

**MONEY PURCHASE PENSION PLAN AND TRUST AGREEMENT  
OF THE POLICE DEPARTMENT OF THE CITY OF AURORA  
(As Amended and Restated Effective November 30, 2021)**

**MONEY PURCHASE PENSION PLAN  
AND TRUST AGREEMENT OF  
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**MONEY PURCHASE PENSION PLAN  
AND TRUST AGREEMENT OF  
THE POLICE DEPARTMENT OF THE CITY OF AURORA**

CITY OF AURORA, a Colorado municipality, makes this Agreement as the Employer with the Trustees hereunder.

**WITNESSETH:**

CITY OF AURORA continues, within this Trust Agreement, a Plan for the administration and distribution of contributions made by the Employer and its eligible Employees for the purpose of providing retirement benefits for its eligible Employees. The original Plan was established effective as of January 1, 1988 and has been subsequently amended and restated for the principal purpose of complying with the tax qualification requirements of the Internal Revenue Code of 1986, as amended (“Code”). This amended and restated Plan is effective as of November 30, 2021, except as otherwise provided herein, and is intended to reflect the requirements contained in the 2014 Cumulative List of Changes in Plan Qualification Requirements, as issued by the Internal Revenue Service in Notice 2014-77, the 2015 Cumulative List of Changes in Plan Qualification Requirements, as issued by the Internal Revenue Service in Notice 2015-84, and the prior Cumulative Lists of Changes in Plan Qualification Requirements, as issued by the Internal Revenue Service. The Plan also is intended to reflect the applicable provisions of the Pension Protection Act of 2006, the Heroes Earnings Assistance and Relief Tax Act of 2008, and the Worker, Retiree and Employer Recovery Act of 2008.

The provisions of this Plan, as amended and restated, shall apply solely to an Employee whose employment with the Employer terminates on or after the amended and restated Effective Date of the Plan, unless otherwise provided herein. If an Employee’s employment with the Employer terminates prior to the restated Effective Date, that Employee shall be entitled to benefits under the Plan as the Plan existed on the date of the Employee’s termination of employment.

Now, therefore, in consideration of their mutual covenants, the Employer and the Trustees agree as follows:

**ARTICLE 1.  
DEFINITIONS**

- 1.1 **Account** shall mean the separate account(s) which the Plan Administration Committee or the Trustee shall maintain (a) for a Participant or a Beneficiary, if applicable, under the Plan, (b) to hold Forfeitures and (c) funds to be used for Plan fees and expenses.
- 1.2 **Accounting Date** shall be the last day of the Plan Year.
- 1.3 **Accrued Benefit** shall mean the amount held in a Participant's Employer Contributions Account, Participant Mandatory Contributions Account, Participant Voluntary Contributions Account and Participant Rollover Contributions Account as of any date.
- 1.4 **Authorized Leave of Absence** shall mean any absence authorized by the Employer under the Employer's standard personnel practices, and supplemented by the labor agreement between the Employer and the Aurora Police Association, as may from time to time be in effect. An absence due to military service described in CRS Section 28-3-601, et seq. (or other applicable law), including annual, extended and emergency military leave, shall be governed by CRS Section 28-3-601, et seq. and shall be considered an Authorized Leave of Absence hereunder, provided that the absence meets the requirements set forth in CRS Section 28-3-601, et seq.
- 1.5 **Beneficiary** shall mean the person designated by a Participant who is or may become entitled to a benefit under the Plan. A Beneficiary who becomes entitled to a benefit under the Plan shall remain a Beneficiary under the Plan until the Trustee has fully distributed his or her benefit to him or her. A Beneficiary's right to (and the Plan Administrator's, the Plan Administration Committee's or the Trustee's duty to provide to the Beneficiary) information or data concerning the Plan shall not arise until he or she first becomes entitled to receive a benefit under the Plan.
- 1.6 **Code** shall mean the Internal Revenue Code of 1986, as amended.
- 1.7 **Compensation** shall mean the total base salary set forth in the Employer's Compensation Ordinance and/or pertinent City Council resolutions, as from time to time in effect, for the rank and grade held by the Participant concerned and paid by the Employer to the Participant for services rendered by such Participant as an Employee, including longevity pay (where eligible therefor) and other compensation as detailed in the Employee Manual (effective January 1, 2021), but excluding bonuses, commissions, overtime pay, holiday pay, other taxable income, and other forms of extra pay, received for services performed as an Employee for the portion of the Plan Year during which the Employee was a Participant. However, the term "Compensation" shall not be reduced by the Participant's mandatory contributions which are picked up by the Employer pursuant to Article 4, nor shall "Compensation" be reduced by any Elective Contributions, as defined in Section 1.14.

Any reference in this Plan to Compensation is a reference to the definition in this Section 1.7, unless the Plan reference specifies a modification to this definition. The Plan Administration Committee will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A

Compensation payment includes Compensation by the Employer through another person under the common paymaster provisions in Code Sections 3121 and 3306.

For any Plan Year beginning after December 31, 2001, the Trustee in allocating Employer Contributions and Participant Mandatory Contributions shall not take into account more than \$200,000 (as may be adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B)) of any Participant's "Annual Compensation." "Annual Compensation" means a Participant's Compensation for the applicable "Determination Period." "Determination Period" means the Plan Year. 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.

Compensation shall also include regular Compensation (as defined above which excludes leave cashouts) for services, paid by the later of 2½ months after a Participant's severance from employment with the Employer or the end of the Plan Year that includes the date of the Participant's severance from employment, if it is a payment that, absent a severance from employment, 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 2½ months after the date of severance from employment or the end of the Plan Year that includes the date of severance from employment.

- 1.8 **CRS** shall mean Colorado Revised Statutes, as amended.
- 1.9 **DB Plan** means the Retirement Plan and Trust Agreement of the Police Department of the City of Aurora, as amended from time to time.
- 1.10 **DB Plan Participant** means a Participant who has made an irrevocable election to participate in the DB Plan pursuant to Section 2.3 hereof.
- 1.11 **DB Plan Participant Effective Date** means the date, as specified in the participation election made by a DB Plan Participant pursuant to Section 2.3 hereof, on which the DB Plan Participant commences participation in the DB Plan. The DB Plan Participant Effective Date must commence with the first day of the first complete payroll period ending in the calendar month immediately following the date the election is made.
- 1.12 **Disability** shall mean when a Participant is determined by the Board of Directors of the Colorado Fire and Police Pension Association to be eligible for disability benefits as a result of such Participant's becoming disabled, whether occupational or total, and whether on-duty or whether not on-duty, as provided under and defined in CRS, Title 31, Article 31, Part 8, and specifically in CRS Sections 31-31-801, 31-31-803 and 31-31-806.5, or any successor provision thereto.
- 1.13 **Effective Date** of this Plan as amended and restated shall be effective November 30, 2021, except as specifically provided to the contrary in this Plan.



1.14 ***Elective Contributions*** shall mean amounts excludible from the Employee's gross income under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(2), 403(b), 408(p), or 457, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code Section 457 plan. Notwithstanding the preceding sentence, amounts described in Code Section 132(f)(4) are not Elective Contributions until Plan Years beginning on or after January 1, 2001, unless the Trustee operationally has included such amounts effective as of an earlier Plan Year beginning no earlier than January 1, 1998.

1.15 ***Employee*** shall mean any person:

- (a) who is employed by the Employer in the Civil Service;
- (b) whose most recent employment with the Employer commenced on or after April 8, 1978, or whose employment commenced prior to that date and who subsequently elected to be covered by the Prior Plan pursuant to CRS Section 31-30.5-103(2)(b);
- (c) who is paid by the Employer on a full-time salary basis;
- (d) whose duties are directly involved with the provision of police protection; and
- (e) who can normally be expected to be credited with at least one thousand six hundred (1,600) Hours of Service each Plan Year.

The term "Employee" shall not mean or include clerical or other personnel whose services for the Employer are auxiliary to actual police protection services. Leased Employees, as defined in Code Section 414(n), shall be treated as Employees hereunder. However, see the exclusion in Section 2.1.

The Employer shall, under its current employment policy, make the determination of whether a person employed by it meets the definition of "Employee" as set forth in this Section 1.15.

1.16 ***Employer*** shall mean the City of Aurora.

1.17 ***Employer Contributions*** shall mean the amount contributed by the Employer under Section 3.1, excluding Participant Mandatory Contributions, Participant Voluntary Contributions, Participant Rollover Contributions, and Forfeitures.

1.18 ***Employer Contributions Account*** means the account maintained by the Plan Administration Committee in the name of a Participant to record the Participant's interest in the Trust represented by (a) the amount (if any) credited to such account under Section 9.15 representing the total contributions made by the Employer on such Participant's behalf to the Prior Plan and the net earnings of the Prior Plan allocable thereto, (b) such Participant's share of Employer Contributions, and (c) the increase or decrease in the net worth of the Trust allocable thereto.

1.19 ***ERISA*** shall mean the Employee Retirement Income Security Act of 1974, as amended.

- 1.20 **Forfeiture** means that portion of a Participant's Accrued Benefit which is forfeited in accordance with Sections 5.4 or 9.14.
- 1.21 **Former Participant** means an individual who has ceased to be a Participant because of the Participant's Separation from Service for any reason and who has an undistributed Account.
- 1.22 **FPPA** shall mean the Colorado Fire and Police Pension Association established pursuant to CRS, Title 31, Article 31, Part 2.
- 1.23 **Highly Compensated Employee** means an Employee who during the preceding Plan Year had Compensation in excess of \$80,000 (as adjusted by the Commissioner of Internal Revenue for the relevant year) and, if the Employer makes the *top-paid group election*, was part of the top-paid 20% group of Employees (based on Compensation for the preceding Plan Year).

For purposes of this Section 1.23 "Compensation" means Compensation as defined in Section 1.7, except any exclusions from Compensation set forth in Section 1.7 do not apply, and Compensation specifically includes Elective Contributions, as defined in Section 1.14. The Trustee shall make the determination of who is a Highly Compensated Employee, including the determinations of the number and identity of the top-paid 20% group, consistent with Code Section 414(q) and regulations issued thereunder. For purposes of this Section 1.23, if the current Plan Year is the first year of the Plan, then the term "preceding Plan Year" means the 12-consecutive month period immediately preceding the current Plan Year.

Anything contained in this Section 1.23 or any other provision of the Plan to the contrary notwithstanding, the provisions of this Section 1.23 shall only apply to the Plan if so required under the Code, including, but not limited to Code Section 414(q).

1.24 **Hour of Service** shall mean:

- (a) Each hour for which the Employer pays an Employee, or for which the Employee is entitled to payment, for the performance of duties. The Plan Administration Committee credits Hours of Service under this subsection (a) to the Employee for the computation period in which the Employee performs the duties, irrespective of when paid.
- (b) Each hour for back pay, irrespective of mitigation of damages, to which the Employer has agreed or for which the Employee has received an award. The Trustee shall credit Hours of Service under this subsection (b) to the Employee for the computation period(s) to which the award or the agreement pertains rather than for the computation period in which the award, agreement or payment is made.
- (c) Each hour for which the Employer pays an Employee, or for which the Employee is entitled to payment, pursuant to the terms of the labor agreement between the Employer and the Aurora Police Association from time to time in effect, (irrespective of whether the employment relationship is terminated), for reasons other than for the performance of duties during a computation period, such as Authorized Leave of Absence, vacation, holiday, sick leave,

jury duty or military duty. Except as otherwise required by applicable law, the Plan Administration Committee shall credit no more than five hundred one (501) Hours of Service under this subsection (c) to an Employee on account of any single continuous period during which the Employee does not perform any duties (whether or not such period occurs during a single computation period). An hour for which an Employee is paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workmen's compensation, or unemployment compensation or disability insurance laws. Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. The Plan Administration Committee credits Hours of Service under this subsection (c) in accordance with the rules of paragraphs (b) and (c) of Labor Reg. Section 2530.200b-2, which the Plan, by this reference, specifically incorporates in full within this subsection (c).

- (d) Hours of Service shall also include any Service which the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code Section 414(u). The provisions of this subsection (d) shall apply beginning December 12, 1994.

For purposes of this Section 1.24, a payment shall be deemed made by the Employer regardless of whether such payment is made by the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

The Plan Administration Committee shall not credit an Hour of Service under more than one of the above subsections. For example, an Employee who receives a back pay award following a determination that such Employee was paid at an unlawful rate for Hours of Service previously credited will not be entitled to additional credit for the same Hours of Service. Crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in subsection (c) shall be subject to the limitations set forth in such subsection. For example, no more than 501 Hours of Service are required to be credited for payments of back pay, to the extent that such back pay is agreed to or awarded for a period of time during which an Employee did not or would not have performed duties.

A computation period for purposes of this Section 1.24 is the Plan Year in which the Plan Administration Committee is measuring an Employee's Hours of Service.

The Employer shall credit every Employee with Hours of Service on the basis of the "actual" method. For purposes of the Plan, "actual" method means the determination of Hours of Service from records of hours worked and hours for which the Employer makes payment or for which payment is due from the Employer.

1.25 ***In-Service Distribution*** shall have the meaning assigned to it in Section 6.7(a) of the Plan.

- 1.26 **Leased Employee** shall mean an individual (who otherwise is not an Employee of the Employer) who, pursuant to an agreement between the Employer and any other person, has performed services for the Employer (or for the Employer and any persons related to the Employer within the meaning of Code Section 144(a)(3)) on a substantially full time basis for at least one year and who performs such services under primary direction or control of the Employer within the meaning of Code Section 414(n)(2). Except as otherwise provided in this Section 1.26 a Leased Employee is an Employee for purposes of the Plan. If a Leased Employee is treated as an Employee by reason of this Section 1.26, "Compensation" includes compensation from the leasing organization which is attributable to services performed for the Employer.

Notwithstanding anything contained in this Section 1.26 or any other provision of the Plan to the contrary, the provisions of this Section 1.26 shall only apply to the Plan if so required under the Code.

- 1.27 **Nonforfeitable** shall mean a Participant's or Beneficiary's unconditional claim, legally enforceable against the Plan, to the Participant's Accrued Benefit.
- 1.28 **Nontransferable Annuity** shall mean an annuity which by its terms provides that it may not be sold, assigned, discounted, pledged as collateral for a loan or security for the performance of an obligation or for any purpose to any person other than the insurance company. If the Trustee distributes an annuity contract, the contract must be a Nontransferable Annuity.
- 1.29 **Normal Retirement Age** shall mean the later of age 50 or the 5<sup>th</sup> anniversary of the date the Participant is first credited with an Hour of Service as an Employee, but not to exceed age 65.

The provisions of this Section 1.29 and the term Normal Retirement Age shall have no application to a Participant's vesting in his or her Employer Contributions credited to his or her Employer Contributions Account under the Plan, which vesting shall be controlled solely by the provisions in Section 5.2 of the Plan and vesting schedule set forth in Section 5.3 of the Plan. Except as specifically provided in this Plan, the provisions of this Section 1.29 and the term Normal Retirement Age are expressly intended, and are expressly to be construed and interpreted, to have no legal application whatsoever upon the Employer's general employment policies, rules, ordinances or laws. Therefore, except as specifically provided in this Plan, the provisions of this Section 1.29 and the term Normal Retirement Age shall in no manner give or entitle, or be in any manner construed or interpreted to give or entitle, any Employee, Employee-Participant or any Beneficiary any additional legal right or equitable right against the Employer which any such Employee, Employee-Participant or any Beneficiary does not otherwise possess or to which he or she is already entitled.

A Participant who remains in the employ of the Employer after attaining Normal Retirement Age shall continue to participate in the Plan.

- 1.30 **Participant** shall mean an Employee who is eligible to be and becomes a Participant in accordance with the provisions of Section 2.1.

- 1.31 ***Participant Mandatory Contributions*** shall mean the contributions made under Section 4.1 by a Participant, excluding Employer Contributions, Participant Voluntary Contributions, Participant Rollover Contributions, and Forfeitures.
- 1.32 ***Participant Mandatory Contributions Account*** shall mean the account maintained by the Plan Administration Committee in the name of a Participant to record such Participant's interest in the Trust represented by (a) the amount (if any) credited to such account under Section 9.15 representing the total mandatory contributions made by such Participant on such Participant's own behalf to the Prior Plan and the net earnings of the Prior Plan allocable thereto, (b) such Participant's Mandatory Contributions, and (c) the increase or decrease in the net worth of the Trust allocable thereto.
- 1.33 ***Participant Rollover Contributions*** shall mean the contributions made under Section 4.3, excluding Employer Contributions, Participant Mandatory Contributions, Participant Voluntary Contributions, and Forfeitures,
- 1.34 ***Participant Rollover Contributions Account*** shall mean the account maintained by the Plan Administration Committee in the name of a Participant or Former Participant to record such Participant's interest in the Trust represented by such Participant's or Former Participant's Participant Rollover Contributions (if any) and the increase or decrease in the net worth of the Trust allocable thereto.
- 1.35 ***Participant Voluntary Contributions*** shall mean the contributions made under Section 4.2, excluding Employer Contributions, Participant Mandatory Contributions, Participant Rollover Contributions, and Forfeitures.
- 1.36 ***Participant Voluntary Contributions Account*** shall mean the account maintained by the Plan Administration Committee in the name of a Participant to record such Participant's interest in the Trust represented by such Participant's Voluntary Contributions and the increase or decrease in the net worth of the Trust allocable thereto.
- 1.37 ***Plan*** shall mean the retirement plan established and continued by the Employer in the form of this Plan and Trust Agreement, designated as the Money Purchase Pension Plan of the Police Department of the City of Aurora.
- 1.38 ***Plan Administration Committee*** shall mean the Plan Administration Committee as from time to time constituted pursuant to the terms of Article 9.
- 1.39 ***Plan Administrator*** shall mean the Plan Administration Committee unless the Plan Administration Committee designates another person to hold the position of Plan Administrator. In addition to its other duties, the Plan Administrator shall have full responsibility for compliance with the reporting and disclosure rules under applicable law as respects this Plan.
- 1.40 ***Plan Year*** shall mean the fiscal year of the Plan, a twelve (12) consecutive month period ending every December 31.
- 1.41 ***Prior Plan*** means the employee benefit plan maintained by FPPA under CRS Section 31-31-403 (f/k/a CRS Section 31-30-1006), for the benefit of those

Employees who were participating thereunder prior to the original effective date of this Plan, January 1, 1988, and which was replaced and superseded in its entirety by the substitution of this Plan for such plan.

- 1.42 ***Qualified Health Insurance Premiums*** shall mean premiums for coverage for a Participant, the Participant's spouse and dependents (as defined in Code Section 152) by an accident or health plan or qualified long-term care insurance contract (as defined in Code Section 7702B(b)).
- 1.43 ***Related Group/Related Employers*** shall mean a controlled group of corporations (as defined in Code Section 414(b)), trades or businesses (whether or not incorporated) which are under common control (as defined in Code Section 414(c)) or an affiliated service group (as defined in Code Section 414(m)) or an arrangement otherwise described in Code Section 414(o). Each Employer/member of the Related Group is a Related Employer. The term "Employer" includes every Related Employer for purposes of crediting Service, Hours of Service and Vesting Years of Service, applying the definitions of Employee, Highly Compensated Employee, Compensation and Leased Employee, determining Separation from Service, and for any other purpose required by the Code or by a Plan provision. However, an Employer may contribute to the Plan only by being a signatory to the Plan or to a Participation Agreement to the Plan. If a Related Employer executes a Participation Agreement to the Plan, such Related Employer is a Participating Employer. A Participating Employer is an Employer for all purposes of the Plan.

