midwest Energy Emissions Corp. ("ME₂C") sent a demand letter to Platte River asserting that Platte River has been using mercury control methods at its Rawhide generation facility which infringes on one or more of its patents. ME₂C apparently acquired rights to patented mercury control technology from the Energy & Environmental Research Center at the University of North Dakota, and we believe it subsequently sent demand letters to a number of coal-fired generation facilities asserting claims for infringement of these patents. In short, the patents cover the injection of certain halogens or halides (e.g. bromides, chlorides and iodides) into the furnace or on the coal, coupled with various carbon or non-carbon sorbents upstream from particulate controls to capture mercury in the gas emissions. We asked the claimant to provide specific information regarding the alleged patent infringement at the Rawhide facility while we investigated this claim. We also entered into a non-disclosure agreement to facilitate discussions with ME₂C. In the meantime, we sent notice of this claim to Cabot Norit North America (the successor to the entity that provided the mercury control system for the Rawhide facility) based on the patent indemnity provision of our supply contract. Cabot Norit preliminarily denied liability under the patent indemnity clause.

After reviewing the information provided by ME₂C and reviewing the ME₂C patents with outside counsel, it appears that the mercury removal control process implemented by Platte River does not infringe on the ME₂C patents. Specifically, the ME₂C patents describe a "two-step" process for mercury control, where bromides are used to pretreat coal or are injected into the flue gas

separately from the activated carbon used to capture mercury. In contrast, Platte River's system uses a "one-step" process where commercially available activated carbon, which is pre-treated with bromine, is injected into the flue gas stream. We have discussed this issue with counsel for ME₂C and have requested that the patent claims be dropped.

ONGOING AND CURRENT MATTERS OF SIGNIFICANCE

Grand Lake Clarity NEPA Process — Platte River is a coordinating agency in the Grand Lake Clarity National Environmental Policy Act (NEPA) process initiated by the Bureau of Reclamation (BOR). This proceeding could affect Platte River as both a participant in the Windy Gap Firing Project and as a power customer of the Western Area Power Administration. The kick-off meeting occurred on February 10, 2017 in Golden, CO. At present the matter will proceed as an Environmental Assessment (EA), but may convert to an Environmental Impact Statement (EIS). A "visioning process" conducted by BOR yielded a number of capital projects that may address the clarity issue, but the range of alternatives will be expanded to analyze operational modifications that could improve clarity at reduced costs. The "purpose and need" statement was adopted on April 1, 2017. At the September 8, 2017 meeting seven alternatives were discussed and the BOR and Northern Colorado Water Conservancy District representatives introduced other possible operational or low-cost alternatives for consideration. At the January 31, 2018 meeting the list of alternatives was narrowed and BOR engineers began an evaluation process. Initial modeling work is complete, but is being reviewed internally by the Bureau. The review is progressing slowly and the public scoping meeting has been delayed until the summer of 2019.

Environmental Protection Agency Clean Power Plan — Following President Trump's Executive Order of March 28, 2017 directing the Administrator of the EPA to reevaluate the CPP, EPA issued a notice of proposed rule (NOPR) on October 10, 2017 to formally rescind the CPP on the grounds that it exceeds the agency's statutory authority. Objections to the NOPR have been filed by a number of states and communities (including Boulder) asserting that the action was invalid because (now ex) Secretary Pruitt is unalterably biased against the CPP.

Prior to the November 2016 election, a stay of the CPP had been issued in certain litigation against EPA. That case remains pending, although on March 1, 2018 the D.C. Circuit Court of Appeals issued an order holding the litigation in abeyance for another 60 days and directing the EPA to provide status updates every 30 days. With the issuance of the proposed ACE rule discussed below, the court is expected to rule on whether litigation should proceed or be dismissed in the near future.

With the present bottleneck affecting carbon regulation on the Federal level, momentum has shifted back to the state level. As noted in prior reports, Governor Hickenlooper issued an Executive Order calling upon electric utilities to take action voluntarily to cut emission levels by 25 percent of 2012 levels by 2025 and by 35 percent by 2030, although since the stay of the CPP was issued by the Supreme Court, state planning efforts have effectively ceased. During the 2018 session legislation was introduced in the Colorado General Assembly (H.B. 18-1274) to reduce carbon emissions by 80 percent from 2005 levels, but this bill died in the Senate.

The Affordable Clean Energy (ACE) rule was published in the Federal Register on September 10 with comments due by October 31, 2018. The rule still depends heavily on the development of state implementation plans, but the focus of the rule is limited to heat rate improvements, or HRIs, that can be implemented "within the fence" of the generation facility. This restricts significantly the carbon reductions expected from implementation of the ACE rule. **Both the American Public Power Association and the**

Large Public Power Council submitted comments, largely focusing on implementation issues that may exist with the draft rule.

Coal Combustion Residuals (“CCR”) Rule Implementation — As described in the management report, legal counsel is supporting staff in their evaluation of compliance issues relating to the Federal CCR Rule. During 2016 Colorado discontinued its effort to adopt CCR regulations. At least for now, the State has taken the position that it has sufficient authority to ensure environmental protection under their existing programs.

On January 17, 2017 Platte River staff met with the Colorado Department of Public Health and Environment (CDPHE) in Denver. During this meeting, the existing operational plan for the monofill was discussed along with the need for a revised plan. As a result of the meeting, Platte River staff has taken steps to update the operational plan. These steps include increased groundwater monitoring and an evaluation of the existing topsoil cover at the monofill. Platte River staff met with CDPHE again on July 13, 2017 to present a high-level plan and timelines and the feedback received from the CDPHE was favorable. The CDPHE requested additional groundwater data and soil borings.

Concurrently with updates to the operational plan for the ash monofill, Platte River staff obtained approval from CDPHE for modifications to the reclaim pond and closure of the bottom ash ponds which will be replaced with installation of a concrete settling tank with two separate cells and a “reclaim” tank. The CDPHE confirmed that the tanks will not be subject to its regulations.

On March 1, 2018 the EPA issued proposed revisions to the 2015 final CCR rule which remains subject to litigation pending before the U.S. Court of Appeals for the D.C. Circuit. The proposal addresses several provisions of the 2015 CCR rule that the D.C. Circuit remanded back to the EPA in 2016, as well as additional provisions in response to comments received since the final rule went into effect. Many of the proposed revisions would allow state regulatory programs more flexibility to establish equivalent standards considering site specific conditions. These revisions will not impact Platte River because Colorado has chosen not to adopt a state regulatory program. Additional revisions may modify current deadlines for groundwater monitoring and analysis. However, even if these modifications are adopted they would be too late to alter Platte River’s chosen path to compliance. Platte River intends to implement major changes to its ash handling operations during the Fall 2018 outage. These include the installation of a new bottom ash handling system with a wet to dry conversion, and the replacement of the bottom ash ponds with a concrete settling tank as discussed above.

Windy Gap Firing Project — The Windy Gap Firing Project (WGFP) has obtained all necessary state and federal approvals. Northern Water has submitted a water court application to amend the existing Windy Gap water court decrees. Specifically, the Northern Water filing seeks to incorporate the terms of a 2012 intergovernmental agreement (“IGA”) entered into with several West Slope entities. The 2012 IGA provides for the construction of Chimney Hollow Reservoir and the storage of up to 90,000 acre-feet of water provided Northern Water complies with specified mitigation measures. Northern Water is the holder of the Windy Gap water rights and will therefore be the lead applicant on the water court application. Nevertheless, questions may arise throughout the legal proceeding on which Northern Water may request the input or consent of the governing bodies of the Windy Gap participants. One issue that the parties needed to resolve involved prepositioning of water in the Chimney Hollow Reservoir—meaning the placement of Colorado-Big Thompson water in Chimney Hollow in anticipation of Windy Gap water deliveries. This issue became more complicated with the decision in the Busk/Ivanhoe case, and west slope interests sought to use this precedent to limit east slope storage in reservoirs other than Chimney

Hollow. The Northern Water filing contains limiting language that may restrict other project participants but should not be an issue for Platte River.

On October 26, 2017, a number of environmental groups filed a legal action challenging the NEPA analyses performed by both the Bureau of Reclamation and the Army Corps of Engineers. The Bureau of Reclamation and Army Corps of Engineers filed an Answer on January 16, 2018, generally denying the allegations of the Complaint. Northern Water was not listed as a Defendant but filed a motion to intervene as a party to the litigation on January 26, 2018. The Court has granted Northern Water's motion.

The Bureau and Corps filed their administrative records with the court on March 5, 2018. On May 3, 2018, plaintiffs filed a Motion to Supplement the Administrative Records to include a report which allegedly includes updated water demand data that the Bureau and Corps did not consider in making their determinations. That motion is pending.

The Colorado Department of Natural Resources and the City and County of Broomfield have moved to intervene in the action. These motions also remain pending.

It was initially anticipated that the parties would brief the merits of their claims and defenses by early September 2018. In light of these pending motions, it is likely the briefing on the merits will be delayed by several months. The court will decide this action based on the administrative record, and there will not be a trial with live testimony, as would occur in other litigation contexts. We expect the court will set a briefing schedule on the merits as soon as the pending motions are decided.

Mountain West Transmission Group ("MWTG") — In May 2016, the Mountain West Transmission Group ("MWTG"), a working group made up of Platte River, Tri-State Generation and Transmission, Public Service Company of Colorado, Black Hills Energy, Colorado Springs Utilities, Basin Electric, and the Western Area Power Administration, issued a Request for Information ("RFI") for an independent transmission tariff operator and market administrator. MWTG received responses from several regional transmission operators, including the California Independent System Operator, PJM Interconnection LLC, Mid-Continent Independent System Operator, Inc., and the Southwest Power Pool ("SPP"). After evaluating these responses, MWTG entered into further discussions with SPP about the possibility of full market membership, including Reliability Coordinator ("RC") services.

In furtherance of these discussions, MWTG worked to develop a more detailed proposal for consideration by SPP and its membership. Among the issues addressed in this proposal are the rights of MWTG market participants with respect to revenue requirements and required FERC filings, zonal placement of market participants and allocation of costs, operation of DC ties in an integrated market, bylaws and membership agreement revisions to accommodate the interests of the MWTG participants, mitigation of cost impacts to MWTG participants, and governance issues.

The basic terms of the MWTG proposal were outlined in a memo and white paper distributed with the December 2017 board packet. MWTG and SPP staff prepared a "policy memorandum" outlining the terms of the proposal, which was submitted to the SPP board at its March 13, 2018 meeting.

On February 23, 2018, Platte River and the other participants in the MWTG issued notices to withdraw from the Peak Reliability Funding Agreement and to cease taking reliability coordination (RC) services from Peak Reliability effective September 2, 2019. Platte River and the MWTG participants had previously executed a letter of intent to accept RC services from SPP. SPP is currently providing RC services to its members and is pursuing certification to offer RC services to transmission owners in the

West. The California Independent System Operator (CAISO) has also notified Peak Reliability that it will not take RC services from Peak Reliability after September 2, 2019, and it is also pursuing certification to provide RC services to transmission owners in the West.

On April 20, 2018, PSCo informed the other MWTG participants that it did not intend to move forward with SPP membership and withdrew from the MWTG. PSCo was the largest member of the MWTG, and consequently this unexpected development required a re-examination of regional market and reliability coordination alternatives.

The remaining members of the MWTG have continued discussions regarding the possibility of joining SPP. The parties engaged the Brattle Group to revise its economic projections for entry into SPP without PSCo. The Brattle Group shared its preliminary findings with the remaining MWTG members on August 9, 2018. Not surprisingly, the Brattle Group analysis showed that the overall financial benefit of a market without PSCo was significantly reduced, although there is still a financial benefit to the remaining members. Some of the losses from PSCo's lack of participation would be made up through revenues generated by sale of transmission service to PSCo as a non-market participant. On September 3, 2018, Black Hills Energy issued a press release withdrawing from further discussions.

Concurrently, Platte River and the remaining MWTG members were evaluating options for RC service providers. Peak Reliability issued proposals for RC services on a limited basis or as a "transitional" RC service provider. SPP stated that it is willing to offer RC services to transmission owners in the western interconnection and has circulated a proposed contract for consideration. CAISO also indicated a willingness to provide RC services to western transmission owners separate and apart from the California energy imbalance market ("EIM") or regional transmission organization. In order to facilitate the investigation of these options and the orderly transition of RC services, Platte River and the MWTG members extended the date for their withdrawal from Peak Reliability until December 31, 2019.

We were informed that PSCo, which provides balancing authority services to Platte River, intended to take RC service from SPP. Given this circumstance, Platte River negotiated and executed an agreement for RC services with SPP. WECC requested that transmission providers in the West indicate which entity they will select for RC services by September 4, 2018. Platte River provided the required notification.

Platte River is continuing to evaluate options for an organized market in the West. We have been successfully operating under the Joint Dispatch Agreement ("JDA") among Platte River, Black Hills Energy and Public Service Company of Colorado since June of 2017. The JDA provides a market for the participants to purchase and sell energy intra hour while utilizing zero-cost transmission. The JDA is currently limited to utilities in the Public Service Company balancing authority, and does not have sufficient resources to allow the parties to fully balance significant amounts of energy from intermittent resources. However, it may provide a platform for an enhanced market in the future. In that regard, the participants in the JDA are currently in discussions to expand membership through the addition of Colorado Springs Utilities.

Fiber Utilization and Telecommunications — Platte River legal staff is working with electric operations staff to address issues related to fiber utilization and telecommunications. Specifically, the Deputy General Counsel and the Manager of Operations Technology & CIP began a series of meetings with Fort Collins staff in March to discuss the transfer of Platte River's excess fiber in the Fort Collins ring to the City of Fort Collins. Additionally, legal and operations staff drafted a Memorandum of Understanding between Platte River and Estes Park to provide for the installation of a fiber pathway between Glen Haven and Estes Park. Platte River will utilize the fiber pathway for a portion of its long-haul connection between

Loveland and Estes Park. This new connection will provide a redundant fiber route to Estes Park thereby enhancing reliable communications within Platte River's electric system. Legal and operations staff are also researching ways to manage the excess long-haul fibers connecting Platte River's owner communities going forward. The goal is to facilitate, to the extent possible, the services that Platte River can provide in support of the initiatives each municipality is pursuing to provide broadband services within their communities.

