

**GRAND JUNCTION CITY COUNCIL  
CITY HALL AUDITORIUM, 250 NORTH 5<sup>TH</sup> STREET  
AGENDA**

**WEDNESDAY, JANUARY 2, 2002, 7:30 P.M.**

**CALL TO ORDER**

Pledge of Allegiance  
Invocation - Reverend Michael Torphy  
Grand Junction Church of Religious Science

**CITIZENS COMMENTS**

**\*\*\* CONSENT CALENDAR \*\*\***

1. **Minutes of Previous Meetings** [Attach 1](#)

*Action: Approve the Summary of the December 17, 2001 Workshop and the Minutes of the December 19, 2001 Regular Meeting*

2. **Meeting Schedule and Posting of Notices** [Attach 2](#)

State Law requires an annual designation of the City's official location for the posting of meeting notices. The City's Code of Ordinances, Sec. 2-26, requires the meeting schedule and the procedure for calling special meetings be determined annually by resolution.

Resolution No. 01-02 – A Resolution of the City of Grand Junction Designating the Location for the Posting of the Notice of Meetings, Establishing the City Council Meeting Schedule and the Procedure for Calling of Special Meetings for the City Council

*\*Action: Adopt Resolution No. 01-02*

Staff presentation: Stephanie Tuin, City Clerk

3. **Sole Source Approval for Police Computers** [Attach 3](#)

The existing computers have reached the end of their usable life and require replacement. The sole source procurement is required for compatibility or

conformity with other City-owned equipment in which non-conformance would require the expenditure of additional funds. PCS/Portable Computer Systems is the regional Panasonic Distributor for Colorado located in Golden.

*Action: Approve the Sole Source Purchase from PCS/Portable Computer Systems for 34 Panasonic Computers in the Amount of \$133,080*

Staff presentation: Robert Knight, Police Lieutenant

4. **Special Event Funding Awards** [Attach 4](#)

Ten applications for funding were received by the November 6 deadline. After review and discussion of the applications, the VCB Board recommends funding the following six events:

\$4,500	Colorado Mountain Winefest
\$2,000	Kokopelli Adventure Race
\$ 500	Celtic Festival and Highland Games
\$1,670	Rim Rock Run
\$2,000	Fruita Fat Tire Festival
\$4,000	Country Jam USA

*Action: Approve Funding Awards as Recommended*

Staff presentation: Debbie Kovalik, Executive Director VCB

5. **Grand Junction Strategic Cultural Plan** [Attach 5](#)

The Grand Junction Commission on Arts and Culture convened a 50-member cultural plan steering committee to revise the 1991 cultural plan. The plan's recommendations are a ten-year blueprint for arts and cultural development, activities, organizations, and facilities throughout the community.

Resolution No. 02-02 – A Resolution to Approve the 2001 Update of the Grand Junction Strategic Cultural Plan

*\*Action: Adopt Resolution No. 02-02*

Staff presentation: Allison Sarmo, Cultural Arts Coordinator

6. **Grant from the Colorado Council on the Arts to the Grand Junction Commission on Arts and Culture** [Attach 6](#)

The Commission would like to accept a \$3,200 grant from the Colorado Council on the Arts in 2002. This funding will be added to the existing budget for Commission support of local arts and cultural events, projects, and programs.

*Action: Authorize the City Manager to Sign a Contract with Colorado Council on the Arts for a \$3,200 Grant*

Staff presentation: Allison Sarmo, Cultural Arts Coordinator

7. **Temporary Easement Vacation Independence Ranch Filing 8** [File#VE-2001-224] [Attach 7](#)

The applicant proposes to vacate a temporary turnaround easement and a temporary stormwater retention easement at the end of Tranquil Trail in Independence Ranch Filing 8. The subdivision is located at the northeast corner of 20 ½ and F ¾ Road. At its hearing of December 18, 2001 the Planning Commission recommended approval of this request.