Notwithstanding anything contained in this Section 1.43 or any other provision of the Plan to the contrary, the provisions of this Section 1.43 shall only apply to the Plan if so required under the Code.

- 1.44 ***Separation from Service*** shall mean the date the Employee no longer has an employment relationship with the Employer maintaining this Plan.
- 1.45 ***Service*** shall mean any period of time the Employee is in the employ of the Employer.
- 1.46 ***Trust*** shall mean the separate Trust created under the Plan.
- 1.47 ***Trust Agreement*** shall mean the agreement set forth herein between the Employer and the Trustee providing for the administration of the Trust Fund, as the same may be amended from time to time, which forms a part of the Plan.
- 1.48 ***Trustee(s)*** shall mean the person or persons who are named on the last page hereof and referred to as such and who have executed this Agreement as trustee; and any person or persons who become successor trustees pursuant to the terms of the Plan. Each Trustee shall be a member of the Plan Administration Committee.
- 1.49 ***Trust Fund*** shall mean all property of every kind held or acquired by the Trustee under the Agreement.
- 1.50 ***Vesting Years of Service*** shall mean the first consecutive twelve (12) month period measured from the Employee's Employment Commencement Date (as defined below). The Plan measures subsequent vesting computation periods beginning with

each anniversary of an Employee's Employment Commencement Date.  
"Employment Commencement Date" means the date on which the Employee first is credited with an Hour of Service as an Employee. A re-employed Employee under Section 2.2 establishes a new Employment Commencement Date on the date he or she is re-employed by the Employer as an Employee and is first credited with an Hour of Service as a re-employed Employee.

A Participant shall be credited with one Vesting Year of Service for each vesting computation period during which he or she is credited with not less than one thousand (1,000) Hours of Service, including Vesting Years of Service prior to the Effective Date of the Plan.

\* \* \* \* *End of Article 1* \* \* \* \*

**ARTICLE 2.  
ELIGIBILITY AND PARTICIPATION**

- 2.1 **ELIGIBILITY.** An Employee shall be eligible to become a Participant and shall begin participation in the Plan on the date he or she is first credited with an Hour of Service as an Employee. However, each Employee who has satisfied the above requirement on the Effective Date shall become a Participant on the Effective Date, provided he or she is an Employee on the Effective Date. Anything contained in this Plan and Trust Agreement to the contrary notwithstanding, Leased Employees shall not be eligible to become Participants in the Plan.
- 2.2 **PARTICIPATION UPON RE-EMPLOYMENT.** If the Service of an Employee terminates and he or she is re-employed as an Employee, such re-employed Employee will be eligible to become a Participant and shall begin participation in the Plan on the date he or she is re-employed by the Employer as an Employee and is first credited with an Hour of Service as a re-employed Employee.
- 2.3 **MANDATORY PARTICIPATION IN PLAN.**
- (a) ***In General.*** Except as provided in this Section 2.3, all Employees who are eligible to participate in the Plan must participate in the Plan as a condition of their employment, and no current Participant may elect to discontinue his or her participation in the Plan.
- (b) ***Irrevocable Elections to Participate in the DB Plan.***
- (1) ***Election by Active Employees as of January 1, 2022.*** In accordance with procedures as are established by the Plan Administration Committee and pursuant to the terms of the DB Plan, a Participant who is an active Employee as of January 1, 2022, may make an irrevocable election to participate in this Plan and the DB Plan; provided, however, that the DB Plan Participant Effective Date must be on or after January 1, 2022, and on or before June 30, 2023.
- (2) ***Election by New Hires after January 1, 2022.*** In accordance with procedures as are established by the Plan Administration Committee and pursuant to the terms of the DB Plan, a Participant who is not an active Employee as of January 1, 2022, may, upon being employed or reemployed by the Employer after January 1, 2022, make an irrevocable election to participate in this Plan and the DB Plan; provided, however, that the DB Plan Participant Effective Date must be within thirty-six (36) months of such employment (or reemployment) by the Employer.
- (3) Notwithstanding Sections 2.3(b)(1) and (2) above, the Plan Administration Committee may establish appropriate rules with respect to an Employee who performs or performed qualified military service that extends such election deadlines applicable to such Employee by up to the length of such Employee's leave for qualified military service.

\* \* \* \* *End of Article 2* \* \* \* \*



**ARTICLE 3.**  
**EMPLOYER CONTRIBUTIONS AND FORFEITURES**

3.1 **EMPLOYER CONTRIBUTIONS.**

- (a) Subject to the provisions of subsection (b), the Employer will make contributions to the Trust on behalf of Participants as follows.
- (1) For the payroll periods of the Employer beginning with the first payroll period beginning on or after January 1, 1998, and ending with the last payroll period prior to the first payroll period of the Employer beginning on or after January 1, 1999, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are to be reallocated during such pay period under the provisions of Section 3.3, equals nine and seven tenths percent (9.7%) of each Participant's Compensation for such pay period.
  - (2) For the first payroll period of the Employer beginning on or after January 1, 1999, and ending with the last payroll period prior to the first payroll period of the Employer beginning on or after December 22, 2007, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are reallocated during such pay period under the provisions of Section 3.3, equals ten percent (10%) of each Participant's Compensation for such pay period.
  - (3) For the first payroll period of the Employer beginning on or after December 22, 2007, and ending with the last payroll period prior to the first payroll period beginning on or after December 22, 2018, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are reallocated during such pay period under the provisions of Section 3.3, equals ten and one half percent (10.5%) of each Participant's Compensation for such pay period.
  - (4) For the first payroll period of the Employer beginning on or after December 22, 2018, and ending with the last payroll period prior to the first payroll period beginning on or after December 21, 2019, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are reallocated during such pay period under the provisions of Section 3.3, equals eleven percent (11%) of each Participant's Compensation for such pay period.
  - (5) For the first payroll period of the Employer beginning on or after December 21, 2019, and ending with the last payroll period prior to

the first payroll period beginning on or after January 1, 2022, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are reallocated during such pay period under the provisions of Section 3.3, equals twelve percent (12%) of each Participant's Compensation for such pay period.

(6) For the first payroll period of the Employer beginning on or after January 1, 2022, and for each payroll period thereafter, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are reallocated during such pay period under the provisions of Section 3.3, equals twelve percent (12%) of each Participant's Compensation for such pay period; provided, however, that, in the case of a DB Plan Participant, the percentage shall be reduced to three and three-quarters percent (3.75%) beginning on the DB Plan Participant Effective Date applicable to such DB Plan Participant.

(b) Anything contained in this Section 3.1 to the contrary notwithstanding, the Employer's obligation for any Plan Year to contribute to the Trust on behalf of each Participant any amount in excess of nine percent (9%) of each such Participant's Compensation, as provided in subsection (a), is contingent upon (1) the reasonable determination by the City Council of the Employer that such annual Employer Contributions in excess of nine percent (9%) are permitted under Section 20 of Article X of the Colorado Constitution (hereinafter "Amendment 1"), and (2) an annual appropriation. The determination made by the City Council of the Employer after interpretation and application of Amendment 1 shall be determinative of the Employer Contribution percentage under this Section 3.1 for such Plan Year, and such determination by the City Council of the Employer shall be final. In the event the determination of the City Council of the Employer is that the Employer is not permitted under Amendment 1 to make an annual contribution to the Trust in excess of nine percent (9%) of each Participant's Compensation, then the Employer's contribution percentage under the provisions of this Section 3.1 for such Plan Year shall be reduced to nine percent (9%) of each Participant's Compensation for such Plan Year.

(c) The percentage contributions of the Employer provided for in this Section 3.1 may be modified hereafter by the applicable terms of any subsequent binding agreement between the Employer and the Plan Administration Committee, provided such terms make specific reference to such percentage contribution and provided any such amendment is approved in accordance with the provisions of Section 13.2. Any and all such amendments shall be affixed hereto, and the terms and provisions of this Plan and Trust Agreement relating to such percentage contributions shall be deemed modified as of and in accordance with the terms of such binding agreement.

- (d) Except as provided in subsection (e), Employer Contributions made to the Trust for any Plan Year shall be paid to the Trustee, such payments shall be made on a basis during the Plan Year concerned that coincides with the Employer's then current payroll period for the Participants, and pending allocation under Sections 3.2 and 3.3, shall be invested by the Trustee.
- (e) Anything contained in this Agreement to the contrary notwithstanding, the Employer, by mutual agreement with the Trustee, shall make a payment to the Trust prior to the first day of the first payroll period beginning on or after January 1, 1997, in the amount of Sixty-Eight Thousand Seven Hundred Thirty-Nine and No/100 Dollars (\$68,739.00), pursuant to Section 15-88.5 of Chapter 15 of the City Code of the City of Aurora, Colorado (hereinafter referred to as the "Employer Payment"). The Plan Administration Committee shall allocate the Employer Payment in accordance with the provisions of Section 3.2(b).

### 3.2 CONTRIBUTION ALLOCATION.

- (a) Except as provided in subsection (b), the Plan Administration Committee shall allocate and credit to each Participant's Account each Employer Contribution to this Trust upon the same basis as the Employer makes its contributions under Section 3.1; that is, the Plan Administration Committee shall credit each Participant's Account with that portion of the Employer Contribution which is equal to the percentage, as set forth in the applicable provision of Section 3.1, of the Participant's Compensation upon which the Employer based its Employer Contribution during such pay period.
- (b) Anything contained in this Agreement to the contrary notwithstanding, the Employer Payment shall be allocated and credited to a reserve account under the Trust (hereinafter referred to as the "**Employer Payment Account**"). Commencing as of the first payroll period of the Employer beginning on or after January 1, 1997, and thereafter, the Plan Administration Committee shall allocate and credit principal from the Employer Payment Account, as an Employer Contribution, to each Participant's Account in an amount which is equal to the percentage, as set forth in Section 3.1(a), of the Participant's Compensation upon which the Employer is required to base its Employer Contribution during such pay period. In the event that at any time the amount of principal in the Employer Payment Account is insufficient to fully fund the Employer Contribution obligation for a current payroll period of the Employer, as set forth in Section 3.1(a) of the Plan, the Employer shall contribute to the Trust such amount as is required to meet the Employer's Employer Contribution obligation for such payroll period, as set forth in Section 3.1(a). Nothing contained in this subsection (b) shall be construed as relieving the Employer of its Employer Contribution obligation as set forth in Section 3.1, whether such Employer Contribution is made with regular Employer Contributions for the Employer's current payroll period payable pursuant to Section 3.1(d), or through allocation of principal from the Employer Payment Account payable pursuant to this subsection (b). Any net income, gain or loss incurred by the Employer Payment Account shall be used to pay fees and expenses of the Plan pursuant to Section 10.5(a).

- 3.3 **FORFEITURE ALLOCATION.** The amount of a Participant's Accrued Benefit forfeited under the Plan is a Forfeiture. Subject only to any restoration allocation required under Section 9.14, the Plan Administration Committee will use, allocate and credit the Forfeiture, as directed by the Employer in its discretion, in accordance with Section 3.2 to reduce the Employer Contribution for the Plan Year in which the Forfeiture occurs and any subsequent Plan Year if required. Amounts forfeited under Section 5.4, after the date of such Forfeiture under the provisions of Section 5.4, shall be treated as Employer Contributions and allocated as Employer Contributions in accordance with this Section 3.3.

The Plan Administration Committee will continue to hold the undistributed, non-vested portion of a terminated Participant's Accrued Benefit in his or her Account solely for his or her benefit until a Forfeiture occurs at the time specified in Section 5.4. A Participant will not share in the allocation of a Forfeiture of any portion of his or her Accrued Benefit.

- 3.4 **LIMITATIONS ON ALLOCATIONS TO PARTICIPANTS' ACCOUNTS.** The limitations and provisions of Code Section 415 and any regulations (including the preamble of the final Code Section 415 regulations), rulings or guidance issued thereunder are hereby incorporated by reference.

*\* \* \* \* End of Article 3 \* \* \* \**

**ARTICLE 4.  
PARTICIPANT CONTRIBUTIONS**

4.1 **PARTICIPANT MANDATORY CONTRIBUTIONS.**

- (a) Each Participant shall be required to make contributions to the Trust as follows.
- (1) For the payroll periods of the Employer beginning with the first payroll period beginning on or after January 1, 1997, and ending with the last payroll period prior to the first payroll period of the Employer beginning on or after January 1, 1998, each Participant shall be required to contribute an amount equal to nine and five tenths percent (9.5%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be picked up each pay period by the Employer on behalf of each Participant.
  - (2) For the first payroll period of the Employer beginning on or after January 1, 1998, and ending with the last payroll period prior to the first payroll period of the Employer beginning on or after December 22, 2007, each Participant shall be required to contribute an amount equal to ten percent (10%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be picked up each pay period by the Employer on behalf of each Participant.
  - (3) For the first payroll period of the Employer beginning on or after December 22, 2007, and ending with the last payroll period prior to the first payroll period beginning on or after December 22, 2018, each Participant shall be required to contribute an amount equal to ten and one-half percent (10.5%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be picked up each pay period by the Employer on behalf of each Participant.
  - (4) For the first payroll period of the Employer beginning on or after December 22, 2018, and ending with the last payroll period prior to the first payroll period beginning on or after December 21, 2019, each Participant shall be required to contribute an amount equal to eleven percent (11%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be picked up each pay period by the Employer on behalf of each Participant.
  - (5) For the first payroll period of the Employer beginning on or after December 21, 2019, and ending with the last payroll period prior to the first payroll period beginning on or after January 1, 2022, each Participant shall be required to contribute an amount equal to twelve percent (12%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be

picked up each pay period by the Employer on behalf of each Participant.

- (6) For the first payroll period of the Employer beginning on or after January 1, 2022, and for each payroll period thereafter, each Participant shall be required to contribute an amount equal to twelve percent (12%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be picked up each pay period by the Employer on behalf of each Participant; provided, however, that, in the case of a DB Plan Participant, the percentage shall be reduced to three and three-quarters percent (3.75%) beginning on the DB Plan Participant Effective Date applicable to such DB Plan Participant.
- (b) The percentage contributions set forth in subsection (a) may be modified hereafter by the applicable terms of any subsequent binding agreement between the Employer and the Plan Administration Committee, provided such terms make specific reference to such percentage contribution and provided any such amendment is approved in accordance with the provisions of Section 13.2. Any and all such amendments shall be affixed hereto, and the terms and provisions of this Plan and Trust Agreement relating to such percentage contribution shall be deemed modified, as of and in accordance with, the terms of such binding agreement
- (c) It is understood that the amounts set forth in subsection (a) shall be paid by the Employer to the Trust in lieu of such contributions being paid directly by each Participant. No Participant shall have the option of choosing to have the Employer pay him or her directly the Participant Mandatory Contribution required under this section instead of having such Participant Mandatory Contribution picked up and paid over to the Trust by the Employer. Although the Participant Mandatory Contribution under this section is otherwise designated and treated herein as the contribution of such Participant, it is intended that such contribution shall be treated, for federal income tax purposes, as an Employer Contribution under Code Section 414(h)(2).
- (d) For purposes of determining the amount of the percentage contributions set forth in this section, Compensation, as defined in Section 1.7, shall be used. However, for federal income tax purposes, the amount of a Participant's taxable income and wages for withholding tax purposes shall not include the Participant Mandatory Contribution picked up by the Employer under this section.
- (e) The Participant Mandatory Contributions required pursuant to the provisions of this Section 4.1 shall be paid by the Employer to the Trustee on a basis during the Plan Year concerned that coincides with the Employer's then current payroll period for Participants.

4.2 **PARTICIPANT VOLUNTARY CONTRIBUTIONS.**

- (a) ***Participant Voluntary Contributions After December 31, 1991.*** From and after January 1, 1992, Participant Voluntary Contributions shall no longer be permitted under the Plan.
- (b) ***Participant Voluntary Contributions Prior to January 1, 1992.*** Any Participant may make voluntary contributions to the Trust for his or her own benefit, subject to the Code Section 415 limitations for voluntary contributions. A Participant must make a voluntary contribution for a particular Plan Year not later than thirty (30) days after the Accounting Date of that Plan Year. The Plan Administration Committee will allocate and credit a voluntary contribution made for a particular Plan Year to the contributing Participant's Account as of the Accounting Date of that Plan Year. The Plan Administration Committee may establish whatever procedures it deems necessary to facilitate Participant Voluntary Contributions.

4.3 **PARTICIPANT ROLLOVER CONTRIBUTIONS.** The Trustee may, but shall not be obligated to, accept from a Participant or a Former Participant who has not yet attained age 70½:

- (a) Participant Rollover Contributions of an eligible rollover distribution from:
  - (1) a qualified plan described in Code Section 401(a), excluding voluntary after-tax contributions and other non-taxable funds;
  - (2) an annuity contract described in Code Section 403(b), excluding voluntary after-tax contributions and other non-taxable funds;
  - (3) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state, excluding non-taxable funds; and/or
  - (4) a traditional individual retirement account or annuity described in Code Section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includable in gross income; and/or
- (b) Participant Rollover Contributions made as a direct rollover of an eligible rollover distribution from:
  - (1) a qualified plan described in Code Section 401(a), including voluntary after-tax contributions but excluding other non-taxable funds;
  - (2) an annuity contract described in Code Section 403(b), including voluntary after-tax contributions but excluding other non-taxable funds; and/or
  - (3) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality

of a state or political subdivision of a state, excluding non-taxable funds.

Notwithstanding the preceding, the Plan shall not accept any Roth funds made as a Participant Rollover Contribution or otherwise. The Plan shall separately account for the Participant Rollover Contribution and separately account for any voluntary after-tax contributions or other non-taxable funds, which are directly rolled over as part of Participant Rollover Contributions under the Participant's or Former Participant's Participant Rollover Contributions Account. Before accepting a rollover contribution, the Trustee may, in accordance with I.R.S. Revenue Ruling 2014-9, require an Employee, Participant, or Former Participant to furnish satisfactory evidence that the proposed transfer is in fact a "rollover contribution" which the Code permits an employee to make to a qualified plan and which complies with any procedures established by the Trustees. Additionally, before accepting a rollover contribution, the Trustee may require the Employer's written consent, and the Participant's, Former Participant's, or Employee's filing with the Trustee any forms prescribed by them for such purpose. The Trustee may also require that if property other than cash is to be contributed to the Trust as a rollover contribution, such property must be liquidated into cash prior to its contribution to the Trust. A rollover contribution is not an annual addition under Code Section 415 or a Participant Voluntary Contribution.

The Trustee, in its sole discretion, may invest the rollover contribution either in a segregated investment account for the Participant's sole benefit or as part of the Trust Fund. As of the Accounting Date (or other valuation date) for each Plan Year, the Trustee shall allocate and credit the net income (or net loss) from a Participant's segregated Account, any expenses allocable thereto and the increase or decrease in the fair market value of the assets of a segregated Account solely to that Account as provided in Section 9.11.

An Employee, prior to satisfying the Plan's eligibility conditions, may make a rollover contribution to the Trust to the same extent and in the same manner as a Participant. If an Employee makes a rollover contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Trustee shall treat the Employee as a Participant for all purposes of the Plan except the Employee is not a Participant for purposes of sharing in Employer Contributions or Forfeitures under the Plan nor may the Employee make Participant contributions under Article 4 until he or she actually becomes a Participant in the Plan. If the Employee has a Separation from Service prior to becoming a Participant, the Trustee shall distribute the Participant Rollover Contribution Account to the Participant as if it were an Employer Contribution Account.

