

**RESOLUTION OF THE GOVERNING BOARD OF  
COLORADO COUNTY OFFICIALS AND EMPLOYEES  
RETIREMENT ASSOCIATION  
(Amendment to Deferred Compensation Plan)**

**RESOLUTION NO. 2, SERIES OF 2009**

WHEREAS, CCOERA originally established the Colorado County Officials and Employees Deferred Compensation Plan (the "Plan") effective as of January 1, 1979; and

WHEREAS, CCOERA amended and restated the Plan effective as of January 2, 1993, subsequently amended and restated the Plan effective as of December 4, 1996; subsequently amended and restated the Plan effective as of August 27, 1997; subsequently amended and restated the Plan effective as of May 11, 2001; subsequently amended and restated the Plan effective as of August 16, 2002; and last amended and restated the Plan effective as of July 1, 2004; and

WHEREAS, CCOERA wishes to amend the Plan in order to make necessary and desirable changes and in order to bring the Plan into compliance with changes in the law on account of the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act); and

WHEREAS, CCOERA is authorized to amend the Plan pursuant to Section 8.12 of the Plan.

NOW, THEREFORE be it resolved that effective as of January 1, 2009 the Fifth Amendment to the Colorado County Officials and Employees Retirement Association Deferred Compensation Plan (Amended and Restated Effective as of July 1, 2004) ("Fifth Amendment") is hereby approved in substantial the same form as attached hereto as *Exhibit A*.

FURTHER RESOLVED that the Executive Director is hereby authorized to execute the Fifth Amendment and that the proper officer or officers of CCOERA be and they hereby are authorized to do all other acts and things necessary and proper to keep the Fifth Amendment and the Plan and its Trust in full force and effect and to make such further amendments and changes, if any, as may be necessary to maintain the qualification of the Plan and its Trust under the applicable sections of the Internal Revenue Code of 1986 (the "Code"), as amended from time to time.

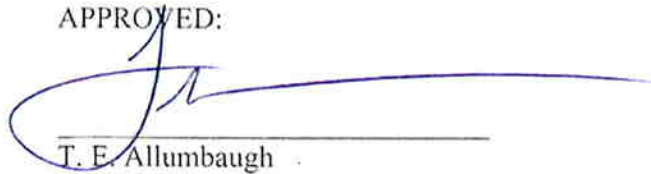
FURTHER RESOLVED that an announcement shall be made to all employees covered by the Plan concerning the adoption of the Fifth Amendment.

FURTHER RESOLVED that the appropriate officer or officers of CCOERA be, and they hereby are, authorized and directed to take all actions that in their judgment or the judgment of CCOERA's legal counsel are necessary or advisable to carry out the intent and purpose of the aforementioned resolutions.

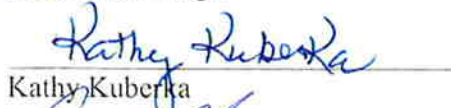
No further actions are hereby consented to or taken.

Dated this 20<sup>th</sup> day of February, 2009.

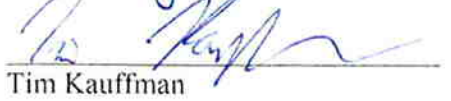
APPROVED:



T. E. Allumbaugh

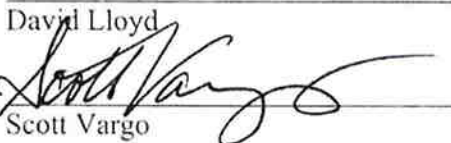


Kathy Kuberka



Tim Kauffman

David Lloyd



Scott Vargo

Jeff Shrader

Reviewed and Approved:



Edward J. Krisor  
CCOERA Attorney

## MEMORANDUM

**TO:** All Present Employees and Officials Eligible to Participate or Currently Participating in the Colorado County Officials and Employees Retirement Association Deferred Compensation Plan (the "Plan")

**FROM:** CCOERA as Plan Administrator

**DATE:** March 1, 2009

**RE:** Recent Changes to the 457(b) Plan

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Effective January 1, 2009, the Plan is amended to comply with changes signed into law by the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act). This law provides additional tax and pension benefits to individuals who are absent from work due to qualified military service. The Fifth Amendment to the Plan makes the following changes:

1. Some employers pay differential pay to their employees who are called to active duty in the uniformed services. "Differential pay" is the difference between your pay from your employer and your military pay. Prior to the passage of the HEART Act, differential pay was not treated as wages for federal income tax withholding rules, and was reported on a Form 1099-MISC. The HEART Act revised the federal income tax withholding rules to treat differential pay paid after December 31, 2008, as wages. Effective January 1, 2009, differential pay must be treated as compensation for purposes of the Plan. Therefore, the Plan was amended so that you may now be allowed to make contributions to the Plan based on your differential pay, and if your employer is making contributions to the Plan based on your compensation, it must include differential pay when determining your Plan contributions.
2. The HEART Act provides special distribution options for certain employees who are receiving differential pay after December 31, 2008. Under the new law, if you are receiving military differential pay for an active duty period of more than 30 days, you must be treated as having terminated employment for purposes of eligibility to receive a distribution of your account. If you take a distribution, you cannot resume Plan deferrals during the six-month period beginning on the date of the distribution. The Plan has been amended to reflect these rules.
3. The Plan was amended to clarify the benefit distribution options. The amendment provides that you may revoke an election under the Plan to receive a form of distribution at any time prior to the commencement of payment. Once your account has entered pay status, your election as to the form of benefit becomes irrevocable.

You should file this memorandum with your copy of the Summary Review for the Plan because it changes certain information contained therein.

FIFTH AMENDMENT TO THE  
COLORADO COUNTY OFFICIALS AND EMPLOYEES RETIREMENT ASSOCIATION  
DEFERRED COMPENSATION PLAN  
(AMENDED AND RESTATED EFFECTIVE AS OF JULY 1, 2004)

1. **Plan Sponsor:** Colorado County Officials and Employees Retirement Association.
2. **Recitals:** Pursuant to the authority granted in Section 8.12 of the Colorado County Officials and Employees Retirement Association Deferred Compensation Plan (Amended and Restated Effective July 1, 2004) (the "Plan"), CCOERA, as Plan sponsor, wishes to amend the Plan to reflect changes in the law on account of the Heroes Earnings Assistance and Relief tax Act of 2008 (HEART Act) and to make other necessary and desirable changes.
3. **Amendment of Plan:** The following Amendment to the Plan is adopted effective as of January 1, 2009.
4. **Section 1.8 of the Plan shall be amended to read in full as follows:**
  - 1.8 ***Compensation*** means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or Code Section 457(b) (including an election to defer compensation under Article 3). Effective January 1, 2009, ***Compensation*** shall also include differential pay (the difference between the Participant's pay from the Participating Employer and his or her military pay).
5. **Section 1.21 of the Plan shall be amended to read in full as follows:**
  - 1.21 ***Severance from Employment*** means the date that the Employee dies, retires, or otherwise has a severance from employment with the Participating Employer, as determined by the Administrator (and taking into account guidance issued under the Code that may include Treasury Regulation Section 1.457-6(b)). A Participant on qualified military service (within the meaning of Code Section 414(u)) for more than thirty (30) days and who is receiving differential pay, shall be considered to have had a severance from employment for purposes of taking a distribution of his or her Account Balance.
6. **Section 2.8 of the Plan shall be amended to read in full as follows:**
  - 2.8 **AUTOMATIC SUSPENSION OF ANNUAL DEFERRALS.**
    - (a) ***Insufficient Funds.*** Annual Deferrals shall automatically be suspended for any month in which there are insufficient monies available to make the entire

deduction agreed upon, and automatically reinstated in the next month that Compensation is sufficient to make the agreed upon Annual Deferrals.

- (b) ***Qualified Military Service.*** In the event a Participant on qualified military service (within the meaning of Code Section 414(u)) who is receiving differential pay takes a distribution of his or her Account Balance while in USERRA covered service, the individual may not make Annual Deferrals during the six (6)-month period beginning on the date of distribution.

7. **Section 5.7 of the Plan shall be amended to read in full as follows:**

5.7 **REVOCATION OF PRIOR ELECTION.** Any election made under this Article 5 may be revoked at any time prior to commencement of payment.

8. **Terms and Conditions of Plan.** Except for the above Amendment, all terms and conditions of the Plan are unamended and shall remain in full force and effect.

9. **Execution.** This Fifth Amendment has been executed on this 20<sup>th</sup> day of February, 2009.

**Colorado County Officials and Employees  
Retirement Association**



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Jacob P. Kuijper, Executive Director

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