

Case No. _____

Civil Action No. _____

In Re the Marriage of:

_____, Petitioner,

And

_____, Respondent.

AGREEMENT FOR THE DIVISION OF PENSION BENEFITS

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between _____ (the "Member") and _____, (the "Alternate Payee") for the purpose of dividing the pension benefits of the Member as follows:

WITNESSETH:

WHEREAS, the parties to this Agreement are currently parties in an action for dissolution of marriage, legal separation or declaration of invalidity of marriage; and

WHEREAS, the Member is a member of the **Colorado Springs New Hire Defined Benefit Plan** (the "Defined Benefit Plan"), the **Statewide Death & Disability Plan** (the "Death & Disability Plan"), and/or **Section 457 Deferred Compensation Plan** (the "457 Plan") established pursuant to Colorado law and administered by the Fire and Police Pension Association ("FPPA") and any successor plans, collectively called the Plans; and

WHEREAS, the parties are desirous of entering into this Agreement pursuant to Colo. Rev. Stat. § 14-10-113(6)(c)(I) and (II), as amended, which Agreement shall be binding upon both parties and shall divide retirement benefits under the Plans as set forth hereinafter; and

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

PARTIES

1. The Member:

(a) Name (as shown on retirement plan documents):

(b) Mailing Address (P.O. Box or Street, City, State, Zip Code):

(c) Social Security Number: _____

(d) Date of Birth: _____

(e) Place of Birth: _____

2. The Alternate Payee:

(a) Name (as shown on retirement plan documents):

(b) Mailing Address (P.O. Box or Street, City, State, Zip Code):

(c) Social Security Number: _____

(d) Relationship to Member: _____

(e) Date of Birth: _____

(f) Place of Birth: _____

BENEFIT DISTRIBUTION

COLORADO SPRINGS NEW HIRE DEFINED BENEFIT PLAN

Benefits under the Colorado Springs New Hire Defined Benefit Plan are to be divided as provided in this section:

- (1) **Normal, Early, Deferred or Vested Retirement:** The Alternate Payee shall receive the following amount of the Member's monthly Defined Benefit payment under the applicable type of retirement.

(1.1) Members who are Post-Retirement: And have commenced receipt of pension benefits or who have entered the Deferred Retirement Option Plan ("DROP") prior to the execution of this Agreement:

(A) Monthly Pension Benefits

☐ (a) The Alternate Payee shall receive the flat dollar amount of \$ _____ per month.

OR

☐ (b) The Alternate Payee shall receive _____% of the monthly benefit.

The Alternate Payee will not continue to receive a share of the benefit payments if the benefit payments to the Member cease.

OR

☐ (c) The parties elect **not** to divide the Defined Benefit account

(B) DROP Account: The parties make the following election for the division of the DROP account. *(Please select only one box below.)*

☐ (a) The Alternate Payee is awarded \$ _____ from the Member's DROP account as of the date of division, combined with any pro rata earnings or losses on said amount from said date through the date of distribution into the Alternate Payee's account.

OR

☐ (b) The Alternate Payee is awarded _____ % from the Member's DROP account as of the date of division combined with any pro rata earnings or losses on the calculated amount from said date through the date of distribution into the Alternate Payee's account.

OR

☐ (c) The parties elect **not** to divide the DROP account.

The parties understand and agree that distribution from the DROP account to the Alternate Payee shall be derived by applying the instructions in one of the three options above and made within approximately 90 days but not later than 120 days after the DRO is filed with FPPA.

(1.2) Members who are Pre-Retirement:

- (a) The Alternate Payee shall receive _____ % of the monthly benefit

OR

- (b) The Alternate Payee's share shall be determined by dividing the number of months of service credit acquired under the plan during the marriage (_____ months), by the number of months of service credit in the plan at the time of the Member's entry into DROP or separation from service as determined by the plan, which quotient shall be multiplied by _____ %, and the product of which shall be further multiplied by the amount of the payment to the Member at the date of separation from service.

The Alternate Payee's share of the benefit: 1) shall be severed from the Member's benefit, 2) shall be adjusted based on actuarial factors such as the Alternate Payee's life expectancy, and 3) the actuarial equivalent amount shall be paid over the lifetime of the Alternate Payee.

The parties understand and agree that the Defined Benefit Plan will make payments to the Alternate Payee when payments commence to the Member. The Alternate Payee will not receive benefit payments if the Member dies before benefit payments commence.

If the Member subsequently enters DROP, a separate DROP account shall be established for the Alternate Payee and the Alternate Payee's severed portion of the defined benefit shall be deposited in the Alternate Payee's DROP account. The Alternate Payee shall self-direct the investment of the Alternate Payee's DROP account. The Alternate Payee shall not take a distribution from the DROP account until the Member has separated from service.