A fiber work session was held on June 7 among Platte River and the relevant municipal staff members working on broadband issues. There was general consensus to move forward with a transfer of title to the local loops to the municipalities. A follow-on meeting to discuss the technical protocols for accessing the fiber in the local loops was held on July 18.

Resolutions authorizing the General Manager to convey excess fiber in the local loops to Estes Park, Fort Collins and Loveland were approved at the September meeting. In addition, a resolution authorizing the General Manager to convey associated assets supporting the fiber cable in the local Longmont loop to the City of Longmont was also approved. Transfer of the fiber assets is contingent upon development of a mutually acceptable description of the assets to be conveyed, and execution of a Fiber Management Intergovernmental Agreement (Fiber Management IGA). **The IGA has been reviewed by staff members in the owner communities and will be presented to the board for approval at the December meeting.**

Oil Spill at Rawhide Solar Facility — On November 1, employees of Platte River discovered evidence of an oil spill from a transformer at the 30 MW solar facility operated by Bison Solar, LLC ("Bison Solar") at the Rawhide Energy Station. It appeared that Bison Solar had excavated soil around the spill area, leaving a hole approximately the size of a 55-gallon drum. Before Platte River could investigate further, Bison Solar had refilled the hole with clean soil and covered the area with aggregate. Bison Solar failed to provide Platte River with notice of the spill or to communicate with Platte River prior to undertaking remediation, both of which are breaches of the lease agreement for the solar facility. Platte River sent a demand letter to Bison Solar informing it of the lease issues and demanding information regarding the spill and clean up efforts. Bison Solar asserted that the oil spilled was not a hazardous material, but has agreed to engage a remediation contractor, ERM, and to coordinate with Platte River to verify that the clean up has been completed in a thorough manner consistent with Platte River's requirements. Based on the report developed by ERM approximately 40 gallons of transformer oil spilled. The oil was a bio-degradable vegetable-based product. Nine five-gallon containers of oil-saturated soil were removed from the spill area and are awaiting final disposal. Due to the proximity of the spill to the concrete base of the transformer further excavation of the soil was considered inadvisable and unnecessary given the characteristics of the oil. Bison Solar has agreed to improve communications with Platte River to avoid any such further issues in the future. Coordination is somewhat complicated due to the fact that much of the work on the solar facility occurs at night. A letter has been sent to Bison Solar to initiate a routine communication process for activities on our site.

CONTRACTUAL MATTERS

Power Production

Outage Contracts — The Deputy General Counsel is assisting staff in negotiating contracts for equipment to be supplied and services to be performed during the Fall 2018 plant outage. Negotiations with Siemens Energy, Inc. (“Siemens”) for the purchase of a new generator rotor have been successful. A purchase order has been sent to Siemens. There is a twenty-four (24) month lead-time related to this purchase. Siemens notified Platte River that an error had been made in the manufacture of the new rotor. Specifically, a manufacturing defect occurred on the exciter end coupling of the new rotor. Platte River staff met with Siemens to discuss options going forward. Siemens has proposed a solution whereby the defect can be mitigated. The proposed solution is acceptable to Platte River engineering staff. However, Platte River will require Siemens to provide an extended warranty for the work performed by Siemens to repair the defect. The Deputy General Counsel is reviewing a proposed contract amendment to incorporate the extended warranty language.

Outage projects including a stator rewind will be performed under this services agreement. In addition to these projects, an ash handling conversion project is scheduled to be completed during the Fall 2018 plant outage. The ash handling conversion project consists of upgrading Rawhide Energy Station Unit 1’s existing bottom ash handling system with a wet to dry conversion. The current process of wet sluicing bottom ash and conveying it to settling ponds will be discontinued. Instead, bottom ash will be collected under the boiler and conveyed to a bunker. Ash will be periodically removed from the bunker and carried to the monofill by truck for disposal. Platte River staff has identified the preferred Contractor for the ash handling conversion project. However, concerns have been raised regarding the Contractor’s financial stability. To address these concerns, legal staff incorporated additional protections into the procurement and installation contract(s) for the project.

Solar and Storage Power Purchase Agreement – The Deputy General Counsel assisted staff in the drafting of a power purchase agreement for 20 MW solar and 2 MW storage project at Rawhide. A term sheet was executed with Apex Solar Holdings, LLC in August 2018. Apex recently revealed some mistakes in its bid proposal that changed pricing significantly. Discussions are occurring with other short-listed bidders. It is still anticipated that this project will commence commercial operation by the end of 2019.

GOVERNMENTAL AFFAIRS:

Colorado General Assembly — The November 2018 elections placed Democrat candidates in control of all the state-wide offices. Governor-elect Polis will be inaugurated on January 8. Democrats also have majorities in both houses of the Legislature. The Legislature will convene its 2019 session on January 4 and will adjourn on May 3.



October 2018 operating report

Executive summary

Municipal demand came in above budget, as we experienced above normal temperatures during the early days of October, while municipal energy came in near budget. Year to date, municipal demand is above budget and energy is near budget.

October was a challenging month for baseload generation. While Rawhide was off-line for its planned major outage, Craig units 1 and 2 both experienced a forced outage. Craig 3 also had two forced outages resulting in the delivery of shaft share. Year to date, Rawhide and Craig units' equivalent availability factor is near budget and net capacity factor is below budget.

Wind generation came in well below budget due to low wind penetrations throughout the month. Solar also came in well below budget with several cloudy days which resulted in low irradiance levels. Year to date, wind remains below budget and solar remains near budget.

Surplus sales volume and pricing came in well above budget, as sales were not budgeted for during Rawhide's planned major outage. Year to date, surplus sales and volume remain above budget.

Dispatch costs were well below budget for the month, mainly due to operations and maintenance costs for the planned major outage on Rawhide having come in below budget. Year to date, dispatch costs remain below budget.

Category	October variance		YTD variance	
Municipal demand	3.4%	●	2.2%	●
Municipal energy	(0.9%)	◆	(0.9%)	◆
Baseload generation	(40.2%)	■	(11.6%)	■
Wind generation	(8.9%)	■	(4.4%)	■
Solar generation	(12.4%)	■	(1.1%)	◆
Surplus sales volume	302451.7%	●	2.4%	●
Surplus sales price	14.3%	●	13.5%	●
Dispatch cost	(11.8%)	●	(2.8%)	●

Variance key: Favorable: ● >2% | Near budget: ◆ +/- 2% | Unfavorable: ■ <-2%

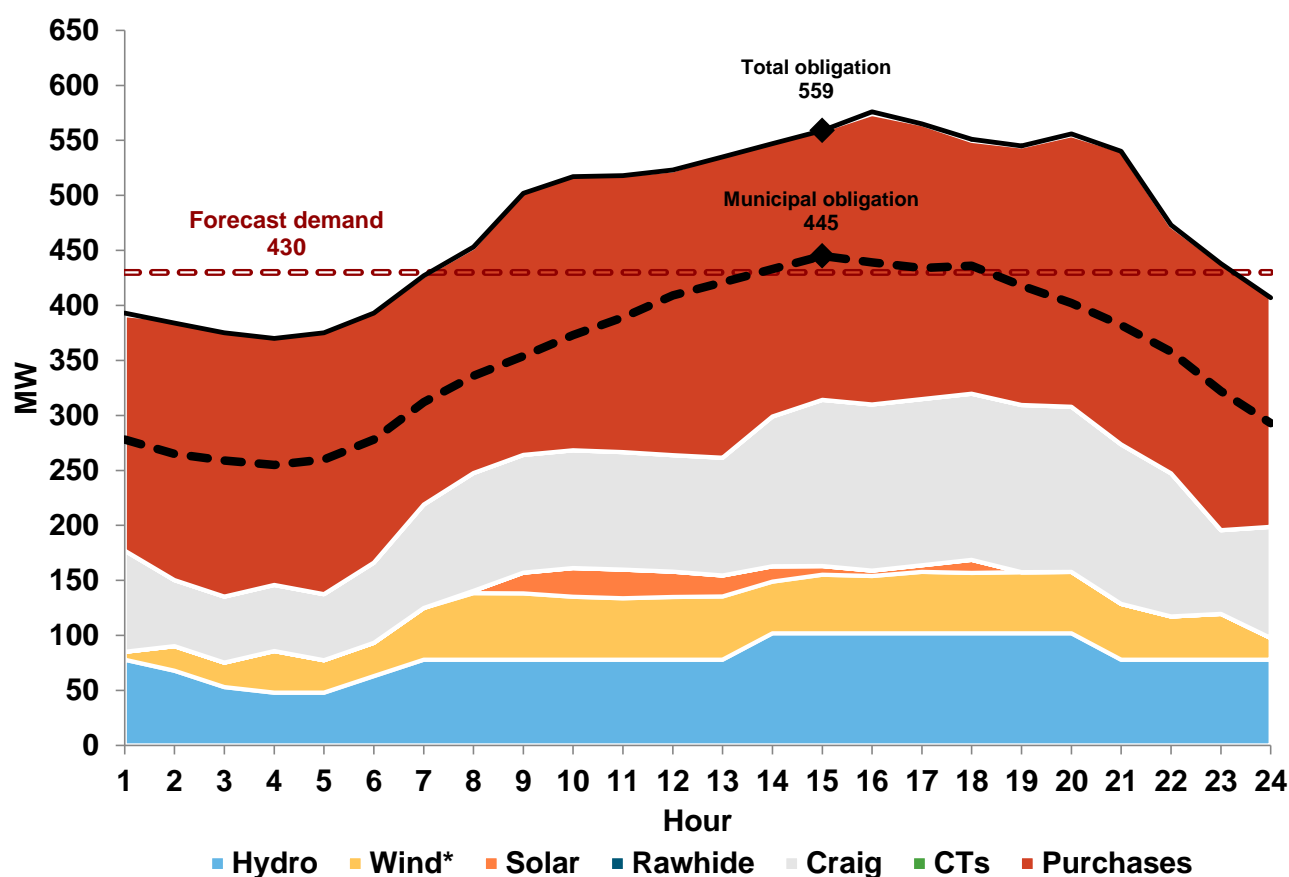
Operational overview

System disturbances. There were no system disturbances resulting in loss of load during the month of October.

2018 goal	October actual	YTD total
0	0 ●	0 ●

Peak day obligation. Peak demand for the month was 445 megawatts which occurred on Oct. 3, 2018 at hour ending 15:00 and was 15 megawatts above budget. Demand response and voltage reduction were not called upon at the time of the peak. Platte River's obligation at the time of the peak totaled 559 megawatts.

Peak day obligation: October 3, 2018



*Silver Sage RECs and associated energy have been sold to another utility and, therefore, cannot be claimed as a renewable resource by Platte River or its owner communities.

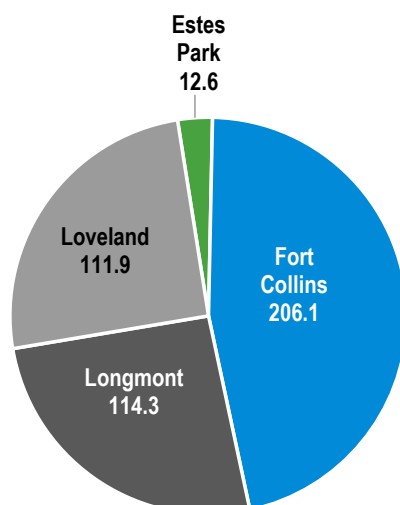
Municipal loads

October municipal demand came in above budget while energy came in near budget. Year to date, municipal demand is above budget and energy is near budget.

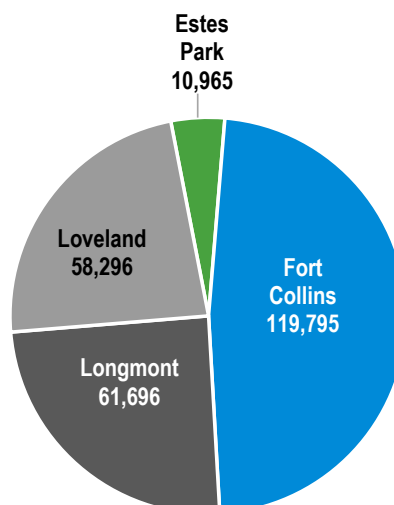
	October budget	October actual	Favorable / (unfavorable)	
			<i>MW</i>	
Total coincident demand (MW)	430.2	444.9	3.4%	●
Estes Park	14.1	12.6	(11.1%)	■
Fort Collins	205.7	206.1	0.2%	◆
Longmont	108.8	114.3	5.1%	●
Loveland	101.6	111.9	10.1%	●
			<i>%</i>	
Total energy sales (MWh)	253,024	250,753	(0.9%)	◆
Estes Park	10,037	10,965	9.3%	●
Fort Collins	121,960	119,795	(1.8%)	◆
Longmont	63,603	61,696	(3.0%)	■
Loveland	57,423	58,296	1.5%	◆