Resolution No. 03-02 – A Resolution Vacating a Temporary Turnaround and Stormwater Retention Easement at the End of Tranquil Trail in Independence Ranch Subdivision

*\*Action: Adopt Resolution No. 03-02*

Staff presentation: Bill Nebeker, Senior Planner

8. **Setting a Hearing on Rezoning Ordinance for Riverside Market Located at 215 Chuluota Avenue** [File #RZ-2001-226] [Attach 8](#)

First Reading of the Rezoning Ordinance to rezone 215 Chuluota Avenue from Residential Multi-Family-8 (RMF-8) zone district to Planned Development (PD) with the Neighborhood Business (B-1) zone as the underlying default zone.

Proposed Ordinance Rezoning 215 Chuluota Avenue from the Residential Multi-Family-8 (RMF-8) Zone District to Planned Development with Neighborhood Business (B-1) as the Default Zone

*Action: Approve Proposed Ordinance on First Reading and Set a Hearing for January 16, 2002*

Staff presentation: Lisa Gerstenberger, Senior Planner

9. **One-Year Farm Lease of the Saccomanno Park Property with Robert H. Murphy** [Attach 9](#)

The proposed lease will allow the property to remain in a productive condition pending its development as a community park. The 30 acre Saccomanno Park property is located at the southwest corner of 26 ½ Road and H Road. The City purchased the property in 1994 as a Community Park site in accordance with the recommendation of the Parks, Recreation and Open Space Master Plan. Development of the property as a park is scheduled for 2008.

Resolution No. 04-02 – A Resolution Authorizing a One-year Farm Lease of the Saccomanno Park Property with Robert H. Murphy

*\*Action: Adopt Resolution No. 04-02*

Staff presentation: Tim Woodmansee, Real Estate Manager

10. **Exchange of Real Estate with the Botanical Society** [Attach 10](#)

The proposed resolution will authorize the exchange of real estate between the City and The Western Colorado Botanical Society. The Botanical Society presently leases 15 acres of City property located east of 5<sup>th</sup> Street between Struthers Avenue and the Colorado River. In addition to utilizing the leased premises, the Botanical Society owns an adjoining parcel of land containing 1/3 of an acre.

Resolution No. 05-02 – A Resolution Authorizing the Exchange of Real Estate with the Western Colorado Botanical Society

*\*Action: Adopt Resolution No. 05-02*

Staff presentation: Tim Woodmansee, Real Estate Manager

11. **Award of Contract for Independent Avenue Irrigation and Storm Line Phase 1B** [Attach 11](#)

Bids were received and opened on December 20, 2001 for Independent Avenue Utility Improvements Phase 1B. Bogue Construction submitted the apparent low bid in the amount of \$377,846.45.

<u>Contractor</u>	<u>From</u>	<u>Bid Amount</u>
Bogue Construction, Inc.	Fruita	\$377,846.45
Skyline Contracting, Inc.	Grand Junction	\$458,794.33
Downey Excavation, Inc.	Montrose	\$501,877.60
M. A. Concrete	Grand Junction	\$516,193.17
R. W. Jones	Fruita	\$550,339.21
Continental West	Eagle	\$568,758.85
Spallone Construction,	Gunnison	\$580,861.02
Engineer's Estimate		\$517,007.17

*Action: Authorize City Manager to Execute a Construction Contract for the Independent Avenue Utility Improvements Phase 1B with Bogue Construction in the Amount of \$377,846.45*

Staff presentation: Tim Moore, Public Works Manager

12. **Award of Contract for 26 Road Sewer Trunk Line Extension** [Attach 12](#)

This contract would construct over 5,200 feet of sanitary sewer along the 26 Road corridor from F½ Road to a proposed development northwest of the intersection of 26 Road and G Road and eliminate the Jasmine Lane Lift Station.

<u>Contractor</u>	<u>From</u>	<u>Bid Amount</u>
Precision Excavating, Inc.	Hayden, CO	\$408,186.00
Mendez, Inc.	Grand Jct., CO	\$445,650.00
M.A. Concrete Const.	Grand Jct., CO	\$452,985.00
Downey Excavation, Inc.	Montrose, CO	\$505,972.50
Spallone Construction, Inc.	Gunnison, CO.	\$524,563.00
Bogue Construction, Inc.	Fruita, CO	\$551,447.30
Engineer's Estimate		\$455,255.00

*Action: Authorize the City Manager to Execute a Construction Contract for the 26 Road Sewer Trunk Extension with Precision Excavating in the Amount of \$408,186.00*

Staff presentation: Mark Relph, Public Works and Utilities Director

13. **Redlands Area Study** [Attach 13](#)

The written report will serve to update the City Council on the progress of the Transportation and Land Use Study, including information on the January 8<sup>th</sup> Public Meeting and recommendations for future improvements.