- 4.4 **PARTICIPANT CONTRIBUTION – ACCRUED BENEFIT.** The Plan Administration Committee shall maintain, or shall direct the Trustee to maintain, a separate Account(s) in the name of each Participant to reflect the Participant's Accrued Benefit under the Plan derived from his or her Participant contributions under this Article 4. A Participant's Accrued Benefit derived from his or her Participant contributions as of any applicable date is the balance of his or her separate Participant contribution Account(s).

\* \* \* \* *End of Article 4* \* \* \* \*



**ARTICLE 5.  
VESTING**

- 5.1 **GENERAL.** A Participant, Former Participant or Beneficiary shall acquire a Nonforfeitable interest in the Accounts standing in his or her name only as provided in this Article 5. After a Participant acquires a Nonforfeitable interest under the provisions of this Article 5, such Nonforfeitable interest shall carry over and continue after the Participant becomes a Former Participant or a Beneficiary designation with respect thereto becomes applicable, subject to charges, deductions, distributions and Forfeitures under the Plan. A Participant’s interest in the Trust Fund is not an interest in any specific assets of the Trust Fund, but rather a right to receive his or her Nonforfeitable interest, as determined by the Plan Administration Committee, in cash or in kind from the Trustee at the time and in the manner described in this Article 5.
- 5.2 **NORMAL RETIREMENT AGE; DEATH.** If a Participant reaches Normal Retirement Age while employed by the Employer or if a Participant’s employment with the Employer terminates as a result of death (or as required by Code Section 414(u), death of the Participant while performing qualified military service), the Participant’s Accrued Benefit derived from Employer Contributions will be 100% Nonforfeitable.
- 5.3 **VESTING.** A Participant’s Accrued Benefit is, at all times, one hundred percent (100%) Nonforfeitable to the extent the value of his or her Accrued Benefit is derived from Participant Mandatory Contributions, Participant Voluntary Contributions and Participant Rollover Contributions, or is derived from the excess of the value of his or her Employer Contributions Account over the forfeitable percentage (if any) of the aggregate amount of all actual Employer Contributions then credited to such Participant’s Employer Contributions Account.

Except as provided in Sections 5.1 and 5.2, for each Vesting Year of Service, a Participant’s Nonforfeitable percentage in the aggregate amount of all actual Employer Contributions then credited to such Participant’s Employer Contributions Account equals the percentage in the following vesting schedule:

<u>Vesting Years of Service With the Employer</u>	<u>Percent of Nonforfeitable Accrued Benefit</u>
Less than 5	0%
5 or more	100%

- 5.4 **FORFEITURE OCCURS.** Except for a Forfeiture under Section 9.14, a Forfeiture, if any, of a Participant’s Accrued Benefit derived from Employer Contributions occurs under the Plan as of the earlier of (a) the date the Participant receives a cash out distribution, as such term is defined in the following sentence, and (b) the last day of the calendar quarter immediately following the calendar quarter in which such Participant terminates employment as an Employee with the Employer. A “cash out distribution” is a distribution of a Participant’s entire Nonforfeitable Accrued Benefit under the Plan.

If the Trustee forfeits a lost Participant's Accrued Benefit under Section 9.14(b), such Forfeiture occurs as of the date the Trustee makes the Forfeiture as provided in Section 9.14.

The Trustee shall determine the percentage of a Participant's Forfeiture, if any, under this Section 5.4 solely by reference to the vesting schedule of Section 5.3. A Participant will not forfeit any portion of his or her Accrued Benefit for any other reason or cause except as expressly provided by this Section 5.4 or as provided under Section 9.14.

*\* \* \* \* End of Article 5 \* \* \* \**

## **ARTICLE 6. DISTRIBUTIONS**

- 6.1 **TIMING OF DISTRIBUTIONS.** The Plan Administration Committee shall direct the Trustee to make distribution of a Participant's Nonforfeitable Accrued Benefit in accordance with this Section 6.1. For all purposes of this Article 6, the term "annuity starting date" means the first day of the first period for which the Plan distributes an amount as an annuity or in any other form, but in no event shall the "annuity starting date" be earlier than (a) a Participant's Separation of Service, (b) a Participant's Disability, or (c) a Participant's In-Service Distribution, whichever is applicable. A "distribution date" under this Article 6 is the earliest administratively feasible date following the earlier to occur of the Participant's Separation from Service or the Participant's Disability.

Anything contained herein to the contrary notwithstanding, any distribution of a Participant's Nonforfeitable Accrued Benefit is subject to the applicable provisions of Section 6.9.

- 6.2 **WITHDRAWALS OF PARTICIPANT VOLUNTARY OR ROLLOVER CONTRIBUTIONS.** A Participant, by giving prior written notice to the Trustee, may withdraw all or any part of the value of his or her Accrued Benefit derived from his or her Participant Voluntary Contributions or Participant Rollover Contributions. A distribution of a Participant's Accrued Benefit derived from his or her Participant Voluntary Contributions or Participant Rollover Contributions must comply with the qualified joint and survivor and pre-retirement survivor annuity provisions of Code Sections 401(a)(11) and 417 if applicable. Furthermore, a Participant may not exercise his or her right to withdraw the value of his or her Accrued Benefit derived from Participant Voluntary Contributions or Participant Rollover Contributions more than once during any Plan Year. The Trustee, in accordance with the direction of the Plan Administration Committee, shall distribute a Participant's unwithdrawn Accrued Benefit attributable to his or her Participant Voluntary Contributions and Participant Rollover Contributions at the same time the Trustee distributes the Participant's Accrued Benefit attributable to Employer Contributions and Participant Mandatory Contributions.
- 6.3 **DISTRIBUTION UPON SEPARATION FROM SERVICE OF A PARTICIPANT FOR A REASON OTHER THAN DEATH.** Except as otherwise provided to the contrary in Section 6.5 regarding the Disability of a Participant, in the event a Participant's Separation from Service is for any reason other than his or her death, the Plan Administration Committee shall direct the Trustee to distribute such Participant's Nonforfeitable Accrued Benefit in a form elected by such Participant pursuant to this Article 6. If such Participant fails to make such an election within six (6) months after his or her receipt of the written notice required under Section 6.10, then the Plan Administration Committee may direct the Trustee to distribute to such Participant his or her Nonforfeitable Accrued Benefit in the form of a lump sum distribution, except as otherwise provided to the contrary in Section 6.6, on any distribution date the Plan Administration Committee, in its discretion, may select.
- 6.4 **DISTRIBUTION UPON DEATH OF A PARTICIPANT.** In the event a Participant's Separation from Service is on account of his or her death, the Plan Administration Committee shall direct the Trustee to distribute such Participant's Nonforfeitable

Accrued Benefit to such Participant's designated Beneficiary, in accordance with this section.

The Plan Administration Committee shall direct the Trustee to distribute such deceased Participant's Nonforfeitable Accrued Benefit in the form elected by such Participant or, if applicable, by such Participant's Beneficiary, as permitted under this Article 6. In the absence of such election, the Plan Administration Committee may direct the Trustee to distribute to the deceased Participant's designated Beneficiary such Participant's Nonforfeitable Accrued Benefit in the form of a lump sum distribution, except as otherwise provided to the contrary in Section 6.6, on any distribution date as soon as administratively practicable following the death of the Participant, or, if later, on any distribution date as soon as administratively practicable following the date the Plan Administration Committee receives notification of, or otherwise confirms, the Participant's death.

6.5 **DISTRIBUTION UPON FPPA ON-DUTY TOTAL DISABILITY OR ON-DUTY PERMANENT OCCUPATIONAL DISABILITY.** In the event FPPA determines that a Participant has an "on-duty" Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5 (as the same may be amended), then the Plan Administration Committee shall direct the Trustee to distribute such disabled Participant's Nonforfeitable Accrued Benefit to such Participant, in accordance with this Section 6.5, regardless of whether such disabled Participant has incurred a Separation from Service.

- (a) ***Distribution of Participant's Lump Sum Plan Offset Amount.*** If **all** of the following circumstances occur:
- (1) A Participant is determined by FPPA to have an on-duty Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended;
  - (2) Such Participant is, therefore, found by FPPA to be entitled to either a total disability or a permanent occupational disability benefit pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended (hereinafter referred to as the "FPPA On-Duty Disability Benefit");
  - (3) Such disabled Participant's FPPA On-Duty Disability Benefit is excludible from such disabled Participant's gross income for federal income tax purposes under the provisions of Code Section 104(a)(1), which excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment;
  - (4) Pursuant to the provisions of CRS Section 31-31-804(2), as the same may be amended, such disabled Participant's FPPA On-Duty Disability Benefit that would otherwise be payable under CRS Section 31-31-806.5 is reduced by FPPA in an amount that is the actuarial equivalent of the lump sum value of Participant's Non-

forfeitable Accrued Benefit under the Plan as of a date selected by FPPA and effective November 1, 2012, as adjusted by FPPA based on CRS Section 31-31-804(2), as the same may be amended (“Lump Sum Plan Offset Amount”); and

- (5) The Plan Administration Committee and the Trustee make a good faith determination that pursuant to applicable federal tax law, regulations and rulings that such Participant’s Lump Sum Plan Offset Amount is also exempt from federal income taxation under the provisions of Code Section 104(a)(1) as an on-duty workmen’s compensation type of benefit,

**then** the Plan Administration Committee shall direct the Trustee to distribute to the disabled Participant that portion of his or her Nonforfeitable Accrued Benefit equal to the Participant’s Lump Sum Plan Offset Amount (or all of his or her Nonforfeitable Accrued Benefit if it is equal to or less than the Participant’s Lump Sum Plan Offset Amount) in the form of a lump sum distribution on any distribution date as soon as administratively practicable coincident with or following the date of the determination by FPPA that the Participant has an on-duty Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended.

- (b) ***Distribution of Remaining Balance of Participant’s Nonforfeitable Accrued Benefit.*** If pursuant to the provisions of subsection (a), a disabled Participant’s Lump Sum Plan Offset Amount is distributed to him or her in the form of a lump sum distribution, and if after such lump sum distribution is made there is any remaining balance in the disabled Participant’s Nonforfeitable Accrued Benefit (hereinafter referred to as the “Remaining Balance”), then the Plan Administration Committee shall direct the Trustee to distribute to the disabled Participant the entire Remaining Balance of his or her Nonforfeitable Accrued Benefit in the form of a lump sum distribution after his or her receipt of the written notice required under Section 6.10, except as otherwise provided to the contrary in Section 6.6, on any distribution date the Plan Administration Committee, in its discretion, may select.

- (c) ***Tax Treatment of Disability Distributions.***

- (1) Lump Sum Plan Offset Amount. Any lump sum distribution of the disabled Participant’s Lump Sum Plan Offset Amount made pursuant to subsection (a) shall be treated by the Plan Administration Committee, the Trustee and the disabled Participant as a distribution that is excludible from the disabled Participant’s gross income for federal income tax purposes under the provisions of Code Section 104(a)(1), which excludes from gross income amounts that are received by an employee under a workmen’s compensation act or under a statute in the nature of a workmen’s compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment; and the lump sum distribution

of the disabled Participant's Lump Sum Plan Offset Amount shall not be treated as a distribution from a Code Section 401(a) qualified plan which would otherwise be subject to the rules of federal income taxation under the provisions of Code Sections 402(a) and 72, and the lump sum distribution of the disabled Participant's Lump Sum Plan Offset Amount shall not be subject to the provisions of Sections 6.6, 6.10 and 6.12.

(2) Remaining Balance. Any lump sum distribution of the Remaining Balance in the disabled Participant's Nonforfeitable Accrued Benefit made pursuant to subsection (b) shall be treated by the Plan Administration Committee, the Trustee and the disabled Participant as a lump sum distribution from a Code Section 401(a) qualified plan which is subject to the rules of federal income taxation under the provisions of Code Sections 402(a) and 72, and the lump sum distribution of the Remaining Balance shall be subject to the applicable provisions of Sections 6.6, 6.10 and 6.12.

(d) ***Distribution Upon FPPA Disability Which Is Other Than FPPA On-Duty Total Disability or On-Duty Permanent Occupational Disability.*** In the event FPPA determines that a Participant has a Disability, which is neither an "on-duty" total disability nor an "on-duty" permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended, then, regardless of whether the Participant has incurred a Separation from Service, after the date of the determination by FPPA that such Participant has such a Disability, the Plan Administration Committee shall direct the Trustee to distribute to the disabled Participant his or her entire Nonforfeitable Accrued Benefit in the form of a lump sum distribution, after his or her receipt of the written notice required under Section 6.10, except as otherwise provided to the contrary in Section 6.6, on any distribution date the Plan Administration Committee, in its discretion, may select.

6.6 **MANDATORY DISTRIBUTIONS GREATER THAN \$1,000.** Except as otherwise expressly provided to the contrary pursuant to the provisions of Section 6.5(c)(1), anything contained herein to the contrary notwithstanding, the following provisions shall apply:

(a) In the event the Plan Administration Committee directs the Trustee to distribute a Participant's Nonforfeitable Accrued Benefit in the form of a lump sum distribution as a result of the failure of the Participant to make a distribution election within the six (6) month period described in Section 6.3 and if such Participant's Nonforfeitable Accrued Benefit exceeds \$1,000.00, then the Plan Administration Committee shall instead direct the Trustee to distribute the Participant's Nonforfeitable Accrued Benefit in the form of a direct rollover distribution to an individual retirement account as may be designated by the Plan Administration Committee in the name of the Participant.

- (b) In the event the Plan Administration Committee directs the Trustee to distribute a deceased Participant's Nonforfeitable Accrued Benefit in the form of a lump sum distribution to such deceased Participant's designated Beneficiary as a result of the absence of a distribution election by such deceased Participant or his or her designated Beneficiary as described in Section 6.4, and if such deceased Participant's Nonforfeitable Accrued Benefit under the Plan exceeds \$1,000.00, then the Plan Administration Committee shall instead direct the Trustee to distribute the deceased Participant's Nonforfeitable Accrued Benefit in the form of a direct rollover distribution to an individual retirement account as may be designated by the Plan Administration Committee in the name of the deceased Participant's designated Beneficiary and effective January 1, 2010, in accordance with Code Section 402(c)(11).
- (c) In the event the Plan Administration Committee directs the Trustee to distribute to a disabled Participant the entire Remaining Balance of his or her Nonforfeitable Accrued Benefit in excess of his or her Lump Sum Plan Offset Amount in the form of a lump sum distribution as described in Section 6.5(b), and if the entire Remaining Balance of the disabled Participant's Nonforfeitable Accrued Benefit in excess of his or her Lump Sum Plan Offset Amount exceeds \$1,000.00, then the Plan Administration Committee shall instead direct the Trustee to distribute the entire Remaining Balance of the disabled Participant's Nonforfeitable Accrued Benefit in excess of his or her Lump Sum Plan Offset Amount in the form of a direct rollover distribution to an individual retirement account as may be designated by the Plan Administration Committee in the name of the disabled Participant.
- (d) In the event the Plan Administration Committee directs the Trustee to distribute a disabled Participant's Nonforfeitable Accrued Benefit in the form of a lump sum distribution to the disabled Participant as described in Section 6.5(d), and if the disabled Participant's Nonforfeitable Accrued Benefit exceeds \$1,000.00, then the Plan Administration Committee shall instead direct the Trustee to distribute the disabled Participant's Nonforfeitable Accrued Benefit in the form of a direct rollover distribution to an individual retirement account as may be designated by the Plan Administration Committee in the name of the disabled Participant.

6.7 **IN-SERVICE DISTRIBUTION.**

- (a) Prior to incurring a Separation from Service or a Disability, a Participant who has attained Normal Retirement Age may elect to receive a distribution from the Plan of all or any portion of his or her Nonforfeitable Accrued Benefit (an "In-Service Distribution").
- (b) In order to receive an In-Service Distribution, a Participant shall make an election under this Section 6.7 on a written form prescribed by the Plan Administration Committee at any time during the Plan Year for which his or her election is to be effective and, in such written election form, the Participant shall specify the percentage or dollar amount of his or her Nonforfeitable Accrued Benefit that he or she wishes the Plan Administration

Committee to direct the Trustee to distribute to him or her for the Plan Year for which the election is to be effective.

Notwithstanding any other provisions of this Section 6.7, a Participant's election to receive an In-Service Distribution shall not be effective unless the Participant obtains the written consent of the legal spouse of the Participant on a written form prescribed by the Plan Administration Committee. The spousal consent shall acknowledge in writing the effect of the In-Service Distribution on the benefit and the potential benefit to the Participant's spouse. Spousal consent must be witnessed by a notary public and shall be irrevocable when made. This spousal consent will not be required if it is established to the satisfaction of the Plan Administration Committee that consent cannot be obtained because the Participant has no spouse, the Participant's spouse cannot be located, or the Participant's spouse is incapacitated.

- (c) An In-Service Distribution shall only be payable and distributed in a single lump sum cash payment, and any such single lump sum cash payment shall be distributed to the Participant as soon as administratively practicable after the Plan Administration Committee approves the Participant's written election, together with the spousal consent. The Plan Administration Committee shall distribute the balance of the Participant's Nonforfeitable Accrued Benefit not distributed pursuant to his or her election(s) under this Section 6.7 in accordance with the other applicable distribution provisions of the Plan.
- (d) The provisions of this Section 6.7 shall only apply to Participants whose most recent employment commencement date is on or before December 31, 2021, and Participants whose most recent employment commencement date is after December 31, 2021, shall not be eligible to elect to receive an In-Service Distribution under this Section 6.7.

6.8 **PAYMENT OF QUALIFIED HEALTH INSURANCE PREMIUMS.** Effective October 1, 2010, a Participant who, by reason of Disability or reaching Normal Retirement Age, separates from service with the Employer as a public safety officer, as defined under Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968, is eligible to elect to have distributions for which he or she otherwise is eligible to receive (but has not yet received) and that are otherwise subject to inclusion in the Participant's gross income pursuant to Code Section 72, to be paid directly from the Plan for Qualified Health Insurance Premiums, provided, that:

- (a) The payment for Qualified Health Insurance Premiums on behalf of the Participant must be made directly to the provider of the accident or health plan or qualified long-term care insurance contract (as defined in Code Section 7702B(b)) by deduction from the Participant's distributions from the Plan.
- (b) The payment of Qualified Health Insurance Premiums shall be limited per Participant to the lesser of (1) the amount paid by the Participant for such premiums during the Participant's taxable year or (2) \$3,000 during the Participant's taxable year. Such payment shall be paid from the Participant's distributions in an amount that shall not vary from month-to-month during the Plan Year and that shall not exceed \$250 per month.



- (c) The direct payment from the Plan of Qualified Health Insurance Premiums shall terminate immediately upon the Participant's death.
- (d) The payee of Qualified Health Insurance Premiums must be approved by the Plan Administrator prior to its receipt of Qualified Health Insurance Premiums on behalf of any Participant.
- (e) An eligible Participant pursuant to this Section 6.8 can elect the payment of Qualified Health Insurance Premiums from his or her unpaid distributable Accrued Benefit once per Plan Year and can terminate such election once per Plan Year. The Participant's affirmative election of payment of Qualified Health Insurance Premiums must be made no later than thirty (30) days prior to the date for which the premiums will be paid directly from the Plan on his or her behalf, and the payment will terminate automatically at the end of the Plan Year. The Participant's affirmative termination of payment of Qualified Health Insurance Premiums during the Plan Year must be made no later than thirty (30) days prior to the date on which such termination is effective.
- (f) A Participant otherwise eligible to make an election under this Section 6.8 shall not be eligible for the election for any Plan Year for which Qualified Health Insurance Premiums are being made on his or her behalf from any other governmental plan (including a governmental plan other than the Plan of which the Employer sponsors) that is defined as an eligible retirement plan under Code Section 402(l)(4)(A).