Variance key: Favorable: ● >2% | Near budget: ◆ +/- 2% | Unfavorable: ■ <-2%

Actual October coincident demand = 445 MW



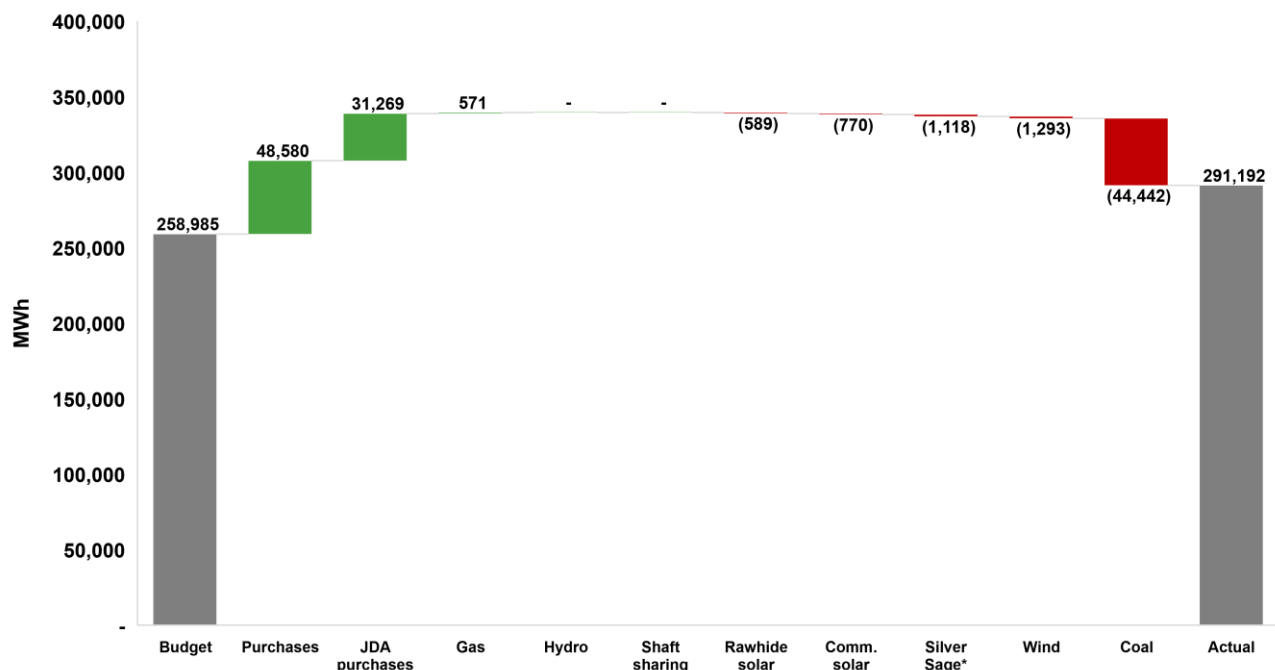
Actual October energy sales = 250,753 MWh



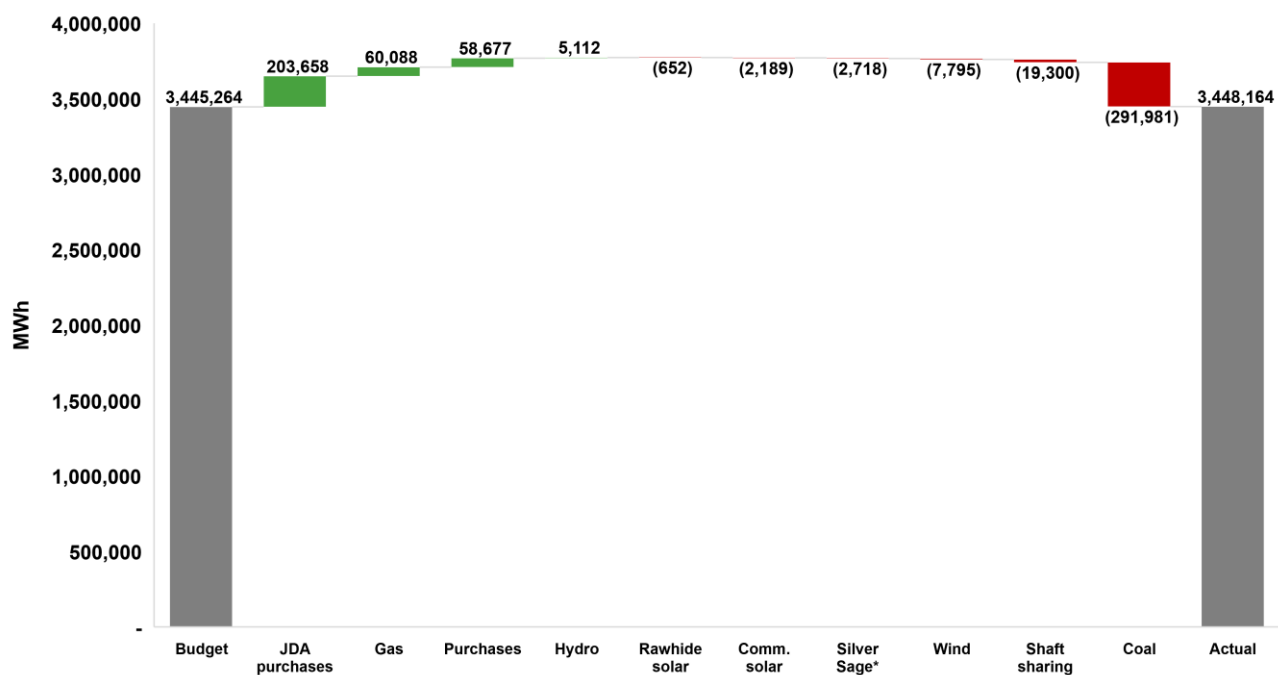
Source of supply variance

Overall, resources came in above budget for the month of October due to power purchased from the bilateral market and Joint Dispatch. Year to date, resources are above budget.

October variance in production from energy resources



Year-to-date variance in production from energy resources (MWh)

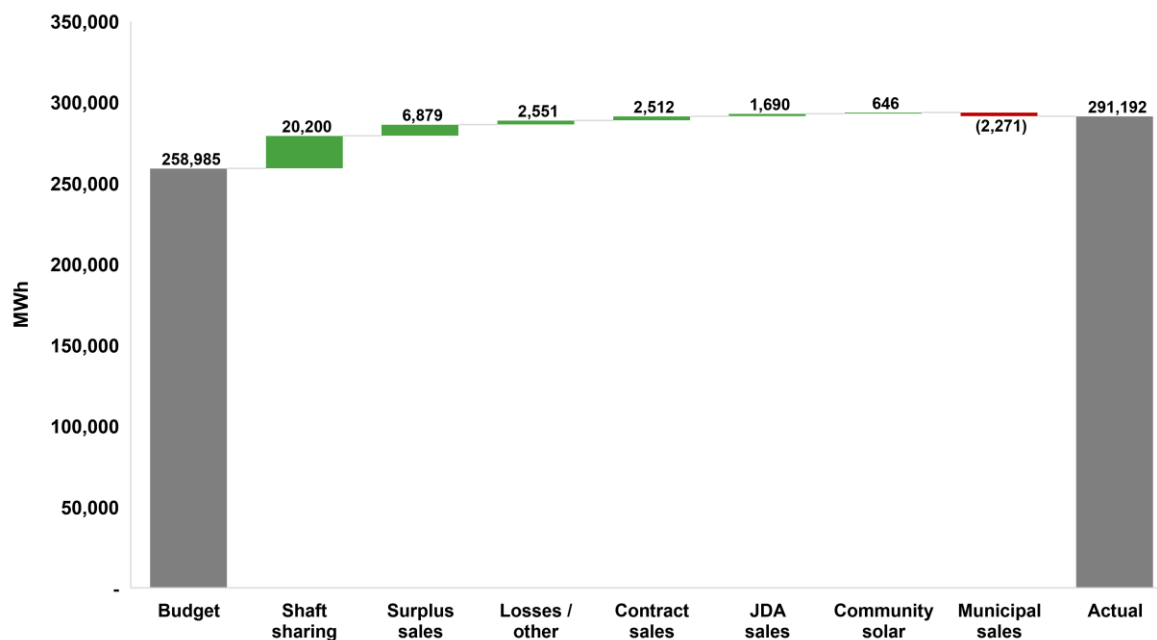


*Silver Sage REC's and associated energy have been sold to another utility and, therefore, cannot be claimed as a renewable resource by Platte River or its owner communities.

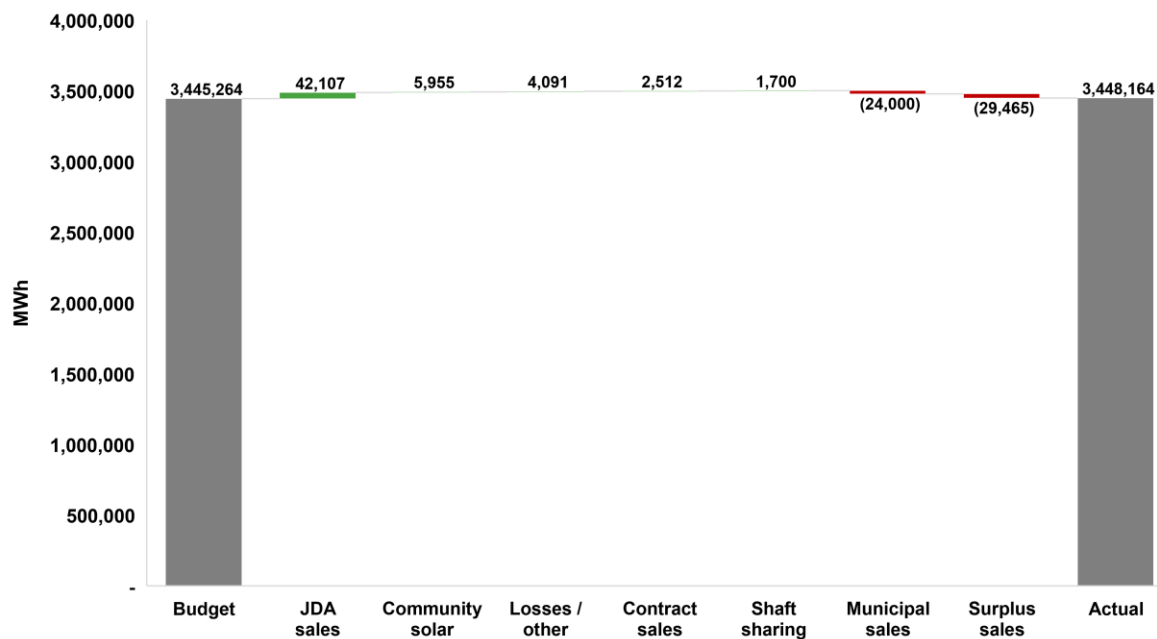
Source of delivery variance

Loads and obligations came in above budget for the month of October due to shaft share delivery requirements and above budget surplus sales. Year to date, loads and obligations are above budget.

October variance in deliveries for loads and obligations



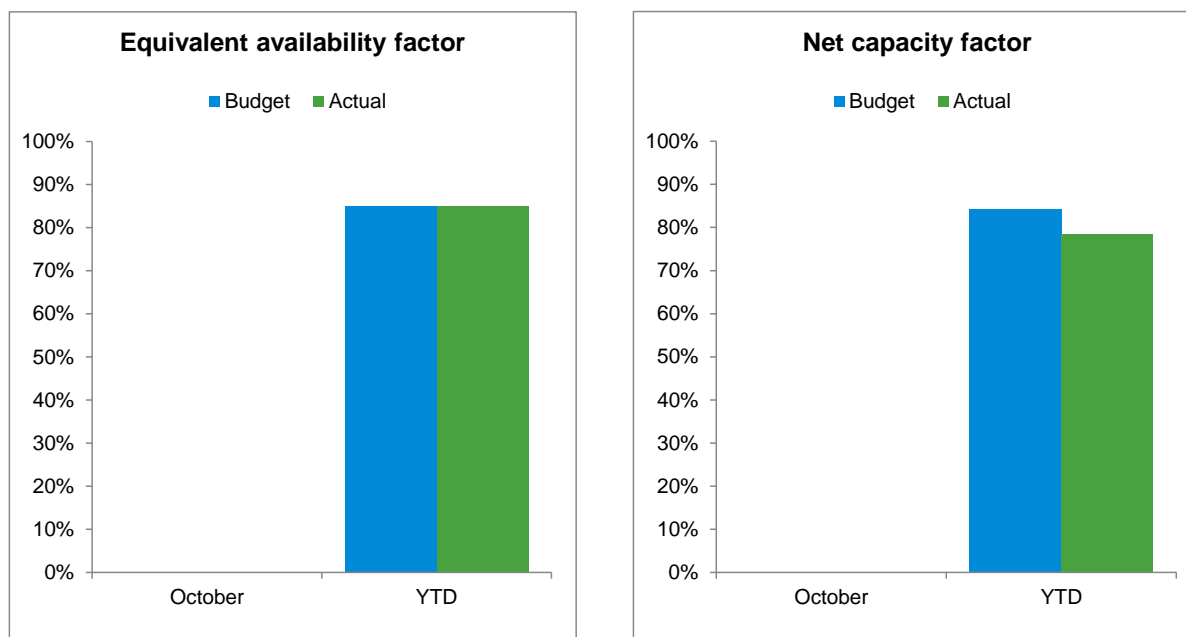
Year-to-date variance in deliveries for loads and obligations



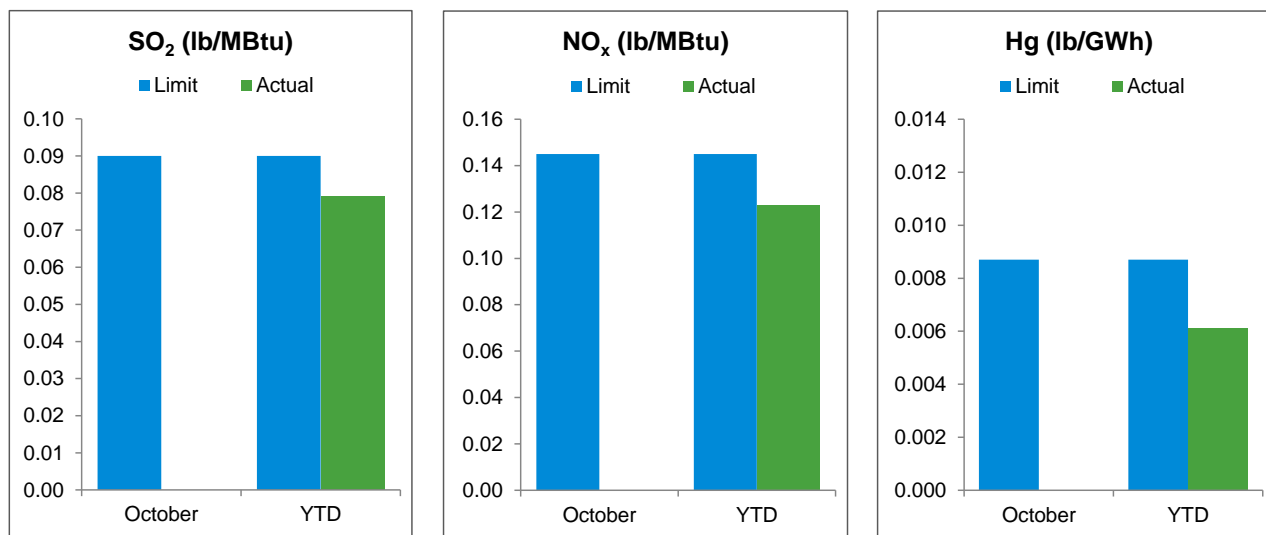
*Silver Sage REC's and associated energy have been sold to another utility and, therefore, cannot be claimed as a renewable resource by Platte River or its owner communities.