Once commenced, the Alternate Payee's payment shall terminate upon the death of the Alternate Payee. The Alternate Payee's payment shall not revert to the Member, the Member's survivor, dependent(s), or estate upon the death of the Alternate Payee. Subsequent annual Cost Of Living Adjustments (COLAs) will be applied to the Alternate Payee's share of the benefit as determined under the Plan.

OR

☐ (c) The parties elect **not** to divide the Defined Benefit account.

(2) **Separate Retirement Account (“SRA”)**: The Alternate Payee shall receive the following amount of the Member's SRA account as of the earlier of the date the Member enters DROP, if the SRA is transferred out of the Police Officer & Firefighter Members Benefit Investment Fund , OR the date the Member separates from service and is eligible for distribution of the benefit (the Date of Division), combined with any pro rata earnings or losses on the account from the Date of Division through the date of distribution to the Alternate Payee.

(a) _____ % **OR** (b) \$ _____

OR

(c) The Alternate Payee's share shall be determined by dividing the number of months of service credit acquired under the plan during the marriage (_____ months), by the number of months of service credit in the plan at the time of the Date of Division, which quotient shall be multiplied by _____%, and the product of which shall be further multiplied by the account balance as of the Date of Division.

OR

☐ (d) The parties elect **not** to divide the SRA account.

The parties understand and agree that the SRA payment to the Alternate Payee shall be derived by applying the instructions in one of the three options above when the Member is eligible for payment. The Alternate Payee's portion of the SRA will be, as determined by the Plan, either 1) transferred into an account in the Alternate Payee's name or 2) paid in a lump sum distribution within approximately 90 days but not later than 120 days from the Date of Division. The Alternate Payee will not receive a distribution of the SRA if the Member dies before the Date of Division.

(3) **Member Contributions**: In the event that the Member terminates employment and elects a refund of Member Contributions in lieu of a monthly retirement benefit, the Alternate Payee shall receive the following amount of the Member's Contribution account balance including any applicable interest payable on the balance, paid as a lump sum distribution. [Note: If the Member is Vested, the Member may leave the Member Contributions in the Plan and qualify

for a monthly benefit payment upon reaching Normal retirement age. Division of a monthly benefit shall be according to the instructions in paragraph (1) above.]

(a) _____ % **OR** (b) \$ _____

OR

(c) The Alternate Payee's share shall be determined by dividing the number of months of service credit acquired under the plan during the marriage (_____ months), by the number of months of service credit in the plan at the time of the Member's separation from service as determined by the plan, which quotient shall be multiplied by _____ %, and the product of which shall be further multiplied by the amount of the Member contributions plus interest at the date of separation from service.

OR

☐ (d) The parties elect **not** to divide the Member Contribution account.

The parties understand and agree that the Member Contributions benefit payment to the Alternate Payee will be derived by applying the instructions in one of the three options above when payment is made to the Member within approximately 90 days but not later than 120 days of separation from service. Note: If a refund of the Member Contributions is taken, the Member's Separate Retirement Account is forfeited.

BENEFIT DISTRIBUTION STATEWIDE DEATH & DISABILITY PLAN

Disability benefits under the Statewide Death and Disability Plan are paid in lieu of defined benefits under the Statewide Defined Benefit Plan to members granted a permanent occupational disability or a total disability. Disability benefits paid after a divorce but prior to retirement eligibility are not generally considered marital property under Colorado Law. Disability benefits paid in lieu of a retirement benefit may be considered marital property subject to division under a domestic relations order under Colorado law.

☐ (a) The parties elect to divide any permanent occupational disability or total disability benefit from the Statewide Death and Disability Plan as provided in this section:

The alternate payee shall become eligible for payment of a portion of the disability benefit upon the Member attaining age 55. The alternate payee's portion of the disability benefit shall be calculated pursuant to the division methodology agreed upon in sections (1.2) above, including the division of the election of the Severed Option in section (1.2)(d) if so elected. However, the division methodology shall be applied to the normal defined benefit amount that the member would have been eligible to receive at age 55 (age 50 for Police) if the Member had separated from service on the date of disability and based on the service credit the Member earned in the defined benefit plan, before any reductions for survivor options. The division methodology shall not be applied to the Member's disability retirement benefit to calculate the alternate payee's portion of the benefit. The calculated amount shall be paid out of the member's disability benefit. The Alternate Payee shall not receive a portion of the Separate Retirement Account as described in Section 2 above.