6.9 **REQUIRED MINIMUM DISTRIBUTIONS.**

- (a) ***Precedence.*** All distributions required under this section shall be determined and made in accordance with Code Section 401(a)(9) and Regulation Sections 1.401(a)(9)-2 through -9, including the incidental benefit rules of Code Section 401(a)(9)(G). The requirements of this section shall take precedence over any provisions of the Plan that are inconsistent with Code Section 401(a)(9) and the regulations thereunder.
- (b) ***TEFRA Section 242(b)(2) Elections.*** Notwithstanding anything to the contrary herein, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to TEFRA Section 242(b)(2).
- (c) ***Definitions.***
  - (1) "Designated beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the designated beneficiary as defined under Treasury Regulation Section 1.401(a)(9)-1, Q&A-4.
  - (2) "Distribution calendar year" means 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 that 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 subsection (e)(2). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

- (3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.
- (4) "Required beginning date" means the April 1 following the close of the calendar year in which the Participant reaches age 70½ or, if later, incurs a Separation from Service. The Participant's pre-1997 required beginning date (if applicable) is the April 1 following the close of the calendar year in which the Participant attains age 70½.

(d) ***Required Distributions During Participant's Lifetime.*** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (1) 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, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- (2) 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 Accrued Benefit by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

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

(e) ***Required Distributions After Participant's Death.***

- (1) Death On or After Date Distributions Begin. 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 Accrued Benefit 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:

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

If the Participant dies on or after the date distributions begin and there is **no** designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Accrued Benefit by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

- (2) Death Before Date Required Distributions Begin. If the Participant dies before required distributions begin, the Participant's Accrued Benefit 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 will begin by December 31 of the calendar year immediately following the calendar year during which the Participant died, or, if later, by December 31 of the calendar year during which the Participant would have attained age 70½.
  - (B) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (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 Accrued Benefit will be distributed by

December 31 of the calendar year containing the 5<sup>th</sup> 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 distributions to the surviving spouse begin, this subsection (2), other than subsection (A), will apply as if the surviving spouse were the Participant.

Distributions are considered to begin on the Participant's required beginning date, provided that if subsection (D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (A)), the date distributions are considered to begin is the date distributions actually commence.

(3) Minimum Amount Distributed.

- (A) 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 Accrued Benefit by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in subsection (1); provided, however, that distribution of the Participant's Accrued Benefit may be completed by December 31 of the calendar year containing the 5<sup>th</sup> anniversary of the Participant's death if so elected by the Participant or designated Beneficiary pursuant to procedures established by the Plan Administrator.

- (B) 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 Accrued Benefit will be completed by December 31 of the calendar year containing the 5<sup>th</sup> anniversary of the Participant's death.

- (f) ***Waiver of 2009 Required Minimum Distributions – Continuation of Required Minimum Distributions for Participants receiving scheduled payments (unless otherwise elected by Participant); Suspension of Required Minimum Distributions for all other Participants (unless otherwise elected).*** Notwithstanding the provisions of Section 6.9, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include 2009 RMDs) made at least

annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 if the payment is a scheduled payment unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect not to receive the distributions described in the preceding sentence. For all other Participants and Beneficiaries, the requirement to receive the 2009 RMD shall be suspended in accordance with Code Section 401(a)(9)(H), unless otherwise elected by the Participant or Beneficiary.

- (g) ***Reasonable and Good Faith Interpretation.*** Effective September 8, 2009, notwithstanding anything herein to the contrary, the Plan, which is a governmental plan (within the meaning of Code Section 414(d)) is treated as having complied with Code Section 401(a)(9) for all years to which Code Section 401(a)(9) applies to the Plan if the Plan complies with a reasonable and good faith interpretation of Code Section 401(a)(9).

6.10 **NOTICE, ELECTION AND METHOD OF DISTRIBUTION.**

- (a) ***Distribution Notice.*** Except as otherwise expressly provided herein to the contrary, effective for years beginning after December 31, 2006, not earlier than one hundred eighty (180) days, but not later than thirty (30) days, before the Participant's annuity starting date, the Plan Administration Committee must provide a written notice (or a summary notice as permitted under Treasury regulations) to a Participant who is eligible for a distribution of his or her Nonforfeitable Accrued Benefit under the Plan ("distribution notice"). The distribution notice must include information required by the Code or applicable Treasury regulations, such as an explanation of the optional forms of benefit in the Plan, the material features and relative values of those options, the Participant's right to defer distribution and consequences for failing to defer as may be permitted in the Plan, the provisions under which the Participant may have a distribution directly transferred to another eligible retirement plan, and the provisions which require the withholding of tax on the distribution if it is not directly transferred to another eligible retirement plan.

Except as otherwise expressly provided herein to the contrary, a Participant may elect any method of payment of the Participant's Nonforfeitable Accrued Benefit that is otherwise permitted under the provisions of this Article 6, which payment(s) commence as of any administratively practicable time (as determined in the sole discretion of the Plan Administration Committee) which is earlier than thirty (30) days following such Participant's receipt of the distribution notice, by such Participant executing a waiver in writing of the remainder of such thirty (30) day period and delivering such written waiver to the Plan Administration Committee.

- (b) ***Right of Election.*** Except as otherwise expressly provided herein to the contrary, the Participant (or his or her Beneficiary in the case of the Participant's death, or his or her legal representative in the case of the

Participant's Disability) shall have the sole right and discretion to elect the method of payment of the Participant's Nonforfeitable Accrued Benefit, as long as the method of payment selected is one of the methods described in subsection (c), and otherwise complies with the provisions and requirements of Section 6.1 and any other applicable provisions of the Plan. With respect to the election of a method of payment authorized under subsection (c)(5), the Participant (or his or Beneficiary in the case of the Participant's death, or his or her legal representative in the case of the Participant's Disability) shall have the right and discretion to elect such a method of payment, but any such method of payment so elected must be approved by the Plan Administration Committee and must otherwise comply with the provisions and requirements of Section 6.1 and any other applicable provisions of the Plan. In granting or denying its approval of any such method of payment so elected under the provisions of subsection (c)(5), the Plan Administration Committee shall not unreasonably withhold its approval and shall act in a non-discriminatory manner.

- (c) ***Methods of Distribution.*** Subject to the provisions of subsection (b), the Plan Administration Committee after consultation with the Participant, (or his or Beneficiary in the event of the Participant's death, or his or her legal representative in the event of the Participant's Disability), shall direct the Trustee to distribute the balance of the Participant's Nonforfeitable Accrued Benefit to the recipient thereof under one of the following methods:
- (1) By payment in a lump sum.
  - (2) By payment in monthly, quarterly or annual installments over a fixed reasonable period of time, not exceeding the life expectancy of the Participant, or the joint life and last survivor expectancy of the Participant and the Participant's designated Beneficiary.
  - (3) A straight life annuity, payable no less frequently than annually, with payment of the Participant's Nonforfeitable Accrued Benefit ending on the Participant's death.
  - (4) A life annuity, payable no less frequently than annually, with a term certain guaranteed. The term certain cannot exceed the Participant's life expectancy, or the joint life and last survivor expectancy of the Participant and his or her designated Beneficiary. If a Participant dies before the Trustee has made the guaranteed number of payments, the Plan Administration Committee shall direct the Trustee to continue the balance of the payments to the Participant's designated Beneficiary.
  - (5) Any other form of payment of the Participant's Nonforfeitable Accrued Benefit which the Plan Administration Committee may approve. However, such form of payment cannot extend beyond the Participant's life, the life of the Participant and his or her designated Beneficiary, the Participant's life expectancy or the joint life and last survivor expectancy of the Participant and his or her designated Beneficiary.

- (d) ***Plan Administration Committee's Right to Modify Method of Distribution.*** The Plan Administration Committee may at any time modify the method of payment elected pursuant to the provisions of subsection (c) to the extent there is still an adjusted balance in the Accounts concerned from which payments are to be made and so long as (1) the new method of payment is consented to in writing by the Participant concerned (or his or her Beneficiary in the event of such Participant's death, or his or her legal representative in the event of such Participant's Disability), (2) the new method of payment is one available under the Plan, and (3) the new method of payment otherwise complies with the provisions and requirements of this Section 6.10, Section 6.1 and any other applicable provisions of the Plan.
- (e) ***Participant's Right to Modify Method of Distribution.*** A Participant may reconsider his or her distribution election under subsection (c) at any time prior to his or her annuity starting date and make a different distribution election as of any other distribution date permitted under the Plan provided that such different distribution election and method of payment otherwise comply with the provisions and requirements of this Section 6.10, Section 6.1 and any other applicable provisions of the Plan.
- (f) ***Segregated Investment Account.*** To facilitate installment payments under this Article 6, the Plan Administration Committee may segregate all or any part of the Participant's Nonforfeitable Accrued Benefit in a segregated investment Account as provided under Section 9.11(d).
- (g) ***Nontransferable Annuity.*** Anything contained herein to the contrary notwithstanding, if an annuity method of payment of a Participant's Nonforfeitable Accrued Benefit is the method of payment selected as provided under the provisions of this Section 6.10, the Plan Administration Committee, in its sole discretion, may effectuate said annuity payment by purchasing a Nontransferable Annuity from an insurance company with the value of the Nonforfeitable Accrued Benefit of such Participant, provided that such Nontransferable Annuity satisfies the distribution requirements of Section 6.1.
- (h) ***Exceptions.*** Anything contained in this Section 6.10 to the contrary notwithstanding, a Participant (or his or Beneficiary or legal representative) shall not have the right to select the method of payment as provided for above in this Section 6.10 in the case of distributions to a disabled Participant of his or her Nonforfeitable Accrued Benefit made pursuant to the provisions of Sections 6.5(a), 6.5(b) and 6.5(d) since all such distributions shall be made in the form of a lump sum distribution; provided, however, that distributions to a disabled Participant of his or her Nonforfeitable Accrued Benefit made pursuant to the provisions of Section 6.5(b) or 6.5(d) shall be subject to the provisions of Sections 6.6, 6.10 and 6.12, and further provided, however, that distributions to a disabled Participant of his or her Lump Sum Plan Offset Amount made pursuant to the provisions of Sections 6.5(a) shall not be subject to the provisions of Sections 6.6, 6.10 and 6.12.

6.11 **DISTRIBUTIONS UNDER DOMESTIC RELATIONS ORDERS.** This Plan is generally not subject to Code Section 414(p) and corollary provisions of ERISA relating to qualified domestic relations orders (as defined in Code Section 414(q)). However, the following provisions shall apply:

- (a) Effective for all dissolution of marriage, legal separation and declaration of invalidity of marriage actions in which the court, prior to January 1, 1997, entered a final property division order concerning the division of a Participant's Accrued Benefit, the Plan Administration Committee shall be permitted to comply with the provisions of such property division order if, and only if, such order is an assignment for child support purposes only, as allowed by and provided for under Section 8.5.
- (b) Effective for causes of action for dissolution of marriage, legal separation or declaration of invalidity of marriage filed on or after January 1, 1997, and for all dissolution of marriage, legal separation or declaration of invalidity of marriage actions filed prior to January 1, 1997, in which the court did not enter a final property division order concerning the division of a Participant's Accrued Benefit prior to January 1, 1997, the Plan Administration Committee shall comply with a properly executed court order approving a written agreement entered into pursuant to CRS Section 14-10-113(6), concerning the division of a Participant's Accrued Benefit under the Plan, all in accordance with and to the extent required under the provisions of CRS Section 14-10-113(6). In accordance with the provisions of CRS Section 14-10-113(6), the Plan Administration Committee may adopt, modify and revoke from time to time rules or procedures governing the implementation of this subsection. Any such rules or procedures implementing this subsection may include, but are not limited to: (1) a requirement that, in order for the parties' agreement concerning the division of a Participant's Accrued Benefit under the Plan to be effective, a standardized form adopted by the Plan Administration Committee must be used by the parties and the court; (2) the timing and method of payment to the alternate payee under such court order of a Participant's Accrued Benefit under the Plan; and (3) any other provisions that are consistent with the provisions of CRS Section 14-10-113(6).
- (c) To the extent the provisions relating to domestic relations orders described in this Section 6.11 are modified or repealed by applicable Colorado law, then the provisions of this Section 6.11 shall be deemed modified or repealed in accordance therewith.

6.12 **DIRECT ROLLOVER.**

- (a) ***Election.*** This Section 6.12 applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article 6, a distributee may elect, at the time and in the manner prescribed by the Plan Administration Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.



Not earlier than one hundred eighty (180) days, but not later than thirty (30) days, before the Plan Administration Committee directs the Trustee's distribution of an eligible rollover distribution, the Plan Administration Committee must provide a written notice (or a summary notice as permitted under Treasury regulations) to a distributee the rollover option ("rollover notice"). The rollover notice must explain, among other information required by the applicable provisions of the Code and regulations, the rollover option, the optional forms of benefit in the Plan, including the material features and relative values of those options, the provisions under which the distributee may have a distribution directly transferred to another eligible retirement plan, and the provisions which require the withholding of tax on the distribution if it is not directly transferred to another eligible retirement plan.

A distributee may also elect to receive distribution as of any administratively practicable time (as determined in the sole discretion of the Plan Administration Committee) which is earlier than thirty (30) days following such distributee's receipt of the rollover notice by such distributee executing a waiver in writing of the remainder of such thirty (30) day period and delivering such written waiver to the Plan Administration Committee.

(b) **Definitions.** For purposes of this Section 6.12, the following definitions shall apply:

- (1) **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 (A) 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, or for a specified period of ten years or more, (B) any distribution to the extent such distribution is required under Code Section 401(a)(9), or (C) any amount that is distributed on account of hardship. For purposes of the direct rollover provisions in this Section 6.12, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Participant contributions or any other distribution which are not includible in gross income; provided, however, such portion may be paid only to an individual retirement account or annuity described in Code Sections 408(a) or 408(b), or effective on or after January 1, 2007, in a direct trustee-to-trustee transfer, to a qualified trust or an annuity contract described in Code Section 403(b), and such trust or annuity contract provides for separate accounting for amounts so transferred (and earnings 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. Furthermore, effective for distributions after December 31, 2007, such after-tax portion may also be directly transferred to a Roth IRA described in Code Section 408A, subject to any limitations described in Code Section 408A(c).

Notwithstanding the foregoing, effective January 1, 2009, if all or any portion of a distribution during 2009 is treated as an eligible rollover distribution pursuant to Code Section 402(c)(4) but would not be so treated if the minimum distribution requirements under Code Section 401(a)(9) had applied during 2009, such distribution shall not be treated as an eligible rollover distribution for purposes of Code Section 401(a)(31), Code Section 3405(c) or Code Section 402(f).

- (2) Eligible Retirement Plan. An eligible retirement plan is (A) an individual retirement account described in Code Section 408(a); (B) an individual retirement annuity described in Code Section 408(b); (C) effective for distributions after December 31, 2007, a Roth IRA described in Code Section 408A subject to any limitations under Code Section 408A(c); (D) an annuity plan described in Code Section 403(a); (E) a qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution; (F) an annuity contract described in Code Section 403(b); and (G) 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 this Plan. 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). For distributees who are non-spouse Beneficiaries, an eligible retirement plan means only an arrangement described in subsections (A), (B) and (C) that is treated as an inherited IRA pursuant to Code Section 402(c)(11).
- (3) Distributee. A distributee includes a Participant or former Participant. In addition, the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p) or applicable provisions of the CRS, are distributees with regard to the interest of the spouse or former spouse. Effective for distributions made on or after January 1, 2010, distributee also includes a non-spouse Beneficiary of a Participant or former Participant.
- (4) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- (5) Default Rollover. The Trustee in the case of a distributee who does not respond timely to the notice described in subsection (a) may make a direct rollover of the Participant's Nonforfeitable Accrued Benefit to which the distributee is entitled (in the manner and subject to the procedures of Revenue Ruling 2000-36 or in any successor law or

guidance) in lieu of distributing such Nonforfeitable Accrued Benefit to the distributee.

- (c) ***Distribution to Nonspouse Designated Beneficiary.*** Effective for Plan Years beginning after December 31, 2009, a distribution with respect to a nonspouse designated Beneficiary shall be subject to Code Sections 401(a)(31), 402(f), and 3405(c).
- (d) ***Allocation of After-tax Amounts.*** Effective for distributions on or after January 1, 2015, for purposes of determining the portion of a disbursement of benefits from the Plan to a distributee that is not includible in gross income under Code Section 72, the guidance under I.R.S. Notice 2014-54 shall be followed.

\* \* \* \* *End of Article 6* \* \* \* \*

**ARTICLE 7.**  
**EMPLOYER ADMINISTRATIVE PROVISIONS**

- 7.1 **INFORMATION TO COMMITTEE.** The Employer will make available current information to the Plan Administration Committee as to the name, date of birth, date of employment, annual compensation, Leaves of Absence, Vesting Years of Service and date of termination of employment of each Employee who is, or who will be eligible to become, a Participant under the Plan, together with any other information which the Plan Administration Committee reasonably considers necessary. The Employer's records as to the current information the Employer makes available to the Plan Administration Committee shall be conclusive as to all persons.
- 7.2 **INDEMNITY OF COMMITTEE AND TRUSTEE.** Subject to any limitations under applicable law, the Plan and Trust indemnify and save harmless the Trustee, the Plan Administrator and the members of the Plan Administration Committee, and each of them, from and against any and all loss resulting from liability to which the Trustee, the Plan Administrator and the Plan Administration Committee, or the members of the Plan Administration Committee, may be subjected by reason of any act or conduct (except willful misconduct or gross negligence) in their official capacities in the administration of this Trust or Plan or both, including all expenses reasonably incurred in their defense. The indemnification provisions of this Section 7.2 shall not relieve the Trustee, the Plan Administrator or any Plan Administration Committee member from any liability they may have for breach of a fiduciary duty.

\* \* \* \* *End of Article 7* \* \* \* \*

**ARTICLE 8.**  
**PARTICIPANT ADMINISTRATIVE PROVISIONS**

- 8.1 **BENEFICIARY DESIGNATION.** Any Participant may from time to time designate, in writing, any person or persons, including a trust or other entity, contingently or successively, to whom the Trustee shall pay his or her Nonforfeitable Accrued Benefit (including any life insurance proceeds payable to the Participant's Account) on event of his or her death. The Plan Administration Committee shall prescribe the form for the written designation of Beneficiary and, upon the Participant's filing the form with the Plan Administration Committee, it effectively shall revoke all designations filed prior to that date by the same Participant.
- 8.2 **NO BENEFICIARY DESIGNATION.** If a Participant fails to name a Beneficiary in accordance with Section 8.1, or if the Beneficiary named by a Participant predeceases the Participant, then the Trustee shall pay the Participant's Nonforfeitable Accrued Benefit in accordance with Article 6 in the following order of priority to:
- (a) the Participant's surviving spouse or partner in a civil union under the Colorado Civil Union Act;
  - (b) the Participant's surviving children, including adopted children, in equal shares;
  - (c) the Participant's surviving parents, in equal shares; or
  - (d) the Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the Participant's entire Nonforfeitable Accrued Benefit, the Trustee shall pay the remaining Nonforfeitable Accrued Benefit to the Beneficiary's estate unless the Participant's Beneficiary designation provides otherwise.