Power generation - Rawhide

Rawhide was off-line during the entire month of October for its planned major outage. Year to date, equivalent availability is at budget while capacity factor remains below budget.

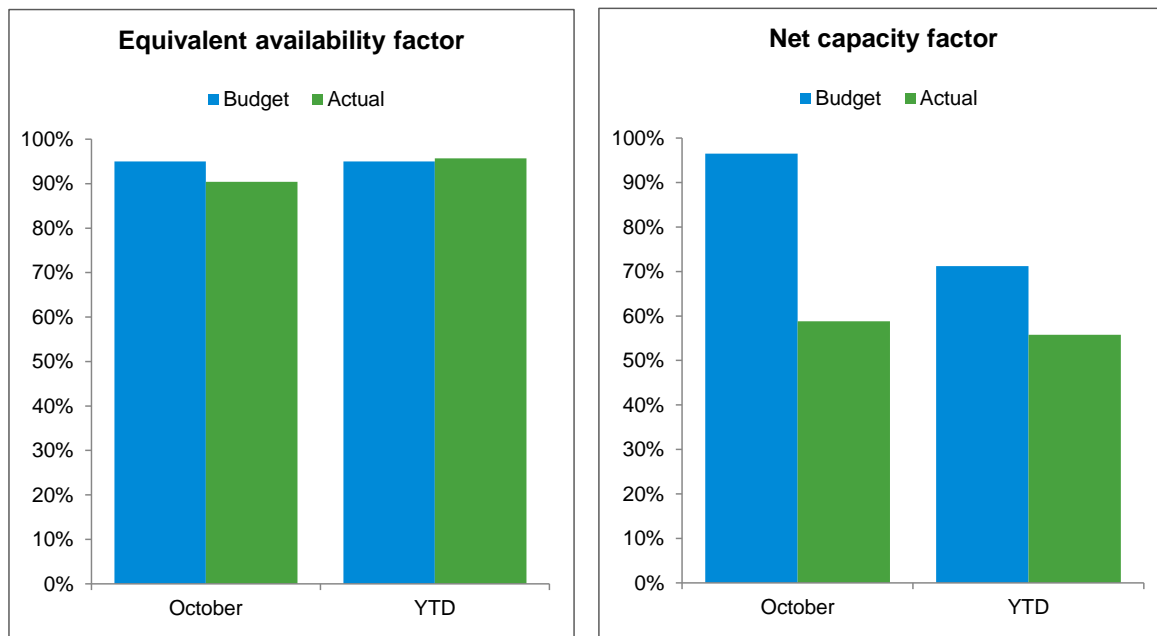


No emission were recorded for the month of October, as Rawhide was in outage.



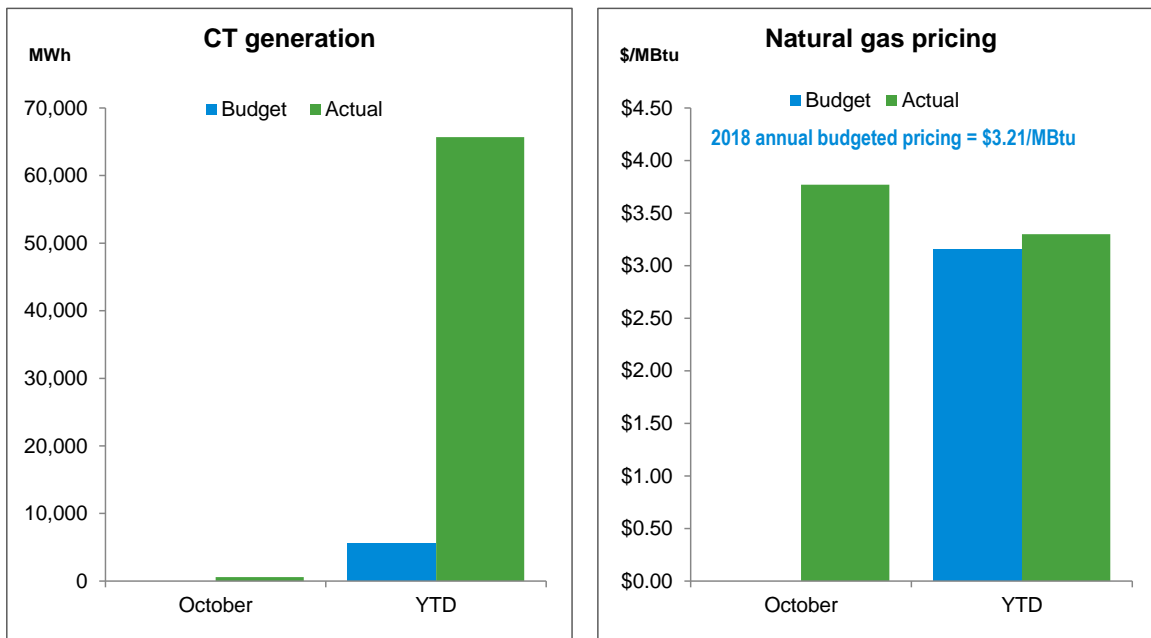
Power generation - Craig

The Craig units both experienced several curtailments, due to equipment issues and mercury testing, and the units each had a forced outage during the month of October. The units were also dispatched down into Joint Dispatch. Year to date, equivalent availability is near budget and net capacity factor is well below budget.



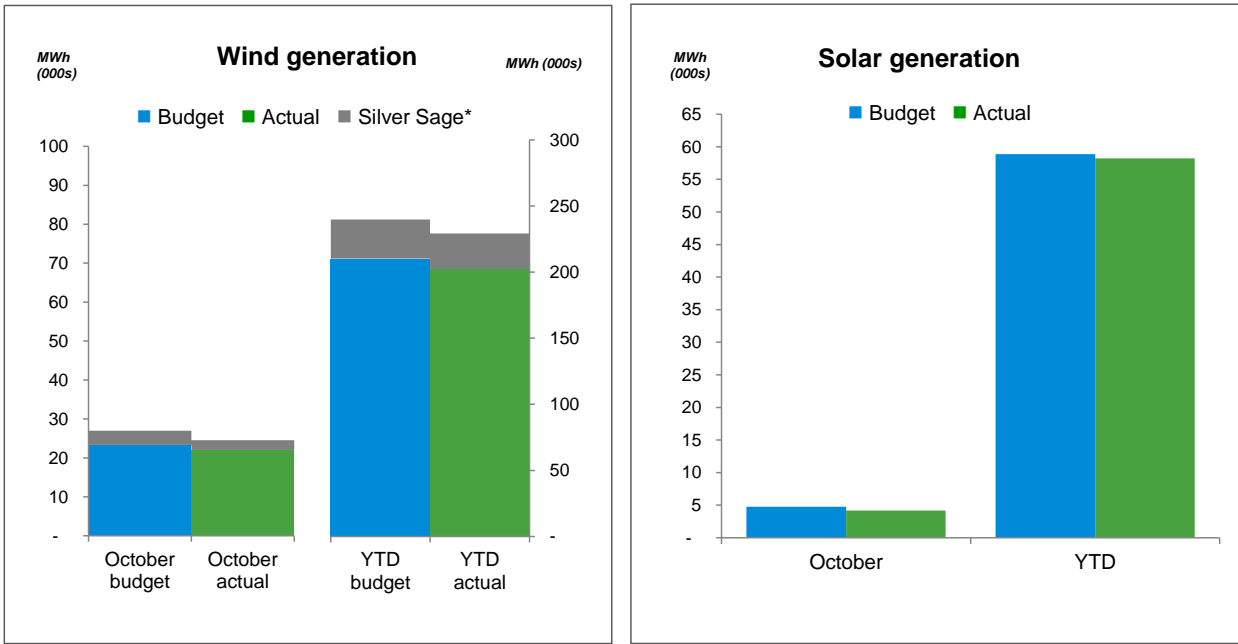
Power generation - CTs

During the month of October, the combustion turbines were run to cover shaft sharing with a small amount of CT generation used to serve a sale. Year to date, CT generation is significantly above budget and natural gas pricing is also above budget.



Power generation - renewables

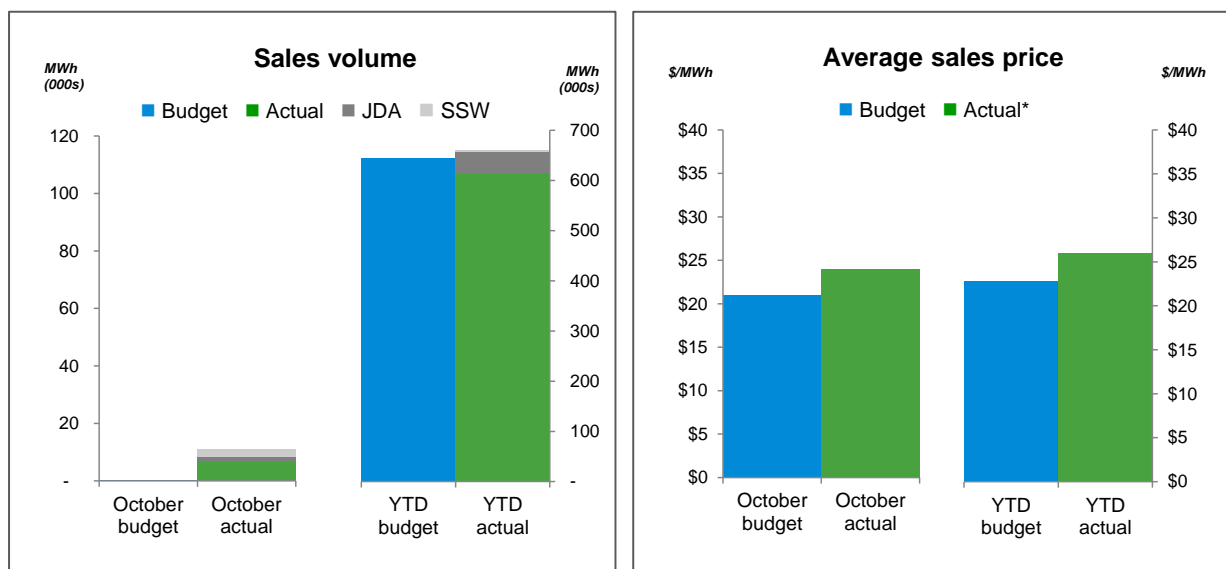
Wind and solar came in below budget for the month. Year to date, wind and solar remain below budget.



*Silver Sage REC's and associated energy have been sold to another utility and, therefore, cannot be claimed as a renewable resource by Platte River or its owner communities.

Market sales

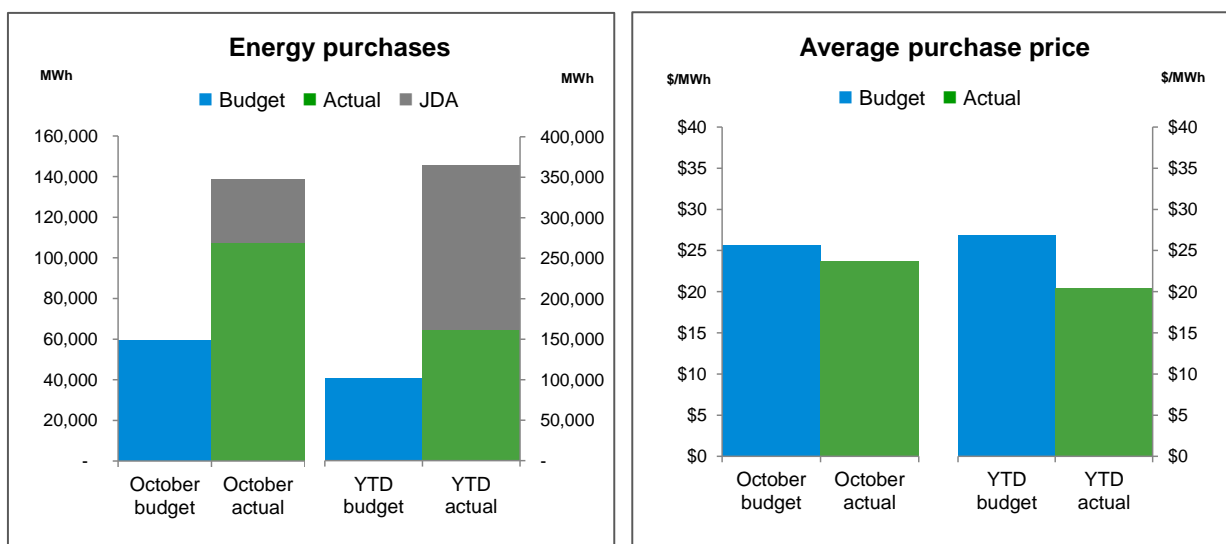
Surplus sales volume and pricing came in well above budget, as sales were not budgeted for during Rawhide's planned major outage. Year to date, surplus sales and volume remain above budget.



*The actual average sales price includes the Silver Sage sale.