If a Member dies prior to the first payment of benefits to the alternate payee, no payments shall be due to the alternate payee. In the event the Member dies before the alternate payee after payments have commenced, the alternate payee's portion of the monthly benefit shall continue for the Alternate Payee's lifetime. In the event the alternate payee dies before becoming eligible for payment of a portion of the benefit, the member's benefit shall continue without any division. In the event the alternate payee dies after the commencement of the division of benefits and before the Member, the alternate payee's portion of the monthly benefit shall cease, and the amount of the alternate payee's portion shall not revert to the Member.

☐ (b) The parties elect **not** to divide the Disability benefit.

This DRO does not provide for the distribution of Death Benefits. Please refer to FPPA's web site at www.fppaco.org for an explanation of these benefits.

BENEFIT DISTRIBUTION
SECTION 457 DEFERRED COMPENSATION PLAN ADMINISTERED BY FPPA

☐ Check this box if the member does not have a 457 administered by FPPA.

Benefits under the 457 Plan are to be divided as provided in this section:

(1) **457 Plan:** The Alternate Payee will receive the following amount of the Member's account in an account in the Alternate Payee's name:

(a) The Alternate Payee is awarded \$_____ from the Member's account balance as of _____, _____ [insert date] combined with

any pro rata earnings or losses on said amount from said date through the date of distribution to the Alternate Payee's Account.

OR

- (b) The Alternate Payee is awarded _____ % of the Member's account balance as of _____, _____ [insert date] combined with any pro rata earnings or losses on the calculated amount from said date through the date of distribution to the Alternate Payee's Account.

OR

- ☐ (c) The parties elect **not** to divide the 457 account administered by FPPA.

The parties understand and agree that payment from the 457 Plan to the Alternate Payee shall be derived by applying the instructions in one of the two options above within approximately 90 days but not later than 120 days after FPPA receives the original Certified Court Order approving this Agreement and application for payment has been made by the Alternate Payee.

CONDITIONS OF PLAN PAYMENT

1. The parties understand and agree that the Plan(s) are not obligated to provide to the Alternate Payee any type or form of benefit or any option not otherwise available to the Member or for which the Member is not eligible or has not properly and timely applied as required by the Plan.
2. The parties understand and agree that the Alternate Payee's ongoing right to payments will terminate upon the involuntary termination (i.e. death) of benefits payable to the Member or upon the death of the Alternate Payee, whichever occurs first except those benefits paid under the Defined Benefit Severed Option or Disability Retirement Severed Option benefit elections.
3. The parties understand and agree that this Agreement will not affect payments that are currently required to be paid to another Alternate Payee or which may already be subject to a statutory assignment or lien. A Member may have more than one DRO or multiple DRO's.
4. The parties understand and agree that if a final property division Court Order concerning the parties' public employee retirement benefits has been previously entered, this Agreement (concerning the same parties) when Court Ordered is submitted to replace that Agreement and will be considered to supersede that Agreement. Other Agreements with other parties that have been Court Ordered are not affected.

5. The parties understand and agree that actual payment of any amounts under this Agreement shall be provided with a defined percentage, dollar amount, or formula permissible under the Plan and as determined by FPPA.
6. The parties understand and agree that FPPA's DRO forms must be used without modification as authorized by §14-10-113(6), C.R.S., as amended, FPPA Board approved and in compliance with FPPA Rule 706.03. It is recommended that the DRO first be approved by FPPA before it is submitted to the Court. It must be approved and accepted by FPPA prior to being implemented by FPPA.
7. The parties understand and agree that the approved, executed and accepted Agreement shall be submitted to the Court with the Court Order by the parties for approval as part of the Permanent Orders regarding property distribution. The original Certified Court stamped copy of the Order and Agreement must be submitted by the parties to FPPA within ninety (90) days of the date of the Order and at least 30 days before it is to become effective.
8. The parties understand and agree that the Court may not modify, alter or change this Agreement. The Court may retain jurisdiction to supervise the implementation of this Agreement. Agreements modified, altered and/or changed by the Court are subject to FPPA approval before acceptance and implementation.
9. The parties affirm that the decree of dissolution of marriage, legal separation, or declaration of invalidity of marriage was entered on *[insert date]* _____, _____.

SIGNATURES OF PARTIES

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first above written.

Member

Subscribed and sworn to before me in the (City and) County of _____, State of _____, this ____ day of _____, _____, by the **Member**.

Notary Public

Commission expiration

SEAL

Alternate Payee

Subscribed and sworn to before me in the (City and) County of _____, State of _____, this ____ day of _____, _____, by the **Alternate Payee**.

Payee.

Notary Public

Commission expiration

SEAL

APPROVED AS TO FORM:

Attorney for Member

APPROVED AS TO FORM:

Attorney for Alternate Payee