The Plan Administration Committee shall direct the Trustee as to the method and to whom the Trustee shall make payment under this Section 8.2.

- 8.3 **PERSONAL DATA TO COMMITTEE.** Each Participant and each Beneficiary of a deceased Participant must furnish to the Plan Administration Committee such evidence, data or information as the Plan Administration Committee considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Plan Administration Committee, provided the Plan Administration Committee shall advise each Participant of the effect of his or her failure to comply with its request.
- 8.4 **ADDRESS FOR NOTIFICATION.** Each Participant and each Beneficiary of a deceased Participant shall file with the Plan Administration Committee from time to time, in writing, his or her post office address and any change of post office address. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his or her last post office address filed with the Plan Administration Committee, or as

shown on the records of the Employer, shall bind the Participant, or Beneficiary, for all purposes of this Plan.

- 8.5 **ASSIGNMENT OR ALIENATION.** Except for (a) assignments for child support purposes as provided for in CRS Sections 14-10-118(1) and 14-14-107, as they existed prior to July 1, 1996, (b) income assignments for child support purposes pursuant to CRS Section 14-14-111.5, (c) writs of garnishment which are the result of a judgment taken for arrearages for child support or for child support debt, and (d) payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to CRS Section 14-10-113(6), as set forth in Section 6.11 of the Plan, neither a Participant nor a Beneficiary shall anticipate, assign or alienate (either at law or in equity) any benefit provided under the Plan, and no part of the Trust Fund, or any benefit hereunder, either before or after any order for distribution thereof to a Participant, a Beneficiary, a Participant's surviving spouse or parent, or a guardian or personal representative of a minor child of a deceased Participant, shall be held, seized, taken, subjected to, detained, or levied on, whether by virtue of any attachment, execution, protest or proceeding of any nature whatsoever, issued out of or by any court in the State of Colorado or any other jurisdiction, for payment or satisfaction, in whole or in part, of any debt, damages, claim, demand, judgment, fine or amercement of such Participant, Beneficiary, surviving spouse, parent, or minor child. The Trust Fund shall be kept, secured and distributed only for the purposes of pensioning and protecting Participants and their Beneficiaries and for no other purposes whatsoever.

To the extent the provisions relating to anticipation, assignment, or alienation of benefits under the Plan described in this Section 8.5 are modified or repealed by applicable Colorado law, then the provisions of this Section 8.5 shall be deemed modified or repealed in accordance therewith.

- 8.6 **NOTICE OF CHANGE IN TERMS.** The Plan Administrator, within a reasonable time, shall furnish all Participants and Beneficiaries a summary description of any material amendment to the Plan.
- 8.7 **LITIGATION AGAINST THE TRUST.** A court of competent jurisdiction may authorize any appropriate equitable relief to redress violations of applicable law as respects this Plan or its administration or to enforce any provisions of such law or the terms of the Plan. A fiduciary may receive reimbursement of expenses properly and actually incurred in the performance of his or her duties with the Plan.
- 8.8 **INFORMATION AVAILABLE.** Any Participant in the Plan or any Beneficiary may examine copies of the Plan description, latest financial reports, this Plan and Trust, contract or any other instrument under which the Plan was established or is operated. The Plan Administrator will maintain all of the items listed in this Section 8.8 in its office, or in such other place or places as the Plan Administrator may designate from time to time for examination during reasonable business hours. Upon the written request of a Participant or Beneficiary the Plan Administrator shall furnish him or her with a copy of any item listed in this Section 8.8. The Plan Administrator may make a reasonable charge to the requesting person for the copy so furnished.
- 8.9 **APPEAL PROCEDURE FOR DENIAL OF BENEFITS.** A Participant or a Beneficiary ("Claimant") may file with the Plan Administration Committee a written claim for

benefits, if the Participant or Beneficiary determines the distribution procedures of the Plan have not provided him or her his or her proper Nonforfeitable Accrued Benefit. The Plan Administration Committee must render a decision on the claim within 60 days of the Claimant's written claim for benefits. The Plan Administration Committee must provide adequate notice in writing to any Claimant whose claim for benefits under the Plan the Plan Administration Committee has denied. The Plan Administration Committee's notice to the Claimant shall set forth:

- (a) the specific reason for the denial;
- (b) specific references to pertinent Plan provisions on which the Plan Administration Committee based its denial;
- (c) a description of any additional material and information needed for the Claimant to perfect his or her claim and an explanation of why the material or information is needed; and
- (d) that any appeal the Claimant wishes to make of the adverse determination must be in writing to the Plan Administration Committee within seventy-five (75) days after receipt of the Plan Administration Committee's notice of denial of benefits. The Plan Administration Committee's notice must further advise the Claimant that his or her failure to appeal the action to the Plan Administration Committee in writing within the seventy-five (75) day period will render the Plan Administration Committee's determination final, binding and conclusive.

Appeals from Plan Administration Committee determinations shall be in accordance with procedures adopted from time to time by the Plan Administration Committee. The Plan Administration Committee may, in its sole discretion, appoint a hearing officer to conduct any necessary evidentiary hearing into the facts of the appeal and to make recommendations the Plan Administration Committee.

The Plan Administration Committee's notice of denial of benefits shall identify the name of each member of the Plan Administration Committee and the name and address of the Plan Administration Committee member to whom the Claimant may forward his or her appeal.

The provisions of this Section 8.9 shall not be in conflict with any constitutional and due process rights of any affected Participant or Beneficiary, and to the extent of any such conflict, the provisions of this Section 8.9 shall be amended or superseded to avoid such conflict.

8.10 **PARTICIPANT DIRECTION OF INVESTMENT.** A Participant's direction of the investment of his or her Account is subject to the provisions of this Section 8.10. For purposes of this Section 8.10, a "Participant" (as used in this Section 8.10) shall also include a Beneficiary if the Beneficiary has succeeded to the Participant's Account, and if the Plan or the Plan Administration Committee, in its discretion, afford the Beneficiary the same self-direction as the Participant.

- (a) ***Plan Administration Committee Authorization and Procedures.*** A Participant has the right to direct the Plan Administration Committee with respect to the investment or re-investment of the assets comprising the

Participant's individual Account(s) only if the Plan Administration Committee consents in writing to permit such direction. If the Plan Administration Committee consents to Participant direction of investment, the Plan Administration Committee will only accept direction from each Participant on a written direction of investment form the Plan Administration Committee or the Plan service provider provides for this purpose. The Plan Administration Committee, or with the Plan Administration Committee's consent, the Plan service provider, may establish written procedures relating to Participant direction of investment under this Section 8.10, including procedures or conditions for electronic transfers or for changes in investments by Participants. The Plan Administration Committee will maintain, or direct the Plan service provider to maintain, appropriate individual investment Account(s) to the extent the Participant's Account(s) are subject to Participant self-direction.

- (b) ***Fiduciary Exculpation.*** To the fullest extent permitted by applicable law, no Plan fiduciary (including the Employer, Plan Administration Committee and Trustee) is liable for any loss or for any breach resulting from a Participant's direction of the investment of any part of his or her self-directed Account(s) to the extent the Participant's exercise of his or her right to direct the investment of his or her Account(s) satisfies the requirements of applicable law.

\* \* \* \* *End of Article 8* \* \* \* \*



**ARTICLE 9.**  
**PLAN ADMINISTRATION COMMITTEE**

- 9.1 **PLAN ADMINISTRATION COMMITTEE.** The following provisions shall apply with respect to the Plan Administration Committee.
- (a) ***Plan Administrator.*** The Plan Administration Committee shall be the Plan Administrator.
  - (b) ***Membership.*** The Plan Administration Committee shall be made up of five (5) individual members who shall be: four (4) current Participants and one (1) person who is not a Participant and who has business and/or investment experience within the local community. The Finance Director for the City (“Finance Director”) and a Deputy Manager of the City appointed by the City Manager (“Deputy City Manager”) shall be ex officio members of the Plan Administration Committee.
  - (c) ***Election.*** The member of the Plan Administration Committee who is not a Participant shall be elected by majority vote of the other members of the Plan Administration Committee. The four (4) members of the Plan Administration Committee who are Participants shall be elected by plurality vote of the current Participants.
  - (d) ***Resignation.*** Any member of the Plan Administration Committee may resign by delivering his or her written resignation to the Employer and the other members of the Plan Administration Committee. Any resignation of a member of the Plan Administration Committee shall be effective thirty (30) days after written notice has been delivered, unless otherwise agreed to by the other members of the Plan Administration Committee.
  - (e) ***Removal.*** Members of the Plan Administration Committee who are Participants may be removed, with or without cause, by majority vote of the current Participants. The member of the Plan Administration Committee who is not a Participant may be removed, with or without cause, by the majority vote of the other members of the Plan Administration Committee. Written notice of any such removal shall be delivered to any such removed member, to the other members of the Plan Administration Committee and to the Employer. Any removal of any member of the Plan Administration Committee shall be effective thirty (30) days after written notice has been delivered.
  - (f) ***Vacancies.*** Any vacancy on the Plan Administration Committee arising as a result of the resignation, removal, death or otherwise of a member who was a Participant shall be filled by plurality vote of the current Participants. Any other vacancy on the Plan Administration Committee shall be filled by majority vote of the other members of the Plan Administration Committee.
  - (g) ***Trustee.*** Each member of the Plan Administration Committee shall also be a Trustee.

- (h) **Compensation and Expenses.** The members of the Plan Administration Committee shall serve without compensation for services rendered as a Plan Administration Committee member, unless authorized by majority vote of the members of the Plan Administration Committee. Any compensation for services is to be made from the Trust Fund. Each Plan Administration Committee member shall be reimbursed by the Trustee from the Trust Fund for any expenses he or she may properly incur in connection with the performance of his or her duties as a member of the Plan Administration Committee.
- (i) **Bond.** Every member of the Plan Administration Committee shall be bonded if required by applicable law, or as they deem appropriate, and the costs of such bond will be paid by the Trustee from the Trust Fund.

9.2 **TERM.** Except as provided in this Section 9.2, each member of the Plan Administration Committee who is elected by the current Participants shall serve for staggered three (3) calendar year terms or until the appointment of his or her successor. Under the staggering of the terms of such members elected by the current Participants, one such member shall be elected in one year, one such member shall be elected in the following year, and two such members shall be elected in the next following year. Anything contained in this Section 9.2 to the contrary notwithstanding, the staggering of the terms of the members of the Plan Administration Committee elected by the current Participants shall begin as of January 1, 1992, so that the initial term of one such member shall be for one (1) year, the initial term for one such member shall be for two (2) years and the initial term for two such members shall be for three (3) years. The Plan Administration Committee shall determine which such members shall have the initial terms of one year, two years or three years.

The other member of the Plan Administration Committee who is appointed by the majority vote of the other members of the Plan Administration Committee shall serve for a term designated by the Plan Administration Committee or until the appointment of his or her successor.

9.3 **POWERS.** In case of a vacancy in the membership of the Plan Administration Committee, the remaining members of the Plan Administration Committee may exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administration Committee pending the filling of the vacancy.

9.4 **GENERAL.** The Plan Administration Committee shall have the following powers and duties:

- (a) To select a President, Secretary and other officers, who need not be members of the Plan Administration Committee;
- (b) To determine the rights of eligibility of an Employee to participate in the Plan and the value of a Participant's Accrued Benefit;
- (c) To adopt by-laws, rules of procedure and regulations necessary for the proper and efficient administration of the Plan provided the rules are not inconsistent with the terms of this Agreement;

- (d) To construe and enforce the terms of the Plan and the by-laws, rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation;
- (e) To direct the Trustee as respects the crediting and distribution of the Trust;
- (f) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan;
- (g) To furnish the Employer with information which the Employer may require for tax or other purposes;
- (h) To engage the service of agents whom it may deem advisable to assist it with the performance of its duties;
- (i) To engage the services of an Investment Manager or Managers (as defined in ERISA Section 3(38)), each of whom shall have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset under its control; and
- (j) To establish and maintain a funding standard account and to make credits and charges to the account to the extent required by and in accordance with the provisions of the Code.
- (k) To develop such procedures and require such information from the distributing plan as it deems necessary to reasonably conclude that a potential rollover contribution is a valid rollover contribution under Section 1.401(a)(31)-1, Q&A-14(b)(2), of the Income Tax Regulations.

The Plan Administration Committee shall exercise all of its powers, duties and discretion under the Plan in a uniform and nondiscriminatory manner.

9.5 **FUNDING POLICY.** The Plan Administration Committee shall review, not less often than annually, all pertinent Employee information and Plan data in order to establish the funding policy of the Plan and to determine the appropriate methods of carrying out the Plan's objectives. The Plan Administration Committee shall communicate periodically, as it deems appropriate, to the Trustee and to any Investment Manager the Plan's short-term and long-term financial needs so the investment policy can be coordinated with Plan financial requirements.

9.6 **MANNER OF ACTION.** Any action or decision of the Plan Administration Committee shall be decided by majority vote of the members of the Plan Administration Committee then appointed and qualified.

9.7 **AUTHORIZED REPRESENTATIVE.** The Plan Administration Committee may authorize any one of its members, or its President or Secretary, to sign on its behalf any notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents. The Plan Administration Committee must evidence this authority by an instrument signed by all members.

- 9.8 **INTERESTED MEMBER.** No member of the Plan Administration Committee may decide or determine any matter concerning the distribution, nature or method of settlement of his or her own benefits under the Plan, except in exercising an election available to that member in his or her capacity as a Participant.
- 9.9 **INDIVIDUAL ACCOUNTS.** The Plan Administration Committee will establish and maintain an individual Account or multiple Accounts in the name of each Participant as of the date a contribution is first made to the Trust Fund on his or her behalf to reflect the Participant's Accrued Benefit under the Plan. An Employer Contributions Account will be so established and maintained for each Participant to record his or her interest in the Trust Fund attributable to his or her share of Employer Contributions and Forfeitures. A Participant Mandatory Contributions Account will be so established and maintained for each Employee to record his or her interest in the Trust Fund attributable to his or her Participant Mandatory Contributions made to the Trust Fund pursuant to Section 4.1. A Participant Voluntary Contributions Account will be so established and maintained for each Employee to record his or her interest in the Trust Fund attributable to his or her Participant Voluntary Contributions made to the Trust Fund pursuant to Section 4.2. A Participant Rollover Contributions account will be so established and maintained for each Employee to record his or her interest in the Trust Fund attributable to his or her Participant Rollover Contributions made to the Trust Fund pursuant to Section 4.3. The Trustee will not be required, however, to segregate Trust Fund assets because of the maintenance of separate Accounts, unless required or permitted under another provision of the Plan.

The Plan Administration Committee will make its allocations, or request the Trustee to make its allocations, to the Accounts of the Participants in accordance with the provisions of Section 9.11. The Plan Administration Committee may direct the Trustee to maintain a temporary segregated investment Account in the name of a Participant to prevent a distortion of income, gain or loss allocations under Section 9.11. The Plan Administration Committee shall maintain records of its activities.

- 9.10 **VALUE OF PARTICIPANT'S ACCRUED BENEFIT.** If any or all Plan investment accounts are pooled, each Participant's Account(s) has an undivided interest in the assets comprising the pooled account. In a pooled account, the value of each Participant's Accrued Benefit consists of that proportion of the net worth (at fair market value) of the Trust Fund which the net credit balance in his or her Account(s) (exclusive of the cash value of incidental benefit insurance contracts) bears to the total net credit balance in the Accounts (exclusive of the cash value of the incidental benefit insurance contracts) of all Participants, plus the cash surrender value of any incidental benefit insurance contracts held by the Trustee on the Participant's life.

If any or all Plan investment accounts are Participant directed, the directing Participant's Accrued Benefit is comprised of the assets held within such Participant's Account(s) and the value of such Participant's Account(s) is the fair market value of such assets.

For purposes of a distribution under the Plan, the value of a Participant's Accrued Benefit is its value as of the valuation date immediately preceding the date of the distribution.

- 9.11 **ALLOCATION AND DISTRIBUTION OF NET INCOME GAIN OR LOSS.** This Section 9.11 applies solely to the allocation of net income, gain or loss of the Trust Fund. The

Plan Administration Committee will allocate Participant Mandatory, Voluntary and Rollover Contributions in accordance with the applicable provisions of Article 4 and Employer Contributions and Forfeitures in accordance with the applicable provisions of Article 3.

- (a) **Valuation Date.** A “valuation date” under this Plan is each Accounting Date and any other valuation date the Plan Administration Committee elects. The Plan Administration Committee may elect alternative valuation dates for the different Account types which the Plan Administration Committee maintains under the Plan. As of each valuation date, the Plan Administration Committee must adjust Accounts to reflect net income, gain or loss since the last valuation date. The valuation period is the period beginning on the day after the last valuation date and ending on the current valuation date.
- (b) **Methods of Allocation.** The Plan Administration Committee will allocate net income, gain or loss to the Accounts in accordance with the daily valuation method, balance forward method, weighted average method, or other method the Plan Administration Committee elects from time to time. The Plan Administration Committee may elect alternative methods of allocation under which the Plan Administration Committee will allocate the net income, gain or loss to the different Account types which the Plan Administration Committee maintain under the Plan. If the Plan Administration Committee elects to apply a weighted average allocation method, the Plan Administration Committee will treat a weighted portion of the applicable contributions as if includible in the Account as of the beginning of the valuation period. The weighted portion is a fraction, the numerator of which is the number of months in the valuation period, excluding each month in the valuation period which begins prior to the contribution date of the applicable contributions, and the denominator of which is the number of months in the valuation period. The Plan Administration Committee may elect to substitute a weighting period other than months for purposes of this weighted average allocation. If the Plan Administration Committee elects to apply the daily valuation method, the Plan Administration Committee will allocate the net income, gain or loss on each day of the Plan Year for which Plan assets are valued on an established market. If the Plan Administration Committee elects to apply the balance forward method, the Plan Administration Committee first will adjust the Accounts, as those Accounts stood at the beginning of the current valuation period, by reducing the Accounts for any Forfeitures arising under the Plan, for amounts charged during the valuation period to the Accounts in accordance with Section 9.13 (relating to distributions) and for insurance premiums and for the cash value of incidental benefit insurance contracts, if applicable to the Accounts. The Plan Administration Committee then, subject to the restoration allocation requirements of the Plan, will allocate the net income, gain or loss pro rata to the adjusted Accounts. The allocable net income, gain or loss is the net income (or net loss), including the increase or decrease in the fair market value of assets, since the last valuation date.

- (c) ***Trust Fund (Pooled) Investment Accounts.*** A pooled investment account is an account which is not a segregated investment Account or an individual investment account.
- (d) ***Segregated Investment Accounts.*** A segregated investment Account receives all income it earns and bears all expense or loss it incurs. The Plan Administration Committee may establish a segregated investment Account(s) to prevent a distortion of Plan income, gain or loss allocations or for such other purposes as the Plan Administration Committee may direct. The Plan Administration Committee will invest the assets of a segregated investment Account(s) consistent with such purposes. As of each valuation date, the Plan Administration Committee must reduce a segregated Participant Account(s) for any Forfeiture arising under Section 5.4 after the Plan Administration Committee has made all other allocations, changes or adjustments to the Account(s) for the valuation period.
- (e) ***Individual (Directed) Investment Accounts.*** An individual investment Account is an Account which is subject to Participant or (if permitted) Beneficiary self-direction under Section 8.10. An individual investment Account receives all income it earns and bears all expense or loss it incurs. As of each valuation date, the Plan Administration Committee must reduce an individual Account for any Forfeiture arising from Section 5.4 after the Plan Administration Committee has made all other allocations, changes or adjustment to the Account for the valuation period.
- (f) ***Code Section 415 Excess Amounts.*** If there is a Code Section 415 an excess amount, such amount does not share in the allocation of net income, gain or loss described in this Section 9.11.