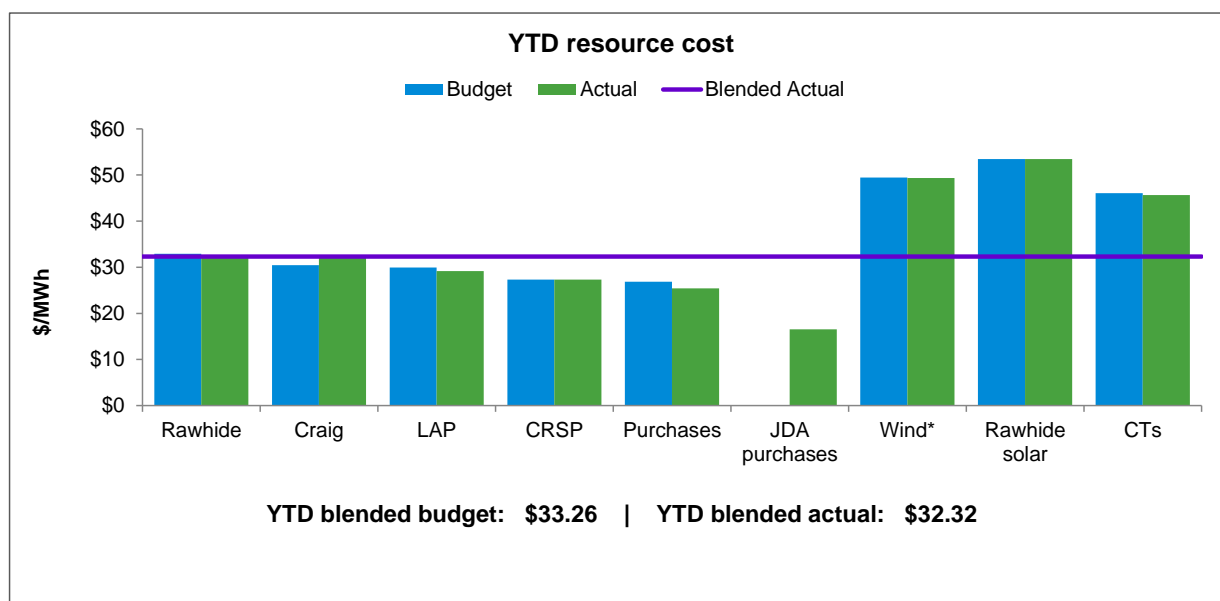
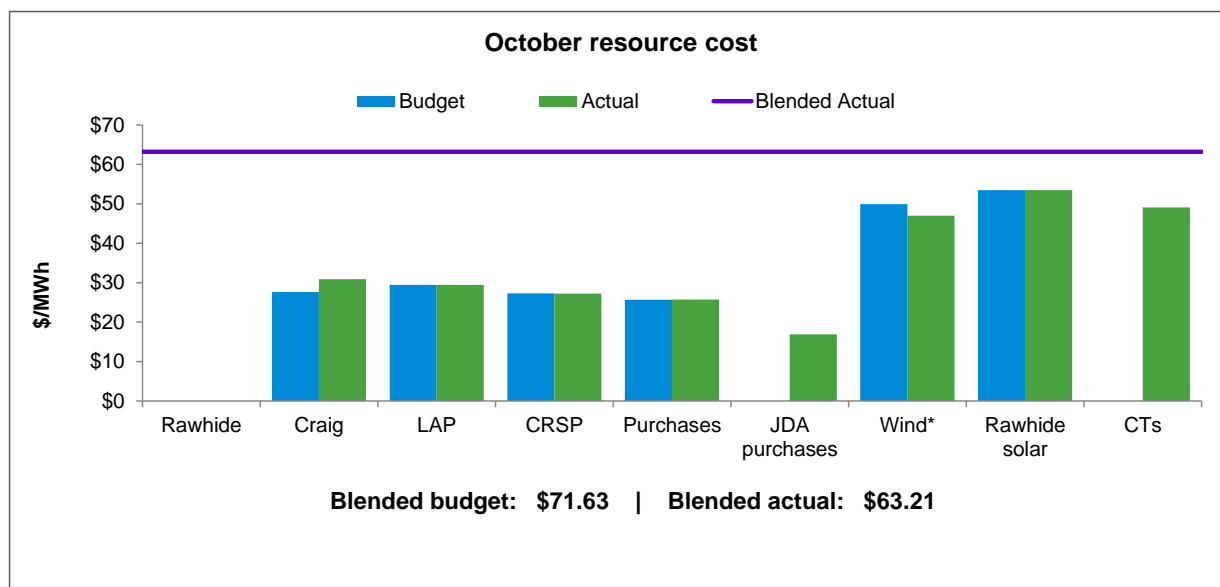
Market purchases

Purchase volumes came in significantly above budget due to forced outages on the Craig units and having met shaft sharing requirements. Another contributing factor was the high volume of Joint Dispatch purchases which were priced significantly below budget. Year to date, purchase volume is significantly above budget while pricing remains well below budget.



Dispatch cost

October dispatch costs were significantly higher than normal due to costs associated with Rawhide's planned major outage. However, dispatch costs came in significantly below budget for the month, as a result of Rawhide's operations and maintenance costs having come in below budget and the ability to purchase below budget replacement power through JDA. Dispatch costs remain below budget, year to date.



*Silver Sage RECs and associated energy have been sold to another utility and, therefore, cannot be claimed as a renewable resource by Platte River or its owner communities.

Power delivery

Major system operations projects benefitting the municipalities:

Location	Estimated finish date	Percent complete	Description
Fort Collins	12/2018	785%	Richard Lake circuit switcher additions
Fort Collins	10/2019	40%	Harmony circuit breaker replacements and circuit switch additions
System	12/2019	11%	Revenue meter replacements

Events of significance

- Rawhide transformer testing was successfully completed during the Rawhide outage.
- Airflow spoiler installations were completed on the two Rawhide 230 kV lines, in order to mitigate line galloping.
- Platte River planning staff members participated in the first IRP stakeholder outreach efforts in Fort Collins and Estes Park.
- Platte River participated in a 100% renewable energy forum facilitated by HDR and attended by representatives from local businesses.
- A Joint Dispatch (JDA) operating committee meeting was held in October, as staff continues to work with Black Hills Colorado Electric and Public Service Company of Colorado to explore ways to increase benefits from JDA.
- Platte River ERT had one on-site call in response to a turbine oil spill on the north end of the first and second floors of the turbine building. No off-site mutual aid calls occurred with Wellington Fire, Nunn Fire and PVH Paramedic Services in the month of October.



October Financial Report

FINANCIAL HIGHLIGHTS YEAR-TO-DATE

Platte River reported favorable results year to date. Net income of \$30.6 million was favorable by \$10.7 million compared to budget due to above-budget revenues and below-budget expenses. Approximately \$2.8 million of the below-budget expenses are expected to be incurred later in the year. Details of the financial results are described below.

At this time, the estimate for year-end net income is approximately \$30.9 million as reported in the 2019 Annual Budget document. Savings are anticipated from lower fuel expenses partially replaced by additional lower-cost purchases under the joint dispatch agreement. Additionally, the depreciation projections were revised downward and trends for sales to the owner communities and surplus sales have improved. Other operating expenses assumes an approximate 3% favorable variance.

Key Financial Results (\$ Millions)	October			Favorable (Unfavorable)		Year to Date			Favorable (Unfavorable)		Annual Budget
	Budget	Actual		Budget	Actual	Budget	Actual				
Net Income/(Loss)	\$ 0.8	\$ 1.4	●	\$ 0.6	75.0%	\$ 19.9	\$ 30.6	●	\$10.7	53.8%	\$ 22.6
Fixed Obligation Charge Coverage	2.01x	2.71x	●	.70x	34.8%	2.51x	3.16x	●	.65x	25.9%	2.48x
Budget Results											
Total Revenues	\$ 15.0	\$ 15.4	●	\$ 0.4	2.7%	\$186.7	\$190.5	◆	\$ 3.8	2.0%	\$ 223.5
Sales to owner communities	14.3	14.4	◆	0.1	0.7%	165.7	166.1	◆	0.4	0.2%	197.0
Sales for resale	-	0.3	●	0.3	-	14.7	17.1	●	2.4	16.3%	18.9
Wheeling	0.4	0.4	◆	0.0	0.0%	3.8	4.4	●	0.6	15.8%	4.6
Interest and other income	0.3	0.3	◆	0.0	0.0%	2.5	2.9	●	0.4	16.0%	3.0
Total Operating Expenses	\$ 11.8	\$ 11.3	●	\$ 0.5	4.2%	\$142.6	\$136.5	●	\$ 6.1	4.3%	\$ 172.0
Purchased power	3.3	4.0	■	(0.7)	(21.2%)	28.2	31.5	■	(3.3)	(11.7%)	34.5
Fuel	2.3	1.3	●	1.0	43.5%	40.7	36.8	●	3.9	9.6%	49.7
Production	2.9	2.2	●	0.7	24.1%	38.1	35.3	●	2.8	7.3%	45.2
Transmission	1.3	1.4	■	(0.1)	(7.7%)	14.3	13.0	●	1.3	9.1%	17.2
Administrative and general	2.0	2.4	■	(0.4)	(20.0%)	21.3	19.9	●	1.4	6.6%	25.4
Capital Additions	\$ 9.0	\$ 8.7	●	\$ 0.3	3.3%	\$ 57.9	\$ 41.1	●	\$16.8	29.0%	\$ 73.5

>2% ● Favorable | 2% to -2% ◆ At or Near Budget | <-2% ■ Unfavorable

KEY BUDGET VARIANCES YEAR-TO-DATE

TOTAL REVENUES

- **Sales for resale** were above budget \$2.4 million primarily due to combustion turbine unit sales and an increase in market prices. The average price was approximately 13.6 percent above budget or \$2.1 million of the variance. The volume of sales was 2 percent above budget and represented \$0.3 million of the variance.
- **Wheeling** was above budget \$0.6 million due to higher third party use of the transmission system, additional point-to-point sales and a rate increase effective in May.
- **Interest and other income** was above budget \$0.4 million due to fiber and tower revenue, unbudgeted co-locate fees, Trapper Mine dividend, and higher-than-anticipated interest rates calculated on higher cash balances due to the sale of the Windy Gap water units.

TOTAL OPERATING EXPENSES

- **Fuel expenses** were \$3.9 million below budget mainly due to lower generation as a result of market conditions, joint dispatch purchases and Rawhide Unit 1's forced outages earlier in the year. The coal prices for Rawhide Unit 1 and Craig Units 1 and 2 were also favorable compared to budget. Partially offsetting the below-budget variance was above-budget natural gas expense. The combustion turbines were utilized to meet load and make additional sales.
- **Chemical expenses, non-routine projects, joint facilities, communication and planning initiatives, distributed energy resources, Rawhide waste compliance activities, property rights legal council, marketing software tool, general project consulting, utilities, routine maintenance expenses, railcar repair parts and other smaller projects** were below budget either due to timing of expenses, projects being completed below budget, or expenses not being required at this time. These expenses were partially offset by additional expenses for Rawhide Unit 1's forced outages and software licenses. The net impact was approximately \$2.1 million below budget.
- **Energy efficiency program expenses** were \$1.1 million below budget due to the unpredictability of the completion of customers' energy efficiency projects. The funds are expected to be spent by the end of the year.
- **Personnel expenses** were below budget \$0.9 million due to lower wages and wages allocated to capital expenditures were higher than planned. Partially offsetting the lower wages were additional medical expenses incurred during the first quarter due to a large medical claim. Since this claim has now satisfied its deductible for this year, further significant adjustments are not anticipated in 2018.
- **Yampa expenses** were \$0.5 million below budget due to timing of expenses.
- **Storm water holding basin cleaning expenses** were \$0.3 million below budget due to a change in scope of the Bottom Ash and Reclaim Pond capital project.
- **Leases and rents** were \$0.3 million below budget due to the need to secure less water than originally planned. There were favorable water conditions and the Windy Gap project was able to pump water.
- **Wheeling expenses** were \$0.3 million below budget as less transmission was purchased during the planned WAPA Craig-to-Ault transmission outage due to the outage ending earlier than anticipated, as well as the ability to sell energy directly from the Craig Station. In addition, transmission on the Silver Sage wind energy is no longer required due to the sale of energy to another utility.
- **Purchased power expenses** were above budget \$3.3 million due to purchases made under the joint dispatch agreement because of favorable pricing. Other supplemental purchases were made for Rawhide Unit 1's forced outages earlier in the year and to provide energy to Tri-State under the Forced Outage Assistance Agreement. Below-budget wind generation and timing of the delivery for renewable energy credits partially offset the additional purchases.

OTHER FINANCIAL ACTIVITIES

- **Pension Accounting** - The required update to pension liability was completed in June. The net pension liability decreased by \$6.3 million to \$13.1 million mainly as a result of a gain on the market value of the assets for the plan year, a better rate of return of approximately 11.97 percent compared to the assumed rate of 7.5 percent, and an increase in accrued benefits due to the experience of the plan.

- **Windy Gap Unit Sales - Accounting Treatment** - The sale of 3 additional units of Windy Gap water in June for \$6.0 million will impact net income beginning in 2018. As a result of this transaction, a net gain of \$6.0 million will be recognized, as the majority of the assets were fully depreciated. This amount will be amortized over the remaining useful life of the facility, which is currently 2046. Over this period, the current estimate of the net impact as a reduction to depreciation expense for this transaction is \$0.2 million annually (or \$6.0 million in total), which will be added to previous sales for a total impact of \$1.5 million annually. The reduction in depreciation results in a corresponding increase in net income over this time frame.
- **Debt** - Payments of \$19.2 million for principal and interest for bond service were made June 1, which included the final principal payment of Series GG bonds. The Series GG bonds were the only debt remaining associated with the construction of the combustion turbines. The remaining outstanding principal for Series HH, II and JJ represents debt associated with the Rawhide Energy Station (\$26 million) and transmission assets (\$153 million). The Series KK bond issuance scheduled for June of 2018 has been delayed and is expected to be issued in 2019.

CAPITAL ADDITIONS (year-end estimates as of October 2018)

At this time, capital expenditures are expected to be approximately \$3.8 million below budget at the end of the year. However, some projects will not be completed during 2018 and the remaining funds for those projects, approximately \$5.5 million, will need to be carried over into 2019 for project completion. The majority of these projects are summarized below. Thus far in 2018, several additional requests for funds have occurred due to changes in the schedule and scope of projects. As a result of the need to carry over funds to 2019, a budget contingency appropriation of approximately \$1.9 million will be required to cover the additional capital project expenses in 2018. Project managers are continuously improving work planning and budgeting by better aligning scope, schedules and available resources. The projects listed below are projected to end the year with a budget variance of more than \$100,000. In addition, the amounts below are costs for 2018 and may not represent the total cost of the project.

Project (\$ in Thousands)	Budget	Estimate	Favorable (Unfavorable)	Estimated Carryover Request
ABOVE BUDGET PROJECTS				
* Generator Stator Rewind - Rawhide Unit 1 - During the Rawhide outage work on the generator stator project, it was determined that additional work is required on the stator core.	\$ 4,522	\$ 6,397	\$ (1,875)	
* Bottom Ash and Reclaim Pond CCR Compliance - This project will be above budget due to a design change. Due to environmental reasons and high groundwater levels, a concrete tank is required to house liquid waste streams rather than lining existing earthen ponds. A concrete tank is not subject to waste impoundment regulations and will prevent leakage into the groundwater, thus negating the need for future monitoring. <i>A portion of the additional funds will be carried over into 2019.</i>	\$ 17,671	\$ 19,510	\$ (1,839)	\$ 867
Controls Upgrade to Ovation Distributed Control System - Combustion Turbine Unit D - All five combustion turbines' control and exciter systems will be upgraded to the Ovation distributed control system creating a unified platform. Recent estimates show a significant cost savings if all five are planned and upgraded together during 2018 and 2019. As a result, more funds are required in 2018 for progress payments on hardware and software but reduces the amount required in 2019.	\$ 152	\$ 818	\$ (666)	

* Boyd 115/230kV Substation Transformer T2 Addition - This project will be above budget due to wheeling expenses for an unforeseen shoofly installation required by Tri-State and Xcel Energy in addition to increases in labor and financing costs.	\$	883	\$	1,414	\$	(531)	
* Controls Upgrade to Ovation Distributed Control System - Combustion Turbine Unit F - All five combustion turbines' control and exciter systems will be upgraded to the Ovation distributed control system creating a unified platform. Recent estimates show a significant cost savings if all five are planned and upgraded together during 2018 and 2019. As a result, more funds are required in 2018 for progress payments on hardware and software but reduces the amount required in 2019.	\$	212	\$	577	\$	(365)	
* Coal Dust Pneumatic Conveying System - This project will be above budget due to a design change from a cyclone separator to a bag house design, as well as an extended commissioning time.	\$	345	\$	645	\$	(300)	
* GenAdvisor Generator Monitoring System - Rawhide Unit 1 - This project will be above budget due to a change in scope to add the partial discharge monitoring (PDM) feature to the isophase to assist with diagnosing vibrations. The PDM was found to be beneficial in the isophase where operational issues were experienced.	\$	544	\$	834	\$	(290)	
* Headquarters Campus - This project will be above budget due to work progressing more quickly than anticipated in 2018. A revised cashflow shows an accelerated schedule with no change in the total project costs.	\$	16,428	\$	16,592	\$	(164)	
Airflow Spoilers - This project will be above budget due to under estimating the number of spoilers needed and contract labor needed to install them.	\$	257	\$	364	\$	(107)	
BELOW BUDGET PROJECTS							
* Low Impact Security - Substation Control Building Access - This project will be below budget due to a significantly lower vendor estimate on conduit and a reassessment of the project costs.	\$	1,541	\$	552	\$	989	
Evergreen Controls Hardware Upgrade - Rawhide Unit 1 - This project will be below budget due to significantly lower vendor quotes.	\$	2,226	\$	1,389	\$	837	
* Windy Gap Firming - This project will be below budget as interest will not be charged to the project this year due to the delay in the debt issuance to 2019. <i>The below-budget funds will be requested to be carried over into 2019.</i>	\$	3,185	\$	2,564	\$	621	\$ 621
** Air Heater Basket Replacement - This project will be below budget due to significantly lower vendor costs than anticipated.	\$	1,741	\$	1,258	\$	483	
Low Impact Security - Substations Owned - This project will be below budget due to a significantly lower vendor estimate on conduit and a reassessment of the project costs.	\$	772	\$	300	\$	472	
* Low Impact Security - Rawhide - This project will be below budget due to a significantly lower vendor estimate on conduit and a reassessment of the project costs.	\$	457	\$	48	\$	409	
Mobile Crane Replacement - This purchase was below budget due to finding a suitable used crane instead of purchasing a new crane as originally planned.	\$	710	\$	337	\$	373	

** Engine 12 Replacement - This project will be below budget due to the down-payment required being less than anticipated. <i>A portion of the below-budget funds will be carried over into 2019.</i>				
	\$ 420	\$ 115	\$ 305	\$ 219
** Protective Relay Replacement - Combustion Turbine Unit F - This project will be below budget due to actual quotes coming in less than budgeted. <i>A portion of the below-budget funds will be carried over into 2019.</i>				
	\$ 298	\$ 75	\$ 223	\$ 87
DELAYED PROJECTS				
* Fiber Optic Route to Estes Park - This project has been delayed to coincide with the City of Loveland's schedule for the installation of the poles. <i>A portion of the below-budget variance will be carried over into 2019.</i>				
	\$ 4,930	\$ 1,311	\$ 3,619	\$ 2,522
Rotary Car Dumper Conversion to Variable Frequency Drives - This project has been delayed due to reallocating resources to allow a greater focus on outage projects. <i>A portion of the below-budget funds will be requested to be carried over into 2019 to start the project.</i>				
	\$ 1,249	\$ -	\$ 1,249	\$ 514
Fixed Fire Suppression System - Combustion Turbines - A portion of this multi-year project has been delayed due to a change in the project scope, which includes an additional phase of protection. Due to the increased scope of work, this will be budgeted in future years with a new charter and scope to complete fire protection on Units A-D. A portion of the below-budget funds will be used to complete Unit F.				
	\$ 326	\$ 83	\$ 243	
Transmission Line Vault Upgrades - Rogers Road - The majority of this project has been delayed due to a decision to reallocate engineering resources to other capital projects. <i>A portion of the below-budget funds will be requested to be carried over into 2019 to complete the project.</i>				
	\$ 267	\$ 43	\$ 224	\$ 115
CANCELED PROJECTS				
Vacuum Truck Replacement - This project is canceled as a result of an updated mechanic assessment which determined replacement is not needed at this time.				
	\$ 380	\$ -	\$ 380	
Spray Dry Absorber Feed and Feed Prep Pump Replacement - This project is canceled due to resource constraints and other higher priority projects taking place during the outage. This project will be budgeted for a future year.				
	\$ 190	\$ -	\$ 190	
OUT-OF-BUDGET PROJECTS				
** Controls Upgrade to Ovation Distributed Control System - Combustion Turbine Unit B - All five combustion turbines' control and exciter systems will be upgraded to the Ovation distributed control system creating a unified platform. Recent estimates show a significant cost savings if all five are planned and upgraded together during 2018 and 2019. To accommodate completion of all five units, the overall schedule has changed resulting in funds being required in 2018.				
	\$ -	\$ 242	\$ (242)	
** Controls Upgrade to Ovation Distributed Control System - Combustion Turbine Unit C - All five combustion turbines' control and exciter systems will be upgraded to the Ovation distributed control system creating a unified platform. Recent estimates show a significant cost savings if all five are planned and upgraded together during 2018 and 2019. To accommodate completion of all five units, the overall schedule has changed resulting in funds being required in 2018.				
	\$ -	\$ 242	\$ (242)	

<p>* Revenue Meters Replacement - The existing meters are at the end of life and are no longer supported. With the possibility of joining a market in the future, the existing meters need to be replaced to accommodate the requirement for high-side loss compensation. The new meters also have enhanced data reporting capabilities.</p>	\$ -	\$ 216	\$ (216)	
<p>* Monofill Upgrade - Rawhide - The Colorado Department of Public Health and Environment (CDPHE) requires that the monofill at Rawhide be upgraded to include a liner and leachate collection system. An Engineering Design and Operations Plan (EDOP) is required to ensure the design is in accordance with regulations. An updated EDOP will be submitted to CDPHE with approval expected mid-2019. Construction planning and final design work will occur in 2019 following approval of the updated EDOP, with construction expected to begin in 2020. When CDPHE approves the newly constructed area for waste placement, the project will be considered complete. This is a phased, multi-year project to update and implement operating procedures for future operations. <i>Funds of \$0.2 million were requested in 2018, of which a portion will be carried over into 2019.</i></p>	\$ -	\$ 143	\$ (143)	\$ 60

* Project details or amounts have changed since last report.

** Project is new to the report.

Budget Schedules

SCHEDULE OF REVENUES AND EXPENDITURES, BUDGET TO ACTUAL

October 2018

Non-GAAP Budgetary Basis (In Thousands)

	Month of October		Favorable
	Budget	Actual	(Unfavorable)
Revenues			
<i>Operating revenues</i>			
Sales to owner communities	\$ 14,342	\$ 14,371	\$ 29
Sales for resale	-	266	266
Wheeling	386	436	50
Total operating revenues	14,728	15,073	345
<i>Other revenues</i>			
Interest income ⁽¹⁾	267	284	17
Other income	13	(1)	(14)
Total other revenues	280	283	3
Total revenues	<u>\$ 15,008</u>	<u>\$ 15,356</u>	<u>\$ 348</u>
Expenditures			
<i>Operating expenses</i>			
Purchased power	\$ 3,267	\$ 4,028	\$ (761)
Fuel	2,258	1,246	1,012
Production	2,950	2,238	712
Transmission	1,313	1,415	(102)
Administrative and general	2,029	2,365	(336)
Total operating expenses	11,817	11,292	525
<i>Debt expense</i>			
Principal	870	861	9
Interest expense	1,019	703	316
Allowance for funds used during construction	(304)	(86)	(218)
Total debt expense	1,585	1,478	107
<i>Capital additions</i>			
Production	6,304	6,699	(395)
Transmission	414	381	33
General	2,305	1,600	705
Total capital additions	9,023	8,680	343
Total expenditures	<u>\$ 22,425</u>	<u>\$ 21,450</u>	<u>\$ 975</u>
Revenues less expenditures	\$ (7,417)	\$ (6,094)	\$ 1,323

⁽¹⁾ Excludes unrealized holding gains and losses on investments.

SCHEDULE OF REVENUES AND EXPENDITURES, BUDGET TO ACTUAL **October 2018 - YEAR TO DATE**

Non-GAAP Budgetary Basis (In Thousands)

	October Year to Date		Favorable	Annual
	Budget	Actual	(Unfavorable)	Budget
Revenues				
<i>Operating revenues</i>				
Sales to owner communities	\$ 165,644	\$ 166,091	\$ 447	\$ 197,016
Sales for resale	14,716	17,095	2,377	18,856
Wheeling	3,844	4,397	553	4,620
Total operating revenues	184,204	187,583	3,379	220,492
<i>Other revenues</i>				
Interest income ⁽¹⁾	2,246	2,371	125	2,793
Other income	252	502	250	256
Total other revenues	2,498	2,873	375	3,049
Total revenues	<u>\$ 186,702</u>	<u>\$ 190,456</u>	<u>\$ 3,754</u>	<u>\$ 223,541</u>
Expenditures				
<i>Operating expenses</i>				
Purchased power	\$ 28,174	\$ 31,521	\$ (3,347)	\$ 34,525
Fuel	40,707	36,829	3,878	49,654
Production	38,155	35,294	2,861	45,194
Transmission	14,299	13,024	1,275	17,199
Administrative and general	21,295	19,907	1,388	25,412
Total operating expenses	142,630	136,575	6,055	171,984
<i>Debt expense</i>				
Principal	10,423	10,381	42	12,162
Interest expense	8,908	7,325	1,583	10,946
Allowance for funds used during construction	(1,781)	(658)	(1,123)	(2,323)
Total debt expense	17,550	17,048	502	20,785
<i>Capital additions</i>				
Production	34,732	25,073	9,659	45,164
Transmission	5,368	3,942	1,426	5,772
General	17,818	12,128	5,690	22,574
Total capital additions	57,918	41,143	16,775	73,510
Total expenditures	<u>\$ 218,098</u>	<u>\$ 194,766</u>	<u>\$ 23,332</u>	<u>\$ 266,279</u>
Contingency reserved to board	-	-	-	23,000
Total expenditures	<u>\$ 218,098</u>	<u>\$ 194,766</u>	<u>\$ 23,332</u>	<u>\$ 289,279</u>
Revenues less expenditures	\$ (31,396)	\$ (4,310)	\$ 27,086	\$ (65,738)

⁽¹⁾ Excludes unrealized holding gains and losses on investments.

Financial Statements

STATEMENTS OF NET POSITION

Unaudited (In Thousands)

	October 31	
	2018	2017
Assets		
<i>Electric plant, at original cost</i>		
Land and land rights	\$ 16,997	\$ 16,997
Plant and equipment in service	1,334,782	1,287,705
Less: accumulated depreciation and amortization	(864,978)	(842,168)
Plant in service, net	486,801	462,534
Construction work in progress	82,486	89,576
Total electric plant	569,287	552,110
<i>Special funds and investments</i>		
Restricted funds and investments	21,543	40,213
Dedicated funds and investments	96,207	83,580
Total special funds and investments	117,750	123,793
<i>Current assets</i>		
Cash and cash equivalents	29,323	23,732
Other temporary investments	33,228	34,846
Accounts receivable - owner communities	14,336	14,031
Accounts receivable - other	3,189	4,273
Fuel inventory, at last-in, first-out cost	15,697	14,912
Materials and supplies inventory, at average cost	13,817	13,627
Prepayments and other assets	2,212	1,996
Total current assets	111,802	107,417
<i>Noncurrent assets</i>		
Regulatory assets	7,274	7,087
Other long-term assets	5,706	6,764
Total noncurrent assets	12,980	13,851
Total assets	811,819	797,171
Deferred Outflows of Resources		
Deferred loss on debt refundings	7,400	8,683
Pension deferrals	10,797	14,550
Total deferred outflows of resources	18,197	23,233
Liabilities		
<i>Noncurrent liabilities</i>		
Long-term debt, net	195,717	209,608
Net pension liability	13,107	19,395
Other liabilities and credits	16,097	16,014
Total noncurrent liabilities	224,921	245,017
<i>Current liabilities</i>		
Current maturities of long-term debt	10,335	14,580
Accounts payable	20,578	13,725
Accrued interest	3,511	3,814
Accrued liabilities and other	2,717	1,769
Total current liabilities	37,141	33,888
Total liabilities	262,062	278,905
Deferred Inflows of Resources		
Regulatory credits	2,653	9,441
Pension deferrals	4,427	1,508
Total deferred inflows of resources	7,080	10,949
Net Position		
Net investment in capital assets	370,488	351,927
Restricted	16,046	17,976
Unrestricted	174,340	160,647
Total net position	\$ 560,874	\$ 530,550

Note: Certain prior year line items have been reclassified to conform to the current year's presentation.