9.12 **INDIVIDUAL STATEMENT.** As soon as practicable after the Accounting Date of each Plan Year, the Plan Administrator will deliver to each Participant (and to each Beneficiary) a statement reflecting the condition of his or her Accrued Benefit in the Trust as of that date and such other information the Plan Administrator deems appropriate. No Participant, except a member of the Plan Administration Committee, shall have the right to inspect the records reflecting the Account of any other Participant. The Plan Administration Committee may, but shall not be required to, provide Participants with the statement referred to in this Section 9.12 more frequently than annually.

9.13 **ACCOUNT CHARGED.** The Plan Administration Committee shall charge a Participant's Account(s) for all distributions made from that Account to the Participant or to his or her Beneficiary. The Plan Administration Committee also will charge a Participant's Account(s) for any administration expenses incurred by the Plan or Trust directly related to that Account.

9.14 **LOST PARTICIPANTS.** If the Plan Administration Committee is unable to locate any Participant or Beneficiary whose Account becomes distributable under Article 6 (a "lost Participant"), the Plan Administration Committee will apply the provisions of this Section 9.14.

- (a) ***Attempt to Locate.*** The Plan Administration Committee will use one or more of the following methods to attempt to locate a lost Participant: (1) provide a distribution notice to the lost Participant at his or her last known address by certified or registered mail; (2) until August 30, 2012, use the IRS letter forwarding program under Revenue Procedure 94-22 (or similar or successor guideline); (3) use a commercial locator service, the internet or other general search method; or (4) use the Social Security Administration search program.
- (b) ***Failure to Locate.*** If a lost Participant remains unlocated for one year following the date of the Plan Administration Committee's first attempts to locate the lost Participant using one or more of the methods described in subsection (a), the Plan Administration Committee may forfeit the lost Participant's Account at any time after the one year period. If the Plan Administration Committee so forfeits the lost Participant's Account, the Forfeiture occurs as of the date the Plan Administration Committee makes such Forfeiture, and the Plan Administration Committee will allocate the Forfeiture in accordance with Section 3.3. If a lost Participant whose Account was forfeited thereafter at any time, but before the Plan has been terminated, makes a claim for his or her forfeited Account, the Plan Administration Committee will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for net income, gains or losses occurring subsequent to the Forfeiture. The Plan Administration Committee will make the restoration in the Plan Year in which the lost Participant makes the claim, first from the amount, if any, of Participant Forfeitures the Plan Administration Committee otherwise would allocate for the Plan Year, then from the amount or additional amount the Employer contributes to the Plan for the Plan Year. The Plan Administration Committee will distribute the restored Account to the lost Participant not later than sixty (60) days after the close of the Plan Year in which the Plan Administration Committee restores the forfeited Account. If the Plan Administration Committee forfeits a lost Participant's Account under this subsection (b), such Forfeiture will be of the entire Account of the lost Participant, including any and all Participant contributions.
- (c) ***Nonexclusivity and Uniformity.*** The provisions of this Section 9.14 are intended to provide permissible, but not exclusive, means for the Plan Administration Committee to administer the Accounts of lost Participants. The Plan Administration Committee may utilize any other reasonable method to locate lost Participants and to administer the Accounts of lost Participants, including the default rollover under Section 6.5(b) and such other methods as the Internal Revenue Service or the U.S. Department of Labor ("DOL") may in the future specify. The Plan Administration Committee will apply this Section 9.14 in a reasonable, uniform and nondiscriminatory manner, but may in determining a specific course of action as to a particular Account, reasonably take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Plan Administration Committee's ability to establish and the expense of establishing a rollover IRA, and other factors deemed relevant under the circumstances of each case. The Plan Administration Committee may charge to the Account of a lost Participant the reasonable expenses

incurred by the Trust Fund under this Section 9.14 and which are associated with the lost Participant's Account.

9.15 **PRIOR PLAN ACCOUNTS.**

- (a) ***General.*** Application was made by the Employer to the Board of Directors of the FPPA for its approval of the withdrawal of the Employer and the Employees from the Prior Plan and the establishment of this Plan as an alternative pension plan under CRS Section 31-31-403, as amended. Upon receiving such approval, FPPA refunded to the Employer all Employer and Participant Contributions which were made to the Prior Plan and were in the custody of FPPA and which were made for Employees of the Employer who had participated in the Prior Plan and who were Participants in this Plan on the original effective date of January 1, 1988, together with the net earnings thereof, in the manner provided by CRS Section 31-31-601 (f/k/a Section 31-30-1003(2)(b)), and prepared and provided a final accounting, described in this subsection (a), with respect to the Employees participation in the Prior Plan.

Such final accounting provided a separate accounting for each Employee of the Employer who participated in the Prior Plan and who was a Participant in this Plan on the original effective date (January 1, 1988), which separate accounting showed the total contributions made by each such Employee on his or her own behalf to the Prior Plan.

The total amount so refunded by FPPA, representing the sum of all Employer and Participant Contributions which were made to the Prior Plan that were in the custody of FPPA and that were made for Employees of the Employer who had participated in the Prior Plan and who were Participants in this Plan on the original effective date (January 1, 1988), plus the net earnings thereof (the term "net earnings" as used hereafter in this Section 9.15 shall have the meaning as defined in CRS Section 31-31-601 (f/k/a Section 31-30-1003(2)(b)) and shall be the amount representing the same which was actually refunded by FPPA hereunder), shall be allocated and credited, as of the original effective date (January 1, 1988), to the Participant Mandatory Contributions Accounts and the Employer Contributions Accounts of those Participants who were Participants in this Plan on the original effective date (January 1, 1988), in the manner provided in this Section 9.15. The total amount so refunded by FPPA which is described in the preceding sentence shall be referred to in this Section 9.15 as the "Total FPPA Refund."

- (b) ***Allocation of Employee and Employer Contributions and Net Earnings for Participants While Employed by the Employer.*** With respect to each Participant who was a Participant in this Plan on the original effective date (January 1, 1988), and who had participated in the Prior Plan while employed by the Employer, the total contributions made by each such Participant to the Prior Plan during the period he or she was employed by the Employer, and the total contributions made by the Employer on behalf of each such Participant to the Prior Plan during the period he or she was employed by the Employer, plus his or her share of the net earnings allocable thereto, shall be determined, transferred and credited to each such Participant's Mandatory



Contributions Account and to his or her Employer Contributions Account under this Plan as of the original effective date (January 1, 1988) in the manner and pursuant to the provisions set forth hereafter in this subsection (b).

- (1) The Plan Administration Committee shall determine from the available records of FPPA and of the Employer, the actual date that a Participant first became an Employee and participated in the Prior Plan while employed by the Employer, which date shall be referred to in this Section 9.15 as such Participant's "participation commencement date";
- (2) The Plan Administration Committee shall determine from the available records of FPPA and of the Employer the total contributions made by each such Participant to the Prior Plan for each calendar year that the Participant was employed by the Employer and participated in the Prior Plan, commencing with and including the calendar year during which such Participant's participation commencement date occurred, through and including the calendar year that such Participant last participated in the Prior Plan. The total contributions to the Prior Plan for each such Participant for each calendar year while he or she was employed by the Employer and participated in the Prior Plan, determined as provided in this subsection (2), shall be referred to in this subsection (b) as each such Participant's "Annual Aggregate Employee Contributions" for the calendar year concerned.
- (3) The Plan Administration Committee shall determine from the available records of FPPA the annual investment rate of return earned by FPPA on the investments of the Prior Plan for each calendar year since and including the calendar year of the Prior Plan's inception, through and including calendar year 1987. Such annual investment rate of return determined pursuant to the provisions of the preceding sentence for any calendar year shall be referred to as the "FPPA Rate of Return" for the calendar year concerned.
- (4) The Plan Administration Committee shall multiply each Participant's Annual Aggregate Employee Contributions for the calendar year during which such Participant's participation commencement date occurred by one-half ( $\frac{1}{2}$ ) of the FPPA Rate of Return for the calendar year during which such Participant's participation commencement date occurred. The amount determined pursuant to the provisions of the preceding sentence shall be deemed to be the value of such Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions as of January 1st of the second calendar year of such Participant's participation in the Prior Plan while he or she was employed by the Employer.
- (5) The Plan Administration Committee shall multiply each Participant's Annual Aggregate Employee Contributions for the second calendar year (if any) of such Participant's participation in the Prior Plan while

he or she was employed by the Employer by one-half ( $\frac{1}{2}$ ) of the FPPA Rate of Return for such second calendar year. The Plan Administration Committee shall also multiply the value of such Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions as of January 1st of such second calendar year (such value determined pursuant to the provisions of subsection (4)) by the FPPA Rate of Return for such calendar year. The amounts determined pursuant to the provisions of the two preceding sentences shall then be added together, and this sum shall be deemed to be the value of such Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions as of January 1st of the third year of such Participant's participation in the Prior Plan while he or she was employed by the Employer.

- (6) For each calendar year (if any) of any Participant's participation in the Prior Plan while he or she was employed by the Employer after the initial and second such calendar year of participation, each such Participant's Annual Aggregate Employee Contributions for the calendar year concerned shall be multiplied by one-half ( $\frac{1}{2}$ ) of the FPPA Rate of Return for such calendar year, the value of each such Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions as of January 1st of the calendar year concerned shall be multiplied by the FPPA Rate of Return for such calendar year, the amounts thereof shall be added together, and the resulting sum shall be deemed to be the value of each such Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions as of January 1st of the next succeeding calendar year.
- (7) The Plan Administration Committee shall determine pursuant to the provisions of subsections (4), (5) and (6) (as may be applicable) the value, as of January 1, 1988, of each Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions. The Plan Administration Committee shall then add together the total of the values, as of January 1, 1988, of all Participants' accrued benefits under the Prior Plan attributable to their Annual Aggregate Employee Contributions.
- (8) The Plan Administration Committee shall then subtract from the Total FPPA Refund the aggregate of the amounts which are required to be transferred and credited pursuant to the provisions of subsection (5) to the Participant Mandatory Contributions Accounts of those Participants who were Participants in this Plan on the original effective date (January 1, 1988), and who had participated in the Prior Plan while employed by an employer other than the Employer, which other employer also participated in the Prior Plan. The difference determined pursuant to the provisions of the preceding sentence shall be referred to in this Section 9.15 as the "Net Total FPPA Refund."

- (9) After the Plan Administration Committee has determined (pursuant to the provisions of subsection (7), the sum of the total values, as of January 1, 1988, of all Participants' accrued benefits under the Prior Plan attributable to their Annual Aggregate Employee Contributions, said sum shall then be compared to one-half (½) of the Net Total FPPA Refund. In order to reflect and reconcile any shortfall or overage (as the case may be) between the one-half (½) of the Net Total FPPA Refund and the sum of the total values, as of January 1, 1988, of all Participants' accrued benefits under the Prior Plan attributable to their Annual Aggregate Employee Contributions, the Plan Administration Committee shall adjust (up or down, as the case may be) the FPPA Rate of Return for calendar year 1987, and such adjusted FPPA Rate of Return, instead of the actual FPPA Rate of Return for calendar year 1987, shall be used pursuant to the provisions of subsections (4), (5) and (6) (whichever may apply) to determine the value, as of January 1, 1988, of each Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions.
- (10) The amount of the value, as of January 1, 1988, of each Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions (determined pursuant to the provisions of subsections (4), (5) and (6), but as adjusted pursuant to the provisions of subsection (9)) shall then be transferred and credited to such Participant's Participant Mandatory Contributions Account under this Plan as of the original effective date (January 1, 1988). The same amount which is so transferred and credited to such Participant's Mandatory Contributions Account under this Plan as of the original effective date (Jan 1, 1988), pursuant to the provisions of the preceding sentence shall also be transferred and credited to such Participant's Employer Contributions Account under this Plan as of the original effective date (January 1, 1988), and shall represent and be treated as the value, as of January 1, 1988, of each such Participant's accrued benefit under the Prior Plan attributable to the total annual aggregate contributions made by the Employer on behalf of each such Participant for each of the calendar years that each such Participant was employed by the Employer and participated in the Prior Plan.
- (c) ***Allocation of Employee Contributions and Net Earnings for a Participant Employed by Another Employer.*** With respect to any Participant who was a Participant in this Plan on the original effective date (January 1, 1988), and who had participated in the Prior Plan while employed by an employer other than the Employer, which other employer also participated in the Prior Plan, then the total contributions made by each such Participant to the Prior Plan during the period he or she was employed by any such other participating employer, plus his or her share of the net earnings allocable thereto, shall be determined, transferred and credited to each such Participant's Mandatory Contributions Account under this Plan as of the original effective date

(January 1, 1988) in the manner and pursuant to the provisions set forth hereinafter in this subsection (c).

- (1) The Plan Administration Committee shall determine the amount representing the total contributions made by each such affected Participant to the Prior Plan for all of his or her years of participation in the Prior Plan (which amount includes all contributions made to the Prior Plan by such affected Participant while he or she was employed by the Employer and while he or she was employed by any other employer participating in the Prior Plan) based on the final accounting prepared and provided by FPPA as described in subsection (a);
- (2) Such affected Participant's Annual Aggregate Employee Contributions for all calendar years that such Participant was employed by the Employer and was participating in the Prior Plan shall be determined pursuant to the provisions of subsection (b)(2) and shall be totaled by the Plan Administration Committee;
- (3) The Plan Administration Committee shall determine the excess of the amount representing the total contributions made by such affected Participant to the Prior Plan for all of his or her years of participation in the Prior Plan (determined as provided in subsection (1)) over the total of such affected Participant's Annual Aggregate Employee Contributions for all calendar years concerned (determined as provided in subsection (2)); such excess shall represent and shall be treated for purposes of this Section 9.15 as the total contributions made by such affected Participant to the Prior Plan during the period he or she participated in the Prior Plan while employed by another employer (other than the Employer) which participated in the Prior Plan; and such excess shall be referred to in this Section 9.15 as the "Prior Employer Aggregate Employee Contributions" of a Participant.
- (4) To determine an affected Participant's share of the net earnings which are allocable to his or her Prior Employer Aggregate Employee Contributions, the Plan Administration Committee shall multiply each such affected Participant's Prior Employer Aggregate Employee Contributions by 53.85%. Said 53.85% is the percentage provided by FPPA to the Plan Administration Committee as representing the ratio of net earnings to the total of the Participant and Employer Contributions made to the Prior Plan, all of which comprise the Total FPPA Refund.
- (5) The amount of each affected Participant's Prior Employer Aggregate Employee Contributions (determined as provided in subsection (3)) and the amount of each such affected Participant's share of the net earnings allocable thereto (determined as provided in subsection (4)) shall be transferred and credited to each such affected Participant's Mandatory Contributions Account under this Plan as of the original effective date (January 1, 1988).

- (d) ***Allocation of Employer Contributions and Net Earnings for Participants While Employed by Another Employer.*** If, as a result of any litigation or otherwise, FPPA refunds to the Employer or the Trustees subsequent to the original effective date (January 1, 1988), any amounts representing contributions made on behalf of a Participant to the Prior Plan by another employer (other than the Employer), which other employer also participated in the Prior Plan, and which contributions were made for a period during which such affected Participant was employed by such other employer and participated in the Prior Plan (hereinafter said contributions shall be referred to as “Prior Employer Contributions”), then said Prior Employer Contributions for any such affected Participant shall be transferred and credited to such affected Participant’s Employer Contributions Account under this Plan as of the date said Prior Employer Contributions are so refunded. If any net earnings allocable to such Prior Employer Contributions are refunded by FPPA to the Employer or the Trustees, such net earnings shall also be allocated, transferred and credited to the affected Participant’s Employer Contributions Accounts as of the date said net earnings are so refunded. The method used for any such allocation of net earnings so refunded shall be determined on a consistent and equitable basis by the Trustees. If any such Prior Employer Contributions or net earnings allocable thereto are so refunded by FPPA to the Employer, the Employer shall promptly transfer and deliver the same to the Trustees for allocation, transfer and crediting to the affected Participants’ Employer Contributions Accounts as required under this subsection (d).
- (e) ***Disposition of Employer Contributions and Net Earnings for Participants in Prior Plan Whose Employment Terminated Prior to the Effective Date.*** The Employer shall not be liable to the Participants, the Trustees or the Beneficiaries for any deficiencies or alleged deficiencies of any amounts which are refunded, or which may later be required to be refunded, by FPPA to the Employer as a result of the Employer’s withdrawal from the Prior Plan, including, but not limited to, any contributions made previously by the Employer to the Prior Plan on behalf of any Employee who was not participating in this Plan on the original effective date (Jan 1, 1988), or who was not a participant in the Prior Plan immediately prior to the original effective date (January 1, 1988), as well as any deficiencies related to the method used by FPPA in calculating the “net earnings” that are required to be refunded pursuant to CRS Section 31-31-601 (f/k/a Section 31-30-1003(2)(b)). The Employer hereby assigns, transfers, conveys, releases and subrogates to the Trustees for the sole benefit of the Participants, Beneficiaries, Former Participants and the Trust Fund any and all rights, causes of action or other claims that the Employer may have against FPPA for any such deficiencies or alleged deficiencies.

In the event any such deficiencies are received by the Trustees, to the extent such deficiencies are not required to be allocated, transferred and credited to the Accounts of any Participants under the provisions of subsections (b), (c) and (d), then such deficiencies shall be used (or set aside for use) to pay or reimburse the costs and expenses of establishing, administering, amending and operating the Plan and/or the

Trust, including, but not limited to, those costs and expenses described in Article 8, 9 or 10 hereof.

- (f) ***Plan Administration Committee Determinations.*** In making any determinations, calculations and allocations required pursuant to the provisions of this Section 9.15, the Plan Administration Committee may employ any actuarial, accounting and mathematical methods that it deems reasonable under the circumstances. In addition, the Plan Administration Committee may retain the services of professionals to assist it in making any such determinations, calculations and allocations, and the Trust Fund shall pay or reimburse the Plan Administration Committee for any fees or expenses therefor. Additionally, in making any such determinations, calculations and allocations, the Plan Administration Committee may rely upon records, information, data or publications provided or made available to it by FPPA, the Employer, an affected Participant or any other reliable source, and shall be held harmless as a result of any such reliance. The determinations, calculations and allocations made by the Plan Administration Committee as required and provided for under the provisions of this Section 9.15 shall be binding and conclusive upon all Participants, Former Participants and Beneficiaries, as well as the Trustees.
- (g) ***Allocation of Employer Contributions and Net Earnings for Participants Whose Employment Was Reinstated.*** Prior to the original effective date (January 1, 1988) of the Plan, the employment with the Employer of certain Employees who were participants in the Prior Plan was terminated, but later, as a result of litigation and administrative proceedings, was reinstated also prior to said original effective date (January 1, 1988) (hereinafter said Employees are referred to as the “Reinstated Participants”). However, during the period from the date said Reinstated Participants’ employment with the Employer was terminated until the date their employment was reinstated, said Reinstated Participants had distributed to them from the Prior Plan their respective employee contributions, plus earnings, as provided under the provisions of CRS Section 31-31-404 (f/k/a Section 31-30-1011). The employment with the Employer of all of said Reinstated Participants was reinstated prior to the original effective date (January 1, 1988), and as a result thereof, said Reinstated Participants are deemed and are treated as Participants under this Plan as of the original effective date (January 1, 1988).