STATEMENTS OF REVENUES, EXPENSES, AND CHANGES IN NET POSITION

Unaudited (In Thousands)

	Month of October	Twelve Months Ended October 31	
		2018	2017
Operating revenues			
Sales to owner communities	\$ 14,371	\$ 196,166	\$ 188,437
Sales for resale	266	21,217	19,386
Wheeling	436	5,211	4,681
Total operating revenues	<u>15,073</u>	<u>222,594</u>	<u>212,504</u>
Operating expenses			
Purchased power	4,028	37,276	35,610
Fuel	1,246	44,695	47,246
Operations and maintenance	3,693	59,846	62,900
Administrative and general	2,378	24,699	19,193
Depreciation	2,160	22,904	26,009
Total operating expenses	<u>13,505</u>	<u>189,420</u>	<u>190,958</u>
Operating income	<u>1,568</u>	<u>33,174</u>	<u>21,546</u>
Nonoperating revenues (expenses)			
Interest income	292	2,773	1,589
Other (loss)/income	(1)	656	559
Interest expense	(703)	(8,851)	(9,767)
Amortization of bond financing costs	187	2,174	2,124
Allowance for funds used during construction	86	783	989
Net increase/(decrease) in fair value of investments	18	(248)	(719)
Total nonoperating revenues (expenses)	<u>(121)</u>	<u>(2,713)</u>	<u>(5,225)</u>
Income before contributions	<u>1,447</u>	<u>30,461</u>	<u>16,321</u>
Contribution of assets to owner communities	<u>-</u>	<u>(137)</u>	<u>(173)</u>
Change in net position	<u>1,447</u>	<u>30,324</u>	<u>16,148</u>
Net position at beginning of period, as previously reported	<u>559,427</u>	<u>530,550</u>	<u>514,402</u>
Net position at end of period	<u>\$ 560,874</u>	<u>\$ 560,874</u>	<u>\$ 530,550</u>

Note: Certain prior year line items have been reclassified to conform to the current year's presentation.

STATEMENTS OF CASH FLOWS

Unaudited (In Thousands)

	Month of October	Twelve Months Ended October 31	
		2018	2017
Cash flows from operating activities			
Receipts from customers	\$ 18,190	\$ 223,337	\$ 211,890
Payments for operating goods and services	(9,305)	(125,558)	(124,271)
Payments for employee services	(3,477)	(38,800)	(36,263)
Net cash provided by operating activities	5,408	58,979	51,356
Cash flows from capital and related financing activities			
Additions to electric utility plant	(6,046)	(43,461)	(39,581)
Payments from accounts payable incurred for electric utility plant additions	(4,338)	(3,101)	(2,503)
Proceeds from disposal of electric utility plant	-	6,159	41,244
Principal payments on long-term debt	-	(14,580)	(23,550)
Interest payments on long-term debt	-	(9,153)	(10,851)
Net cash used in capital and related financing activities	(10,384)	(64,136)	(35,241)
Cash flows from investing activities			
Purchases and sales of temporary and restricted investments, net	167	7,429	(16,012)
Interest and other income, including realized gains and losses	278	3,319	2,222
Net cash provided by/(used in) investing activities	445	10,748	(13,790)
(Decrease)/increase in cash and cash equivalents	(4,531)	5,591	2,325
Balance at beginning of period in cash and cash equivalents	33,854	23,732	21,407
Balance at end of period in cash and cash equivalents	\$ 29,323	\$ 29,323	\$ 23,732
Reconciliation of net operating income to net cash provided by operating activities			
Operating income	\$ 1,568	\$ 33,174	\$ 21,546
Adjustments to reconcile operating income to net cash provided by operating activities			
Depreciation	2,160	22,904	26,009
Changes in assets and liabilities which provided/(used) cash			
Accounts receivable	2,687	779	(744)
Fuel and materials and supplies inventories	464	(975)	(174)
Prepayments and other assets	(186)	556	(7,533)
Deferred outflows of resources	-	3,753	(315)
Accounts payable	8,680	7,822	(352)
Net pension liability	-	(6,288)	(1,113)
Other liabilities	529	1,123	7,663
Deferred inflows of resources	(10,494)	(3,869)	6,369
Net cash provided by operating activities	\$ 5,408	\$ 58,979	\$ 51,356

Note: Certain prior year line items have been reclassified to conform to the current year's presentation.

SCHEDULE OF NET REVENUES FOR DEBT SERVICE

Unaudited (In Thousands)




	Month of October	Twelve Months Ended October 31	
		2018	2017
Net revenues			
Operating revenues	\$ 15,073	\$ 222,594	\$ 212,504
Operations and maintenance expenses, excluding depreciation and amortization	<u>11,345</u>	<u>166,516</u>	<u>164,949</u>
Net operating revenues	3,728	56,078	47,555
Plus interest income on bond accounts and other income ⁽¹⁾	<u>283</u>	<u>3,412</u>	<u>2,212</u>
Net revenues before rate stabilization	4,011	59,490	49,767
Rate stabilization			
Deposits	-	-	-
Withdrawals	-	-	-
Total net revenues	<u>\$ 4,011</u>	<u>\$ 59,490</u>	<u>\$ 49,767</u>
Bond service			
Power revenue bonds	\$ 1,564	\$ 21,662	\$ 29,580
Allowance for funds used during construction	<u>(86)</u>	<u>(783)</u>	<u>(989)</u>
Net revenue bond service	<u>\$ 1,478</u>	<u>\$ 20,879</u>	<u>\$ 28,591</u>
Coverage			
Fixed obligation charge coverage ratio	2.71	2.85	1.74

⁽¹⁾ Excludes unrealized holding gains and losses on investments.

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CORPORATE SERVICES

Safety. No injuries were reported in October.

	2016	2017	2017 (As of 10/27/2018)	2018 (As of 10/27/2018)	
Recordable Incident Rate	3.15	0.43	0.00	0.98	
Lost Time Case Rate	0.90	0.00	0.00	0.00	
DART (Days away restricted)	0.90	0.00	0.00	0.00	

*Note: Formula for criteria listed is: # of cases x 200,000 hours / actual hours worked.

According to the most recent Bureau of Labor Statistics (BLS) data available (2016), the average recordable incident rate for Fossil Fuel Electric Power Generation is 1.2.

The health and safety department continues to provide 24/7 safety administration in full support of the Rawhide planned major outage. Safety orientation training was conducted for over 450 contractors. Over 250 safety permits have been issued for confined space entry and hot work, (welding, cutting and grinding).

Health and safety contracted with an industrial hygienist to conduct air sampling in the flue gas ductwork open during the outage. The results of this sampling have been received and will be used to determine appropriate levels of respiratory protection during future plant outages.

During the week of October 28, Platte River employees received an award to recognize and celebrate one million hours worked without a lost time incident. This safety milestone was reached in late July.

Fleet and Facilities. Rawhide and headquarters (HQ) facilities have had a busy month with the outage at Rawhide and at HQ prepping for the fall and winter season. HQ facilities continues to work on many outside substation buildings with caulking, painting and winterizing. We have also been busy performing preventative maintenance of all HVAC units to make sure we are ready for the cooler climate. Continued support for the HQ campus project as the sidewalk on the west side of the property line has been completed for the pedestrian traffic coming from the north parking lot. The biggest job this past month for facilities was the replacement of the fire protection/potable water line into the EO Building.

Rawhide facilities has been in full swing with the outage. With the end of the outage approaching we have hauled out 1,168,000 lbs. of metal for recycling. This has been one of the busiest outages for recycling for Platte River. We have also been busy with many of other jobs related to outage; hauling out tons of garbage, floor cleaning, elevator repair, plus our other day to day functions that needed to be addressed.

IT Strategy Development. An IT strategy development workshop with InfoTech (IT strategy consulting company) was conducted in November. Some of the deliverables from this workshop will be a clearly defined IT strategy aligned with senior management and the business, an IT vision statement and IT

mission statement, documentation of short-term and long-term IT goals, current-state and target-state gap assessments, and identification of resources required to meet our target-state goals.

Cybersecurity Education & Awareness. We completed a successful cybersecurity education and awareness campaign for Cybersecurity Awareness Month. The communications department created posters, IT distributed calendars and we had a drawing for Engage in Excellence points for employees that completed all the cybersecurity training year to date. We reached a new peak in the number of employees that completed the training in October.

Cybersecurity Strategy Implementation. Significant progress has been made in the development of the implementation plan that we will use to manage the deployment of the numerous technologies, programs and procedures required to implement the cybersecurity strategy presented to the board in August. The plan identifies projects that will be implemented over the next five years. We are currently working on integrating the 2019 objectives with our overall 2019 IT work plan.

HQ Campus Project. Construction activities are in full swing as site changes are occurring daily. The new pond has taken shape and installation of the new heat exchangers in the bottom of the pond for the geo-exchange mechanical systems will begin soon. We are projecting to start filling the pond in mid-December.

Construction of the outbuildings for the maintenance yard is underway and the buildings are starting to go vertical. Prior to the steel tariffs back in June, building manufacturers received an overwhelming amount of orders which has caused delays to the schedule for construction of these buildings. We are working with the manufacturers and other trades to make up schedule time, however these buildings are not on the project critical path.

The south bar of the headquarters building is progressing right on schedule as work continues under the floor slab. The north bar foundation walls will be formed and poured over the next few weeks.



Installation of the new pond liner



Flatwork concrete pour for the maintenance shop

RELIABILITY COMPLIANCE

In December, compliance staff along with SCADA engineering and physical security will conduct an internal audit of Platte River's Critical Infrastructure Protection (CIP) reliability standards. This exercise is conducted annually to assess compliance levels with the associated CIP standards applicable to Platte River. Similar to a North American Electric Reliability Corporation (NERC) audit, staff will spend several days reviewing evidence, conducting random sampling, and interviewing subject-matter-experts (SME) to ensure compliance obligation are being met.

Results and action items associated with the internal audit will be formally documented and addressed.

ENVIRONMENTAL COMPLIANCE

Air Quality Permit Compliance. The Title V air emissions permit for the combustion turbines was renewed by the State of Colorado in October and did not include any significant changes. Platte River staff is currently assembling the application for renewal of the permit for the coal unit which is due in 2019.

Coal Combustion Residuals. Final preparations are being made to begin decommissioning of the two bottom ash transfer ponds at Rawhide which will be replaced by the new concrete settling tank in early 2019.

Solar Generation Step-up Transformer Oil Spill. A generator step-up transformer operated by Bison Solar LLC experienced a spill of approximately 40 gallons of transformer oil. The spill was not reported to Platte River, but was noticed by a Platte River employee. As described in the legal report, a letter was sent by Platte River attorneys alerting Bison Solar that the lack of notice constituted an event of default under the land lease. Bison Solar completed clean-up activities and has pledged to avoid any repeat of the incident.

FINANCE

2018 Budget Update. As mentioned in past management reports and at the October board meeting, a budget contingency transfer is required for capital additions based on the latest project manager estimates. The board contingency transfer request is for a not-to-exceed amount. This will allow staff the opportunity to refine the actual transfer, up to the maximum, after year-end close when actual costs are known. The final amount transferred will be reported to the board at the February meeting. A memo and resolution are included in the December board materials to cover the additional expenses related to project work to be completed in 2018 that is in addition to the original 2018 capital budget.

2019 Annual Budget. Included in this month's board materials is a memorandum accompanying the final budget document, as well as a proposed resolution to adopt the 2019 annual budget and appropriate funds for 2019 expenditures. At the board meeting, a brief recap of the budget results will be presented, and adoption will be requested. Below is a condensed schedule of the overall budget process.

March to May	Kickoff meetings and preparation of budget details by department
June	Data compilation and reporting
July	Senior management and GM/CEO budget review
August	Refine budget and document preparation
September	Budget work session with board
October	Public hearing and board review of budget modifications
November	Prepare final budget document
December	Final budget review with board and request adoption

Preliminary Financial Audit Work. During the week of November 26, BKD, Platte River's external auditors, reviewed documentation on financial processes, met with staff to review internal controls, and reviewed documentation related to the September 30, 2018, financial results.

Insurance Renewal. Platte River has begun preparations for 2019 insurance policy renewals. Information and application materials have been submitted to Platte River's insurance broker, McGriff, Seibels & Williams, Inc., (MSW), for the excess liability and property policies which renew in December 2018 and January 2019, respectively. Platte River has also submitted an application to MSW for quotes to procure cyber insurance.

Rates Meeting – Owner Community and Platte River Staffs. In October, Platte River hosted a meeting with owner community rate staffs to discuss the rate strategy and rate design study including a review of potential rate structures. Since the October meeting, Platte River staff has provided additional presentations and explanation for owner community solar staffs, Longmont staff and Loveland staff.

COMMUNICATIONS & MARKETING

Communications. The October *Power Source* topics included a spotlight on the air preheater upgrade at Rawhide, Cybersecurity Awareness Month, a feature on the history and outdoor trails of Rocky Mountain National Park and tips for managing fatigue. The November *Power Source* topics included a spotlight on Jeff Miller, a feature on Platte River's veterans, details about employee award nominations and safety tips for driving in the dark. Employee *NewsFeed* topics included headquarters construction project updates, Rawhide outage information, key event dates and general information to employees.

Community engagement. A total of approximately 200 people attended the four community listening sessions held by Platte River as part of the IRP process. Platte River leaders explained the history of the organization's generation mix and how the IRP process will move forward. Residents then had the opportunity to take part in a formal survey, provide feedback and ask questions or provide comments regarding the process.

Strategy. The approved strategic plan document was printed in October and both hard and digital copies were made available in early November. Following board direction in October, the chief strategy officer and general manager finalized a draft resource diversification policy to be made available for board action in December.

Tours. A few VIP tours were held in conjunction with the planned outage at the Rawhide Energy Station and the Platte River's board of directors meeting in October was held at Rawhide and included a tour of the plant.