A dispute, however, arose between FPPA and the Reinstated Participants as a result of FPPA’s unilateral decision to treat the contributions made by the Employer to the Prior Plan on behalf of the Reinstated Participants as Forfeitures, which FPPA refused to transfer and refund to this Plan upon the withdrawal of the Employer and the Employees from the Prior Plan. Prior to the actual refund of the Employer and Participant Contributions, plus net earnings thereof, to the Employer by FPPA pursuant to CRS Section 31-31-601 (f/k/a Section 31-30-1003(2)(b)), FPPA modified its decision so as to allow refund of the contributions made by the Employer to the Prior Plan on behalf of the Reinstated Participants, plus net earnings allocable thereto, to the extent of, and in proportion to, the recontribution by the Reinstated Participants of their respective employee contributions made to the Prior Plan (plus statutory interest thereon), which had been distributed to them from the Prior Plan as

provided under the provisions of CRS Section 31-30-1011, after their employment with the Employer was allegedly wrongfully terminated. FPPA conditioned any such refunds of the Employer Contributions made to the Prior Plan on behalf of the Reinstated Participants on the recontribution of their respective previously distributed contributions to the Prior Plan (plus statutory interest thereon) being made no later than the actual date that FPPA refunded the Employer and Participant Contributions to the Prior Plan, plus net earnings thereof, pursuant to CRS Section 31-31-601 (f/k/a Section 31-30-1003(2)(b)).

Some of the Reinstated Participants were able to timely recontribute all amounts required by FPPA in order to have all of the Employer Contributions made to the Prior Plan on their behalf, plus net earnings allocable thereto, refunded, and therefore all of said Employer Contributions and allocable net earnings are being allocated, transferred and credited to the respective Employer Contributions Accounts of such Reinstated Participant in the manner and pursuant to the provisions set forth in subsection (b).

However, with respect to those Reinstated Participants who were not able to timely recontribute all amounts required under FPPA's directive (that is, in order to have FPPA refund all of the contributions which had been made to the Prior Plan by the Employer on behalf of any such Reinstated Participant, plus net earnings allocable thereto), to the extent FPPA refunded any pro rata portion of said Employer Contributions and allocable net earnings, said Employer Contributions and allocable net earnings so refunded shall be allocated, transferred and credited to the Employer Contributions Accounts of the affected Reinstated Participants in the manner and pursuant to the provisions set forth in subsection (b). Additionally, and notwithstanding any other provision of the Plan to the contrary (except for the provisions of the immediately following sentence), if FPPA subsequently refunds to the Employer or the Trustees any amounts representing the pro rata portion of the Employer Contributions made to the Prior Plan on behalf of any of said Reinstated Participants and net earnings allocable thereto which were not refunded to this Plan by FPPA as a result of the failure of any of said Reinstated Participants complying with FPPA's directive to timely recontribute the full amounts previously distributed to them from the Prior Plan, then any such amounts so refunded by FPPA shall also be allocated, transferred and credited to the respective Employer Contributions Accounts of the affected Reinstated Participants in the manner and pursuant to the provisions set forth in subsection (b). The provisions of the immediately preceding sentence shall not apply to any refund subsequently made by FPPA to the Employer or the Trustees, which refund represents amounts described in the immediately preceding sentence, to the extent that (by agreement or stipulation of the Employer and any affected Reinstated Participant or otherwise) similar amounts have been previously allocated, transferred and credited to the Employer Contributions Accounts of any affected Reinstated Participant for the purpose of making up the pro rata portion of the Employer Contributions made to the Prior Plan on behalf of any such affected Reinstated Participant and net earnings allocable thereto which were not so refunded to this Plan by FPPA as a result of any such Reinstated Participant's failure to comply with said directive of FPPA regarding timely recontribution of amounts previously distributed from the Prior Plan; and to the extent the immediately preceding provisions of this sentence apply to any such refund subsequently made by

FPPA to the Employer or the Trustees, such refund shall be subject to and shall be disposed of as provided in subsection (e).

Nothing herein shall be construed to prohibit any agreement or stipulation between the Employer and any Reinstated Participant for the purpose of or related to the settlement of any dispute involving the allegedly wrongful termination of the employment with the Employer of any of said Reinstated Participants and/or their participation in the Prior Plan or in this Plan, including, but not limited to, any agreement or stipulation regarding contributions by the Employer or by a Reinstated Participant to this Plan or to the Prior Plan; provided, however, that, to the extent any such agreement or stipulation affects or impacts this Plan, any such agreement or stipulation: (1) is agreed to in writing by the Trustees; (2) does not, in the good faith opinion of tax counsel to the Trustees or by determination of the Internal Revenue Service, jeopardize the qualification or continued qualification of the Plan or Trust under the Code; and (3) does not violate any other provision of applicable law.

- 9.16 **PLAN CORRECTION.** The Plan Administration Committee in conjunction with the Employer may undertake such correction of Plan errors as the Plan Administration Committee deems necessary, including correction to preserve tax qualification of the Plan under Code Section 401(a) or to correct a fiduciary breach under applicable law. Without limiting the Plan Administration Committee's authority under the prior sentence, the Plan Administration Committee, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and Employer eligibility failures under a method described in the Plan or under the Employee Plans Compliance Resolution System ("EPCRS") or any successor program(s) to EPCRS. The Plan Administration Committee, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate fiduciary or plan official in undertaking correction of a fiduciary breach, including correction under the Voluntary Fiduciary Correction Program ("VFC") or any successor program(s) to VFC. If the Plan includes a 401(k) arrangement, the Plan Administration Committee to correct an operational error, may require distributions from the Plan of elective deferrals or vested matching contributions, including earnings, where such amounts result from an operational error other than a failure of Code Section 415, Code Section 402(g), a failure of the ADP or ACP tests, or a failure of the multiple use limitation.

\* \* \* \* *End of Article 9* \* \* \* \*



**ARTICLE 10.**  
**TRUSTEES, POWERS AND DUTIES**

- 10.1 **ACCEPTANCE.** Each Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed. The Trustee shall provide bond for the faithful performance of his or her duties under the Trust to the extent required by applicable law or as the Trustee deems appropriate.
- 10.2 **RECEIPT OF CONTRIBUTIONS.** Each Trustee shall be accountable to the Employer for the funds contributed to the Trust by the Employer.
- 10.3 **INVESTMENT POWERS.**
- (a) Except as provided in subsection (b), the Trustee shall have full discretion and authority with regard to the investment of the Trust Fund, except with respect to a Plan asset under the control or direction of a properly appointed Investment Manager (as defined in Section 9.4(i)) or with respect to a Plan asset subject to Employer or Participant direction of investment. The Trustee shall coordinate his or her investment policy with Plan financial needs as communicated by the Plan Administration Committee. Each Trustee is authorized and empowered, subject to the provisions of subsection (b), with the following powers, rights and duties:
- (1) To invest any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds, repurchase agreements, United States retirement plan bonds, corporate and municipal bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes, U.S. Treasury bonds and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, as a prudent man would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Trustees in good faith shall be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;
- (2) (A) To retain in cash so much of the Trust Fund as 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 Section 584 which the Trustee (or an affiliate of the Trustees, as defined in Code Section 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;

- (B) To invest any part of the money or property of the Trust Fund in a collective investment trust, a common trust fund or in a group trust qualifying under IRS Revenue Ruling 81-100, as further amended by IRS Revenue Ruling 2004-67, IRS Revenue Ruling 2008-40, and effective January 10, 2011, by IRS Revenue Ruling 2011-1, and as subsequently amended by future guidance. Each such collective investment trust, common trust fund or group trust is adopted, with respect to monies invested therein, as part of the Plan and its Trust and each declaration of trust or trust agreement and related adoption, participation, investment management, or other agreements, as amended from time to time, with respect to monies invested therein, are incorporated by reference into the Plan and its Trust upon approval by the Trustees.
- (3) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustees shall decide;
- (4) To credit and distribute the Trust as directed by the Plan Administration Committee. The Trustees shall not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustees shall be accountable only to the Plan Administration Committee for any payment or distribution made by it in good faith on the order or direction of the Plan Administration Committee;
- (5) To extend mortgages;
- (6) To compromise, contest, arbitrate or abandon claims and demands, in the discretion of the Trustees;
- (7) To have with respect to the Trust all of the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights;
- (8) To lease for oil, gas and other mineral purposes and to create mineral severance 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;

- (9) To hold any securities or other property in the name of the Trustees or their nominee, with depositories or agent depositories or in another form as they may deem best, with or without disclosing the trust relationship;
- (10) To perform any and all other acts in the judgment of the Trustees necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;
- (11) To 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;
- (12) To file all tax returns required of the Trustees;
- (13) To furnish to the Employer, (specifically the City Manager, Finance Director and City Attorney) the Plan Administrator and the Plan Administration Committee an annual statement (no later than July 1 of the succeeding year) of account showing the condition of the Trust Fund and all investments, receipts, disbursements, the source and amount of Forfeitures to the Employer and other transactions effected by the Trustees during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts shall be conclusive on all persons, including the Employer, the Plan Administrator and the Plan Administration Committee, except as to any act or transaction concerning which the Employer, the Plan Administrator or the Plan Administration Committee files with the Trustees written exceptions or objections within ninety (90) days after the receipt of the accounts or for which applicable law authorizes a longer period within which to object; and
- (14) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Trustees shall not be obliged or required to do so unless indemnified to their satisfaction.
- (15) To make available to the Finance Director of the Employer, no later than May 31 of each year, an estimate of the cumulative available Forfeiture amounts for the Plan. In addition, no later than November 30 of each year, the Trustees shall make available to the Finance Director of the Employer a copy of the most recent audit report of the Plan and Trust prepared through the means of an independent audit, which audit report shall include a statement of the available Forfeiture amount on an annual basis.

(b) Anything contained herein to the contrary notwithstanding, the following provisions shall apply:

- (1) The provisions of this subsection (1) shall be effective prior to July 1, 1997. Anything contained herein to the contrary notwithstanding, the

Trust Fund shall be invested by the Trustees; provided that, subject to the limitations on investments described in the CRS Section 15-1-304, as amended, the Trustees may invest all or any part of the fund in the types of investments authorized by CRS Sections 15-1-304, 31-30-1012(5) and 31-30-1012(8), including, but not limited to, obligations of the United States Government and in obligations fully guaranteed as to principal and interest by the United States Government, in state or municipal bonds, in corporate notes, bonds, or debentures, convertible or otherwise, in railroad equipment trust certificates, in real property and in loans secured by first mortgages or deeds of trust on real property, in participation guarantee agreements with life insurance companies, in real estate limited partnerships, and in other types of investment agreements, and the foregoing investments may be made without limitation as to the percentage of the book value of the assets of the retirement fund so invested. Investments may also be made in either common or preferred corporate stocks, but the original cost of all investments in corporate stocks or corporate bonds, notes, or debentures which are convertible into stock, or in investment trust shares, shall not exceed sixty-five percent (65%) of the then book value of the assets of the Trust Fund. In no event shall any investment be made in the common or preferred stock, or both, of any single corporation in an amount in excess of five percent (5%) of the then book value of the assets of the Trust Fund nor shall more than seven percent (7%) of the outstanding stock or bonds of any single corporation be acquired for the Trust Fund, except that the Trustees may acquire up to one hundred percent (100%) of the outstanding stock of any corporation described in Code Sections 501(c)(2) and 501(c)(25).

In accordance with the provisions of CRS Section 31-30-1012(5), as used in this subsection (1), unless the context otherwise requires, (A) “book value” means current market value, (B) “current market value” means the current exchange price of an asset that is publicly traded, and, for a nonpublicly traded asset, it means the current valuation as reflected in the books of the FPPA, and (C) “original cost” means the acquisition cost of an asset.

- (2) The provisions of this subsection (2) shall be effective on and after July 1, 1997. Anything contained herein to the contrary notwithstanding, the Trust Fund shall be invested by the Trustees; provided that, the Trust Fund shall be managed and invested by the Trustees pursuant to the standard and other provisions for trustees set forth in the Colorado Uniform Prudent Investor Act, Article 1.1 of Title 15, CRS. Such investments shall be audited at least biennially.

To the extent the investment limitations described in this subsection (2) are modified or repealed by applicable Colorado law, then the provisions of this subsection shall be deemed modified or repealed in accordance therewith.

- 10.4 **RECORDS AND STATEMENTS.** The records of the Trustees pertaining to the Plan shall be open to the inspection of the Plan Administrator, Plan Administration Committee

and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Administration Committee may specify in writing. The Trustees shall furnish the Plan Administration Committee or the Plan Administrator with whatever information relating to the Trust Fund the Plan Administration Committee or Plan Administrator considers necessary.

10.5 **FEES AND EXPENSES FROM FUND.**

- (a) Each Trustee shall serve without compensation for services rendered as a Trustee, unless authorized by majority vote of the Trustees if payment is to be made from the Trust Fund. The Trustees shall pay all fees and expenses reasonably incurred by them in their administration of the Plan from the Trust Fund unless the Employer pays the fees and expenses.
- (b) Anything contained in subsection (a) to the contrary notwithstanding, the Employer Payment, as defined in Section 3.1(e), shall, for purposes of this Section 10.5 and Section 15-88.5 of Chapter 15 of the City Code of the City of Aurora, Colorado, be treated as being used for the sole purpose of assisting in the payment of the costs and expenses described in this Section 10.5; provided, however, that the Employer Payment shall be allocated exclusively as provided in Section 3.2(b).

10.6 **PARTIES TO LITIGATION.** Except as otherwise provided by applicable law, only the Employer, the Plan Administrator, the Plan Administration Committee, and the Trustees shall be necessary parties to any court proceeding involving the Trustees or the Trust Fund. No Participant, or Beneficiary, shall be entitled to any notice of process unless required by applicable law. Any final judgment entered in any proceeding shall be conclusive upon the Employer, the Plan Administrator, the Plan Administration Committee, the Trustees, Participants and Beneficiaries.

10.7 **PROFESSIONAL AGENTS.** The Trustees may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustees as in their opinion may be necessary. The Trustees may delegate to any agent, attorney, accountant or other person selected by the Trustees any non-Trustee power or duty vested in the Trustees by the Plan, and the Trustees may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

10.8 **DISTRIBUTION OF CASH OR PROPERTY.** The Trustees may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustees. For purposes of a distribution to a Participant or to a Participant's designated Beneficiary or surviving spouse, "property" shall include a Nontransferable Annuity, provided the contract satisfies the distribution requirements under Article 6.

10.9 **DISTRIBUTION DIRECTIONS.** If no one claims a payment or distribution made from the Trust, the Trustees shall promptly notify the Plan Administration Committee and shall dispose of the payment in accordance with the subsequent direction of the Plan Administration Committee.

- 10.10 **THIRD PARTY.** No person dealing with the Trustees shall be obligated to see to the proper application of any money paid or property delivered to the Trustees, or to inquire whether the Trustees have acted pursuant to any of the terms of the Plan. Each person dealing with the Trustees may act upon any notice, request or representation in writing by the Trustees, or by the Trustees' duly authorized agent, and shall not be liable to any person whomsoever in so doing. The certificate of the Trustees that they are acting in accordance with the Plan shall be conclusive in favor of any person relying on the certificate.
- 10.11 **RESIGNATION.** A Trustee(s) may resign at any time as a Trustee of the Plan by giving thirty (30) days' written notice in advance to the Employer and to the Plan Administration Committee.
- 10.12 **REMOVAL.** A Trustee may be removed in the same manner as a member of the Plan Administration Committee, as set forth in Section 9.1(e). Vacancies in the Trustees shall be filled in the same manner as vacancies in the Plan Administration Committee, as set forth in Section 9.1(f).
- 10.13 **INTERIM DUTIES AND SUCCESSOR TRUSTEES.** Each successor Trustee shall succeed to the title to the Trust vested in his or her predecessor by accepting in writing his or her appointment as successor Trustee and filing the acceptance with the former Trustee and the Plan Administration Committee without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, shall execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee shall have and enjoy all of the powers, both discretionary and ministerial, conferred under this Agreement upon his or her predecessor. A successor Trustee shall not be personally liable for any act or failure to act of any predecessor Trustee. With the approval of the Employer and the Plan Administration Committee, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.
- 10.14 **VALUATION OF TRUST.** The Trustees shall value the Trust Fund as of each Accounting Date to determine the fair market value of each Participant's Accrued Benefit in the Trust, and the Trustees shall value the Trust Fund on such other date(s) as directed by the Plan Administration Committee.
- 10.15 **LIMITATION ON LIABILITY – IF INVESTMENT MANAGER APPOINTED.** The Trustees shall not be liable for the acts or omissions of any Investment Manager or Managers the Plan Administration Committee may appoint, nor shall the Trustees 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 Plan Administration Committee, the Trustees and any properly appointed Investment Manager may execute a letter agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager with respect to any part of the Trust Fund under the control of the Investment Manager.
- 10.16 **INVESTMENT IN GROUP TRUST FUND.** The Trustees, for collective investment purposes and, except for the merger for collective investment purposes of this Trust with the Money Purchase Pension Trust of the Fire Department of the City of Aurora,

with the permission of the Employer, 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 Trustees 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.

10.17 **MANNER OF ACTION**. Any action or decision of the Trustees shall be decided by majority vote of the Trustees then appointed and qualified.

*\* \* \* \* End of Article 10 \* \* \* \**

## **ARTICLE 11. INSURANCE**

11.1 **INSURANCE BENEFIT.** To the extent permitted under applicable Colorado law, the Plan Administration Committee may elect to provide incidental life insurance benefits for insurable Participants who consent to life insurance benefits by signing the appropriate insurance company application form; provided however, that the aggregate of life insurance premiums paid for the benefit of a Participant, at all times, shall not exceed the following percentages of the aggregate of the Employer's contributions allocated to any Participant's Account: (a) forty-nine percent (49%) in the case of the purchase of ordinary life insurance contracts; or (b) twenty-five percent (25%) in the case of the purchase of term life insurance contracts. Furthermore, if the Trustees purchase a combination of ordinary life insurance contract(s) and term life insurance contract(s), or universal life insurance contract(s), then the sum of one-half (½) of the premiums paid for the ordinary life insurance contract(s) and the premiums paid for the term life insurance contracts) or the universal life insurance contract(s) shall not exceed twenty-five percent (25%) of the Employer Contributions allocated to any Participant's Account. The Trustees shall not purchase any incidental life insurance benefit for any Participant prior to the Accounting Date as of which the Plan Administration Committee first makes an Employer contribution allocation to the Participant's Account. At an insured Participant's written direction, the Trustees shall use all or any portion of the Participant's voluntary contributions to pay insurance premiums covering the Participant's life. The purchase of life insurance and the premiums payable therefore shall not lessen or diminish the Forfeiture derived from the nonvested component in the Employer Contributions Account allocated to the Employer pursuant to Sections 3.3 and 5.4.

The Plan Administration Committee may select the insurance company or companies and insurance agent(s) through which the Trustees are to purchase the insurance contracts, the amount of the coverage and the applicable dividend plan; provided, however, that no such agent shall be a Trustee, a member of the Plan Administration Committee, a Participant, a Beneficiary, an employee of the Employer, or anyone related to any of the above named persons. Each application for a policy, and the policies themselves, shall designate the Trustees as sole owner, with the right reserved to the Trustees to exercise any right or option contained in the policies, subject to the terms and provisions of this Agreement. The Trustees shall be the named beneficiary for the Account of the insured Participant. Proceeds of insurance contracts paid to the Participant's Account under this Article 11 shall be subject to the distribution requirements of Article 5 and Article 6. The Trustees shall not retain any such proceeds for the benefit of the Trust.