OPERATIONS

Windy Gap Firing Project update. Windy Gap Firing Project progress continues to be focused in the areas of project design and environmental mitigation. Stantec, the project design engineering firm, projects that the design will be substantially complete in early 2019, with a final design review by the Colorado Division of Water Resources to follow. Environmental mitigation activities include a proposal to perform flood restoration on the Big Thompson River west of Loveland and a significant investment in the Fraser Valley wastewater treatment plant in order to improve water quality above the Windy Gap diversion. As the project moves closer to the construction phase, Northern Water staff is collaborating with staff from Black & Veatch, the construction management engineer, to develop plans to help minimize risk during construction.

Unless stayed during litigation, reservoir construction is anticipated to commence in late 2019 or early 2020 and will last approximately four years. The Firing Project is estimated to be complete and ready to begin filling in 2024.

Windy Gap Firing Project funding. The Fifth Phase of the Windy Gap Firing Project began in 2016 and has primarily included activities associated with detailed engineering design, permit completion, land acquisition, environmental mitigation and enhancement planning, and pre-construction activities. To continue this work in advance of construction, the Fourth Amendment to the Fifth Interim Agreement will be entered in late December 2018 or January 2019, with payment due to Northern Water by February 1, 2019. The work anticipated for 2019 will focus on design review and approval, contractor selection, environmental mitigation and enhancement, and pre-construction activities. The total estimated project costs associated with the fourth amendment are \$10 million. Platte River's pro-rata share of the total cost is \$1,777,778 and is included in the 2019 budget.

Windy Gap unit sales update. In accordance with board direction and the board-approved water policy, Platte River has completed a series of Windy Gap unit sales transactions since 2017. Through June 2018, 26 units had been sold. In November, Platte River completed the most recent sale of five additional units. In the coming months, two additional transactions totaling nine units are anticipated to be completed. Upon completion of those pending transactions in early 2019, staff will provide a summary of the results of the sales. In addition to generating income that can be used to offset future Platte River project costs, the transactions have helped develop a number of beneficial partnerships with a variety of regional water organizations.

Rawhide water supply update. While early season snowfall has been robust, drought conditions persist in more than 70 percent of the state. Accordingly, staff has worked with Platte River's Reuse

Agreement/MOU partners at the City of Fort Collins and AB-InBev to develop an operations plan for the 2019 water year that will maximize the benefits of the remaining 2018 pumped Windy Gap water. The goal of the plan is to reach the spring 2019 pumping season without resorting to a “Windy Gap Short” mode of operation. As the season progresses, staff will continue to monitor local and regional conditions and adjust operations accordingly.

2018 Rawhide outage update. The 2018 planned major outage for Rawhide Unit 1 began on Sept. 24 and was originally scheduled to be complete by Nov. 12, 2018. As a result of additional required repairs to the generator, the outage start-up date has been moved out by fourteen days to Nov. 26, 2018. All work and projects not related to the generator have been completed. The remaining scheduled items are final tests and checks that, when completed, will move the unit into start-up and then into full release for dispatch. As always, the safety of all Platte River and contractor personnel is our highest priority.

NextEra/Enyo Roundhouse wind update. Enyo is currently working with key stakeholders to reach a consensus on a preferred transmission line route for delivering the wind output located on the Duck Creek Ranch in southern Wyoming to Platte River’s Rawhide Substation. The preferred transmission route being recommended by almost all interested stakeholders is estimated to be approximately 20.5 miles in length.

Enyo/NextEra have been meeting with various land owners, including the City of Fort Collins, to acquire an easement and crossing agreements necessary for construction on the preferred transmission route. The Larimer County 1041 permit application is expected to be filed in early December and the Weld County 1041 permit application should be filed a week or two later. At this time, the project is on schedule to commence construction in late 2019 or early 2020, in order to meet the December 1, 2020, commercial operation date.

Community solar/storage project. We continue to work towards a power purchase agreement (PPA) on our request for proposals (RFP) for 20 MW of solar and 2 MWh of battery storage. A few complications came to light as we negotiated a PPA with the top bidder, which now appears to have been resolved. We expect to negotiate and execute a final PPA prior to the end of the year. Given the delay in getting to a final bidder and executing a PPA, an in-service date of December 31, 2019, may be difficult, but still possible, if the all permits for this project can be obtained by July 2019. Platte River recently contracted with Logan Simpson to help expedite the environmental review and permitting process. Platte River and owner community staff continue to hold periodic conference calls to discuss progress on the project as well as renewable program design and marketing.

Resource planning and forecasting. The Q3 Power Supply Plan (PSP) was delivered in October. The PSP document and underlying analysis are revised quarterly and are used for the annual budget and near-term rate forecasts.

Planning staff has been developing the process logic for the 2020 sales and demand forecast which will be a crucial input for the 2020 Integrated Resource Plan (IRP). Drivers for the forecast will include demand-side management, electric vehicles, distributed generation, and customer usage patterns. The sales and demand forecast are produced annually, and the final report is expected to be completed in the spring of each year.

Information management. The resource planning department continues the development of an enterprise data warehouse and associated reporting tools to enhance overall business processes. Planning has secured server space for data storage (SQL Server) and process execution. Automated processes for data retrieval of market and economic information are currently being tested.

2020 Integrated Resource Plan. Planning staff participated in several efforts, during the month of October, to develop third-party supporting studies for the 2020 IRP, including:

- Hosted Burns & McDonnell for initial meetings on the coal cycling study.
- Held preliminary discussions with Burns & McDonnell to develop the methodology for the resource adequacy study:
 - The study will include a review of current and future expectations for NERC regulatory requirements for reserves, calculations for electric load carrying capability (ELCC) and loss of load probability (LOLP).
 - Planning staff also converted the existing LOLP methodology into a program that will provide more analytical flexibility.
- Shared the preliminary scope for the generation technology life cycle study with CSU:
 - The life cycle study will evaluate expansion options for the 2020 IRP including solar, wind, batteries, pumped hydro, and natural gas generation resources.
- Provided planning inputs to HDR for the development of the efficiency and demand-side potential analysis.
- Finalized the draft of the generation and technology review (GTR) and received a professionally-edited version for distribution to senior management.

CUSTOMER SERVICE

Demand side management (DSM) potential study. Work on the DSM potential study continues. The study is being done by HDR, Inc. to support Platte River's Integrated Resources Plan (IRP) by identifying achievable DSM potential that is cost-effective compared to supply side options considered in the IRP. The study will assess DSM potential in the following categories: energy efficiency, demand response (including electric vehicle charging), distributed storage (both battery and thermal), distributed solar, and combined heat and power generation. Owner community staff input and support will be critical to the success of this study. We anticipate that this study will be completed early in 2019 and that these results will inform Platte River's IRP modeling efforts.

Energy efficiency (EE) programs. Platte River's 2018 goals for efficiency programs are 32,000 MWh of new energy savings and 6,500 kW of new demand savings. A total of \$12.3 million has been budgeted by Platte River and the owner communities for these EE programs, consisting of approximately \$1 million in costs to manage and promote programs to customers and \$11.3 million in program spending for contracted services and rebates. Of the total, Platte River will provide \$8.05 million and the owner communities will provide \$4.25 million. The projected result is a levelized cost of energy of \$42 per MWh if the entire budget is spent¹.

Year to date, EE programs have achieved 16,405 MWh of new energy savings and 2,599 kW of new summer peak demand reduction at a program cost of \$7.8 million. We have collectively committed \$11.65 million of EE program funding, including the \$7.8 million spent, to specific programs and projects that are expected to be completed this year which will result in 30,089 MWh of new energy savings and 4,100 kW of new summer peak demand reduction. The table below compares current results to projected results and breaks the results and commitments out by customer type.

¹ Levelized cost is the total budget annualized over a 12-year estimated savings lifetime at a four percent annual discount rate.

Energy efficiency program results

Customer segment	Service provided	YTD results	YTD results & commitments	Budget & projected results [note 1]
Commercial & industrial	Efficiency assessments	123	276	276
	Efficiency project rebates	843	1,112	1,112
	Energy savings (MWh)	15,859	27,835	27,835
Residential	Efficiency assessments & rebates	913	1,000	1,000
	Discounted efficient products [note 2]	20,733	61,500	61,500
	Energy savings (MWh)	546	2,253	2,253
Totals	Energy savings (MWh)	16,405	30,089	30,089
Funding (\$ millions)				
Staff costs [note 3]		\$0.81	\$0.97	\$0.97
Program costs		\$6.94	\$10.68	\$10.68
Total costs		\$7.75	\$11.65	\$11.65
Platte River		\$6.71	\$8.04	\$8.04
Owner community		\$1.04	\$3.61	\$3.61
Total funding		\$7.75	\$11.65	\$11.65

1. Projected results are updated throughout the year, based on available budgets and estimates of customer participation.
2. Discounted efficient products include rebates for smart thermostats; appliances; Efficiency Works Store products; refrigerator and freezer recycling in Longmont and Estes Park; LED lighting; and lighting controls.
3. YTD staff costs are estimated from the annual staff budget, assuming monthly costs are one twelfth the annual costs.

Staff is currently focused on completing 2018 projects while also looking ahead towards ways to cost effectively expand EE programs in 2019. These expansion efforts were described in last month's board report.

Electric vehicle (EV) study. The goal of this study is to test new technologies that can provide Platte River and the owner communities with data on how EVs are being charged in people's homes, which could give us the ability to control when charging occurs. We are currently testing devices and, if successful, will work with the owner communities' staffs to develop a plan to bring these devices to customers.

GENERAL & FOLLOW UP ITEMS

Board follow-up on public comments regarding the Windy Gap Firing Project. At the October 25, 2018 meeting, the board received public comments questioning Platte River's authority to invest in the Windy Gap Firing Project and the environmental impacts of that project.

Windy Gap water is necessary to meet Platte River's requirements for cooling water for Rawhide plant operation as well as to meet contractual obligations to the City of Fort Collins under the Reuse Agreement. However, because the Windy Gap Project is unable to pump during both wet and dry periods, there is a risk that Platte River's operations would need to be curtailed during these periods if a substitute supply was unavailable. Platte River's participation in the Windy Gap Firing Project is necessary to

“firm” or provide long-term reliability for Platte River’s Windy Gap water supply, which is an essential component of electric generation. Long-term hydrologic modeling indicates that Platte River’s current 16,000 acre-foot participation level in the Firming Project will provide a reliable water supply for electric operations during a three-year drought period for which the Windy Gap Project does not pump, and alternative supplies are not available.

Platte River does not require a water “enterprise” to participate in the Windy Gap Firming Project. Platte River was created and exists pursuant to section 29-1-204 of the Colorado Revised Statutes, which grants Platte River, as a power authority, the power “to develop electric energy resources and produce or transmit electric energy” for the benefit of the inhabitants of its member municipalities, and to “acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property, commodity, or service” in connection therewith. C.R.S. § 29-1-204(3)(a), (e). The Organic Contract among Platte River’s member municipalities further grants Platte River the power to acquire, construct, own, and operate electric generating plants “and related facilities” and to develop “infrastructure, and resources related to such function.” Organic Contract, Sec. 2.2. Securing an adequate, firm water supply to meet the needs of Platte River’s electric facilities, such as participation in the Windy Gap Firming Project, clearly falls within these broad mandates and, therefore, a separate water “enterprise” is not required.

With respect to concerns voiced over environmental mitigation and channel flows, the Windy Gap Firming Project has undergone an extensive review process, which began in 2003 and extended through 2017 in accordance with the National Environmental Policy Act (NEPA). As a result of this process and in coordination with the Environmental Protection Agency (EPA), the US Army Corps of Engineers approved the Section 404 Permit (Wetlands Mitigation) for the project and the Colorado Department of Public Health and Environment issued a Section 401 Certification (Water Quality) for the project, both of which are required under the Clean Water Act. As part of the permitting process, a variety of mitigation and enhancement measures were identified that would improve the overall health of the Upper Colorado River ecology and were included in the project’s Fish and Wildlife Mitigation Plan, which was subsequently approved by the Colorado Parks and Wildlife Commission as well as the Colorado Water Conservation Board, while additional measures were included in the 1041 Permit from Grand County and the 401 Certification. Some such measures include:

- A reduction of diversions when stream temperature standards are exceeded
- Providing additional flows to the Colorado River during low-flow periods
- Providing flushing flows of 600 cubic feet per second every three years (an increase of 150 cubic feet per second over the original Windy Gap Project mitigation measures)
- Providing additional flushing flows of 1,200 cubic feet per second every six years
- Providing aquatic habitat restoration below Windy Gap Reservoir
- Construction of improvements to the Fraser Valley Wastewater Treatment Plant to minimize nutrient inflows to the Fraser River and Colorado River as well as Granby Reservoir, Shadow Mountain Reservoir, and Grand Lake
- Cooperating to fund and construct a connectivity channel to bypass the Windy Gap Project and allow natural migration of aquatic species
- Support of the Colorado Water Conservation Board instream flow program for the Colorado River below the Windy Gap Project

The channel flows (flushing flows) mentioned above were analyzed through a combination of data review, historical data analysis and project modeling. Based on that review it was determined that these flows will not have a measurable effect on the Windy Gap Firming Project operations, but will have a positive effect on river health. Overall, project participants will contribute more than \$23 million toward

environmental enhancement projects, which have garnered support from Grand County, Trout Unlimited, and Governor John Hickenlooper in the process.

Finally, with respect to the cost of Platte River's investment in the Windy Gap Firming Project, Platte River staff has continually evaluated the economics of the project and potential alternatives. Despite recent price increases, the Windy Gap Firming Project is estimated to cost less than \$20,000 per acre-foot of firm yield and remains the lowest-cost alternative to support Platte River's continued operations. By way of contrast, the Northern Integrated Supply Project (NISP), a comparably-sized project in northern Colorado, is currently estimated to cost in excess of \$25,000 per acre-foot of firm yield and the cost of Colorado-Big Thompson (C-BT) Project water has recently risen above \$43,000 per acre-foot of firm yield.

Board follow-up on mission, vision and values. Suggestions were made during the October board meeting regarding Platte River's formal mission, vision and values statements. The discussion stemmed from the three core pillars that were developed in concert with the resource diversification policy which was drafted and edited throughout the fall. During this process, we have determined that it would be beneficial to review and update the current mission, vision and values to use language consistent with the three pillars, along with newer policies and guidelines. We will bring back a draft of the mission, vision and values with proposed changes to the board late in the first quarter or early in the second quarter of 2019.