The Plan Administration Committee shall charge all amounts paid by the Trustees pursuant to this Section 11.1 for the premiums on any incidental benefit insurance contract(s) covering the life of a Participant to the Account of the Participant. The Trustees shall hold all incidental benefit insurance contracts issued under the Plan as assets of the Trust created under the Plan.

11.2 **LIMITATION ON LIFE INSURANCE PROTECTION.** The Plan Administration Committee shall direct the Trustees to not continue any life insurance protection for any Participant beyond his or her annuity starting date (as defined in Article 6).



If the Trustees hold any incidental benefit insurance contract(s) on the life of a Participant when he or she terminates his or her employment (other than by reason of death), the Plan Administration Committee must direct the Trustees to proceed as follows:

- (a) If the entire cash value of the contract(s) is vested in the terminating Participant, or if the contract(s) will have no cash value at the end of the policy year in which termination of employment occurs, the Trustees will transfer the contract(s) the Participant endorsed so as to vest in the transferee all right, title and interest to the contract(s), free and clear of the Trust; subject however, to restrictions as to surrender or payment of benefits as the issuing insurance company may permit;
- (b) If only part of the cash value of the contract(s) is vested in the terminating Participant, the Trustees, to the extent the Participant's interest in the cash value of the contract(s) is not vested, may adjust the Participant's interest in the value of his or her Account attributable to Trust assets other than incidental benefit insurance contracts and proceed as in (a), or the Trustees must effect a loan from the issuing insurance company on the sole security of the contract(s) for an amount equal to the difference between the cash value of the contract(s) at the end of the policy year in which termination of employment occurs and the amount of the cash value that is vested in the terminating Participant, and the Trustees must transfer the contract(s) endorsed so as to vest in the transferee all right, title and interest to the contract(s), free and clear of the Trust; subject however, to the restrictions as to surrender or payment of benefits as the issuing insurance company may permit;
- (c) If no part of the cash value of the contract(s) is vested in the terminating Participant, the Trustees must surrender the contract(s) for cash proceeds as may be available.

The Plan Administration Committee will direct the Trustees to make any transfer of contract(s) under this Section 11.2 on the Participant's annuity starting date (or as soon as administratively feasible after that date). The Plan Administration Committee shall direct the Trustees to not transfer any contract under this Section 11.2 which contains a method of payment not specifically authorized by Article 6. In this regard, the Trustees either shall convert such a contract to cash and distribute the cash instead of the contract, or before making the transfer, require the issuing company to delete the unauthorized method of payment option from the contract.

11.3 **DEFINITIONS**. For purposes of this Article 11:

- (a) "Policy" means an ordinary life insurance contract or a term life insurance contract issued by an insurer on the life of a Participant.
- (b) "Issuing Insurance Company" is any life insurance company which has issued a policy upon application by the Trustees under the terms of this Agreement.
- (c) "Contract" or "Contracts" means a policy of insurance. In the event of any conflict between the provisions of this Plan and the terms of any contract or

policy of insurance issued in accordance with this Article 11, the provisions of the Plan shall control.

(d) “Insurable Participant” means a Participant to whom an insurance company, upon an application being submitted in accordance with the Plan, will issue insurance coverage, either as a standard risk or as a risk in an extra mortality classification.

- 11.4 **DIVIDEND PLAN.** The dividend plan shall be premium reduction unless the Trustees in their discretion decide to the contrary. The Trustees shall use all premiums for a contract to purchase insurance benefits or additional insurance benefits for the Participant on whose life the insurance company has issued the contract. Furthermore, the Trustees shall arrange, where possible, that all policies issued on the lives of Participants under the Plan shall have the same premium due date and all ordinary life insurance contracts shall contain guaranteed cash values with as uniform basic options as are possible to obtain. The term “dividends” includes policy dividends, refunds of premiums and other credits.
- 11.5 **INSURANCE COMPANY NOT A PARTY TO AGREEMENT.** No insurance company is a party to this Agreement nor shall any insurance company be responsible for its validity.
- 11.6 **INSURANCE COMPANY NOT RESPONSIBLE FOR TRUSTEES’ ACTIONS.** No insurance company is required to examine the terms of this Agreement nor be responsible for any action taken by the Trustees.
- 11.7 **INSURANCE COMPANY RELIANCE ON TRUSTEES’ SIGNATURE.** For the purpose of making application to an insurance company and in the exercise of any right or option contained in any policy, the insurance company may rely upon the signature of the Trustees and shall be saved harmless and completely discharged in acting at the direction and authorization of the Trustees.
- 11.8 **ACQUITTANCE.** An insurance company shall be discharged from all liability for any amount paid to the Trustees or paid in accordance with the direction of the Trustees and it shall not be obliged to see to the distribution or further application of any moneys it so pays.
- 11.9 **DUTIES OF INSURANCE COMPANY.** Each insurance company shall keep such records; make such identification of contracts, funds and accounts within funds; and supply such information as may be necessary for the proper administration of the Plan under which it is carrying insurance benefits.

\* \* \* \* *End of Article 11* \* \* \* \*

**ARTICLE 12.**  
**MISCELLANEOUS**

- 12.1 **EVIDENCE.** Anyone required to give evidence under the terms of the Plan may do so by certificate, affidavit, document or other information which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. Both the Plan Administration Committee and the Trustees shall be fully protected in acting and relying upon any evidence described under the immediately preceding sentence.
- 12.2 **NO RESPONSIBILITY FOR EMPLOYER ACTION.** Neither the Trustees nor the Plan Administration Committee shall have any obligation nor responsibility with respect to any action required by the Plan to be taken by the Employer, any Participant or eligible Employee, nor for the failure of any of the above persons to act or make any payment or contribution, or to otherwise provide any benefit contemplated under this Plan, nor shall the Trustees or the Plan Administration Committee be required to collect any contribution required under the Plan, or determine the correctness of the amount of any Employer contribution. Neither the Trustees nor the Plan Administration Committee need inquire into or be responsible for any action or failure to act on the part of the others. The Employer shall not be responsible for any act or failure to act on the part of the Plan Administration Committee, the Trustees or any Participant or eligible Employee, nor for the payment of any benefits under this Plan except for its obligation to make Employer Contributions as provided under Section 3.1.
- 12.3 **FIDUCIARIES NOT INSURERS.** The Trustees, the Plan Administration Committee, the Plan Administrator and the Employer in no way guarantee the Trust Fund from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Trust Fund. The liability of the Plan Administration Committee and the Trustees to make any payment from the Trust Fund at any time and all times is limited to the then available assets of the Trust.
- 12.4 **WAIVER OF NOTICE.** Any person entitled to notice under the Plan may waive the notice, unless the Code or Treasury regulations (if applicable) prescribe the notice or specifically or impliedly prohibit such a waiver.
- 12.5 **SUCCESSORS.** The Plan shall be binding upon all persons entitled to benefits under the Plan, their respective heirs and legal representatives, upon the Employer, its successors and assigns, and upon the Trustees and the Plan Administration Committee and their successors.
- 12.6 **WORD USAGE.** Words used in the masculine shall apply to the feminine where applicable, and wherever the context of the Employer's Plan dictates, the plural shall be read as the singular and the singular as the plural. The headings of Articles and Sections are included solely for convenience of reference, and if there be any conflict between such headings and the text of this Plan, the text will control.
- 12.7 **STATE LAW.** Colorado law, including the Colorado Civil Union Act, shall determine all questions arising with respect to the provisions of this Agreement except to the extent Federal law supersedes Colorado law. Notwithstanding any provision in the Plan and Trust to the contrary, effective June 26, 2013, for purposes of complying

with any federal law applicable to the Plan and Trust, the terms “husband,” “wife,” “husband and wife,” “marriage,” and “spouse” shall be defined and construed in accordance with such federal law, including I.R.S. Revenue Ruling 2013-17 and I.R.S. Notice 2014-19 and subsequent regulations and rulings.

- 12.8 **EMPLOYMENT NOT GUARANTEED.** Nothing contained in this Plan, or with respect to the establishment of the Trust, or any modification or amendment to the Plan or Trust, or in the creation of any Account, or the payment of any benefit, shall give any Employee, Employee-Participant or any Beneficiary any right to continue employment, any legal or equitable right against the Employer, or Employee of the Employer, or against the Trustees, or its agents or employees, or against the Plan Administrator, except as expressly provided by the Plan, the Trust, by a separate agreement, or by applicable law. Nothing contained in this Plan will be construed as a contract of employment between the Employer and any Employee or Participant, or as a limitation on the right of the Employer to employ, discipline or discharge any Employee or Participant.
- 12.9 **EXEMPTION FROM ACT AND STATUTORY CONSTRUCTION.** It is intended that this Plan is a “governmental plan” as defined in ERISA Section 3(32) and is therefore exempt from the applicability of ERISA and certain provisions of the Code related to tax qualified plans and trusts, except to the extent, and only to the extent, expressly provided to the contrary herein. Nothing contained herein shall be interpreted or construed to be or to represent a waiver of said exemptions nor a consent to the application of any provisions of ERISA or the Code to which governmental plans are exempted, except to the extent, and only to the extent, expressly provided to the contrary herein.
- 12.10 **QUALIFIED MILITARY SERVICE.** Notwithstanding any provision in this Plan to the contrary, contributions, benefits and Service credit with respect to or related to qualified military service will be provided in accordance with and will comply with the requirements of Code Section 414(u) and applicable regulations thereunder. Loan repayments, if any, will be suspended under this Plan as permitted under Code Section 414(u)(4). The provisions of this Section 12.10 shall be effective as of December 12, 1994.

Effective January 1, 2007, if any Participant dies while performing qualified military service, as defined under Code Section 414(u), the survivors of the Participant are entitled to any additional benefits (other than contributions relating to the period of qualified military service, but including vesting service credit for such period and any ancillary life insurance or other survivor benefits) that would have been provided under this Plan had the Participant resumed employment on the day preceding the Participant’s death and then terminated employment on account of death.

For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an employee of the employer making the payment; and (ii) the differential wage payment is treated as compensation for purposes of Code Section 415(c)(3) and Treasury Reg. §1.415(c)-2.

- 12.11 **ELECTRONIC MEDIA.** Effective for applicable notices, elections and consents provided or made for a Participant, Beneficiary, alternate payee or individual entitled

to benefits under the Plan, the use of electronic media to provide such applicable notices and make such elections and consents as described in Section 1.401(a)-21 of the Treasury regulations, is permitted.

\* \* \* \* *End of Article 12* \* \* \* \*

**ARTICLE 13.**  
**EXCLUSIVE BENEFIT, AMENDMENT, TERMINATION**

13.1 **EXCLUSIVE BENEFIT.** Except as provided under Article 3, relating to utilization of Forfeitures to reduce Employer Contributions, the Employer shall have no beneficial interest in any asset of the Trust and no part of any asset in the Trust shall ever revert to or be repaid to an Employer, either directly or indirectly; nor prior to the satisfaction of all liabilities with respect to the Participants and their Beneficiaries under the Plan, shall any part of the corpus or income of the Trust Fund, or any asset of the Trust, be (at any time) used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries. Notwithstanding the foregoing provision for impossibility of diversion of Trust assets to the Employer, if the Commissioner of Internal Revenue, upon the Employer's request for initial approval of this Plan, determines that the Trust created under the Plan is not a qualified trust exempt from Federal income tax, then the Trustees, upon written notice from the Employer, shall return the Employer's contributions (and earnings increment attributable to the contributions) to the Employer. The Trustees must make the return of the Employer contribution under this Section 13.1 within one year of a final disposition of the Employer's request for initial approval of the Plan. The Plan and Trust shall terminate upon the Trustees' return of the Employer's contributions and earnings increment.

13.2 **AMENDMENT BY EMPLOYER.**

- (a) The Employer reserves the right to amend the Plan and the Trust Agreement from time to time, provided that: (1) except as otherwise provided hereafter in this subsection (a), at least sixty-five percent (65%) of the participating Employees who are affected by such amendment approve of it; (2) no amendment will reduce the non-forfeitable interest in the Accrued Benefit of any Participant, Former Participant or Beneficiary as of the date of such amendment; and (3) no amendment will result in any part of the Trust Fund reverting or being paid to the Employer. To the extent not prohibited by applicable law, the Plan and the Trust Agreement may be amended by written agreement of the Employer and all of the then acting members of the Plan Administration Committee without approval of at least sixty-five percent (65%) of the participating Employees who are affected by such amendment if, but only if: (1) the Plan Administration Committee and the Employer determine that such amendment is required in order to obtain or maintain the Plan's or the Trust's initial or continued qualification under Code Section 401 or the Trust's tax-exempt status under Code Section 501, as the same may be amended, [the Plan Administration Committee and the Employer may rely upon the good faith advice of its pension or tax counsel in making any such determination]; and (2) the Plan Administration Committee and the Employer determine that such amendment does not affect the rights or interests of any Participant, Former Participant or Beneficiary in the Plan or in their Plan benefit in a material way.
- (b) No amendment may authorize or permit any of the Trust Fund (other than the part which is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the

Participants or their Beneficiaries or estates. No amendment may cause or permit any portion of the Trust Fund to revert to or become a property of the Employer. The Employer also may not make any amendment which affects the rights, duties or responsibilities of the Trustees, the Plan Administrator or the Plan Administration Committee without the written consent of the affected Trustees, the Plan Administrator or the affected member of the Plan Administration Committee.

- (c) With regard to any amendment of the Plan and Trust Agreement which alters in any way the benefits received by the Participants under the Plan, the Plan Administration Committee shall represent and be the agent for the Participants in the negotiations with the Employer regarding such amendments.

- 13.3 **CONTINUANCE OF THE PLAN.** The Employer expects to continue this Plan and Trust indefinitely. However, in the event that the Employer is legally dissolved pursuant to federal or state statute, court order or judicial decision, the Employer may terminate the Plan and Trust, but only if such termination is permitted under applicable Colorado law.
- 13.4 **FULL VESTING ON TERMINATION.** Notwithstanding any other provision of this Plan to the contrary, upon either full or partial termination of the Plan by the Employer at any time, an affected Participant's right to his or her Accrued Benefit shall be one hundred percent (100%) Nonforfeitable.
- 13.5 **MERGER.** Applicable Colorado law may currently prohibit the merger or consolidation of this Plan with, or the transfer of its assets or liabilities to, another qualified deferred compensation plan. However, in the event that applicable Colorado law would ever permit this Plan to merge or consolidate with, or transfer its assets or liabilities to, any other qualified deferred compensation plan, and subject to Section 13.2, the Trustees shall not consent to, or be a party to, any merger or consolidation with another plan, or to a transfer of assets or liabilities to another plan, unless immediately after the merger, consolidation or transfer, the surviving Plan provides each Participant a benefit equal to or greater than the benefit each Participant would have received had the Plan terminated immediately before the merger or consolidation or transfer. The Trustees possess the specific authority to enter into merger agreements or direct transfer of assets agreements with the trustees of other retirement plans described in Code Section 401(a), including an elective transfer, and to accept the direct transfer of plan assets, or to transfer plan assets, as a party to any such agreement. Prior to termination of employment with the Employer, but no sooner than one (1) year after the DB Plan Participant Effective Date, a Participant whose Accrued Benefit derived from Employer Contributions is 100% Nonforfeitable may elect, using such form and at such time as prescribed by the Plan Administration Committee, to purchase service credit in the DB Plan, in accordance with the provisions of the DB Plan, by a trustee-to-trustee transfer to the DB Plan. Such trustee-to-trustee transfer will be treated as complying with the direct transfer agreement requirement of this Section.

The Trustees may accept a direct transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility condition(s). If the Trustees accepts a direct

transfer of plan assets, the Plan Administration Committee and Trustees shall treat the Employee as a Participant for all purposes of the Plan except the Employee may not make Participant Mandatory Contributions under Article 4 nor shall the Employee share in Employer Contributions or Forfeitures under the Plan until he or she actually becomes a Participant in the Plan.

The Trustees shall not consent to, or be a party to a merger, consolidation or transfer of assets with a pension plan that is subject to the provisions of the Code and ERISA related to qualified joint and survivor annuities and preretirement survivor annuities, except with respect to an “elective transfer”, as such term is described in Treasury Regulation Section 1.411(d)-4, Q & A3. The Trustees shall hold, administer and distribute the transferred assets as a part of the Trust Fund and the Trustees shall maintain a separate Employer contribution Account for the benefit of the Employee on whose behalf the Trustees accepted the transfer in order to reflect the value of the transferred assets.

13.6 **TERMINATION.** Upon termination of the Plan, the distribution provisions of Article 6 shall remain operative, with the following exception: the Participant or the Beneficiary, in addition to the distribution events permitted under Article 6, may elect to have the Trustees commence distribution of his or her Nonforfeitable Accrued Benefit as soon as administratively practicable after the Plan terminates.

To liquidate the Trust, the Plan Administration Committee shall purchase a deferred annuity contract for each Participant which protects the Participant’s distribution rights under the Plan, if the Participant does not elect an immediate distribution pursuant to the preceding sentence and the distribution provisions of Article 6. The Trust shall continue until the Trustees in accordance with the direction of the Plan Administration Committee has distributed all of the benefits under the Plan.

On each Accounting Date, the Plan Administration Committee shall credit any part of a Participant’s Accrued Benefit retained in the Trust with its proportionate share of the Trust’s income, expenses, gains and losses, both realized and unrealized. A resolution or amendment to freeze all future benefit accrual but otherwise to continue maintenance of this Plan, is not a termination for purposes of this Section 13.6.

13.7 **PLAN TO CONFORM TO CODE AND COLORADO LAWS.** It is the intention of the Employer that it shall be impossible for any part of the Trust Fund ever to be used for or diverted to purposes other than for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan and Trust Fund. The Plan and Trust Agreement will, therefore, be construed and administered to follow the spirit and intent of the Code and applicable Colorado laws.

13.8 **APPLICABILITY.** The provisions of this Plan and Trust shall apply only to an Employee who terminates employment on or after the Effective Date. The rights and Plan Benefits, if any, of an employee of the Employer whose employment terminates prior to the Effective Date shall be determined in accordance with the provisions of the Prior Plan, if any, in effect on the date his or her employment terminated.

\* \* \* *End of Article 13* \* \* \* \*



This Plan and Trust Agreement may be executed by original signature or electronic signature in multiple counterparts and may be delivered by fax or other electronic means, each of which shall be deemed to be an original, and all of which, when taken together shall constitute one (1) document.

Subject to an approval in an election of Participants as required in Section 13.2(a) for amendments requiring a Participant election, which approval has already been obtained, the Employer and each member of the Plan Administration Committee (who is also a Trustee) has executed this Plan and Trust Agreement in Aurora, Colorado on each date indicated below.

ATTEST:

  
Kadee Rodriguez, City Clerk

**EMPLOYER**


By:   
Mike Coffman, Mayor

Dated: 11-16-2021

Approved as to Form:

  
Daniel Brotzman, City Attorney

**PLAN ADMINISTRATION  
COMMITTEE/TRUSTEES**

  
Brian Kelly


Dated: 11-9-'21

  
Kris McDowell


Dated: 11/09/2021

  
Heath Graw

Dated: 11/09/2021

  
Douglas Daufeldt

Dated: 11/09/21

  
Wynne Shaw

Dated: 09 Nov 2021