*Action: Acknowledge Written Report*

Staff presentation: Mark Relph, Public Works and Utilities Director

**\*\*\* END OF CONSENT CALENDAR \*\*\***

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**\*\*\* ITEMS NEEDING INDIVIDUAL CONSIDERATION \*\*\***

14. **Public Hearing – Adopting Amendments to Retirement Plans for Specified City of Grand Junction Employee Groups** [Attach 14](#)

The City of Grand Junction, Colorado Employees Retirement Plan, the New Hire Fire Money Purchase Plan and the New Hire Police Money Purchase Plan have been amended to incorporate Internal Revenue Code (IRC) amendments that have been passed by Congress since 1994. These amendments must be incorporated into the aforementioned Plans by February 28, 2002 in order for the Plans to retain their tax-qualified status. Two minor amendments requested by the respective Plan Boards to add flexibility to the Plans are also included herein.

Ordinance No. 3394 – An Ordinance Adopting Amendments to Retirement Plans for Specified City of Grand Junction Employee Groups and Authorizing Publication of the Retirement Plans by Pamphlet

*\*Action: Adopt Ordinance No. 3394 on Second Reading*

Staff presentation: Ron Lappi, Administrative Services Director

15. **Purchase of 4 BMW Police Patrol Motorcycles** [Attach 15](#)

The Grand Junction Police Department has been working collaboratively with the City Purchasing office to compare and evaluate police motorcycles over the planned life cycle of the proposed units. The life cycle analysis includes the price, resale value, miscellaneous set-up fees, warranty, routine maintenance costs and the value of the lost investment when purchasing rather than leasing.

The process also included a physical evaluation and test ride on the Harley Davidson and BMW Police Motorcycles by the Police Department.

*Action: Approve the Purchasing Manager to Procure 4 New BMW Police Motorcycles from All Sports Honda/BMW, LTD, Grand Junction, Colorado for the Amount of \$16,694 each; Total Purchase Price (delivered and set up) is \$66,596*

Staff presentation: Greg Morrison, Police Chief  
Ron Watkins, Purchasing Manager

16. **NON-SCHEDULED CITIZENS & VISITORS**

17. **OTHER BUSINESS**

18. **EXECUTIVE SESSION - PRIVILEGED ATTORNEY - CLIENT COMMUNICATION**- To receive legal advice regarding the City's relationship with the DDA, including specific current issues. Open Meetings Act, section (4)(b).

19. **ADJOURNMENT**

**Attach 1**  
**Minutes of Previous Meetings**

**GRAND JUNCTION**  
**CITY COUNCIL WORKSHOP**

December 17, 2001

The City Council of the City of Grand Junction, Colorado, met on Monday, December 17, 2001 at 7:06 p.m. in the City Auditorium to discuss workshop items. Those present were Harry Butler, Dennis Kirtland, Bill McCurry, Janet Terry and President of the Council Cindy Enos-Martinez. Councilmembers Jim Spehar and Reford Theobold were absent when the meeting convened. Councilmember Theobold entered the meeting at 7:50 p.m.

**Summaries and action on the following topics:**

1. **URBAN TRAILS COMMITTEE:** Committee Co-Chairs Jamie Lummis and Robert Traylor updated Council on their work and trails issues. Jim Grisier, member of the Grand Valley Irrigation Board, said the Board has specific opinions such as their desire to become a significant and authoritative review agency on development of trail plans. Otherwise, the canal company will be hampered from performing their function.

**Action Summary:** Councilmembers expressed support for all the work that the Urban Trails Committee has done. Council also thanked Mr. Grisier for his time.

2. **DTA VENDORS FEE:** Ron Maupin representing the Downtown Association presented a proposal for the vendors fee to be collected by the City and then returned to the DTA to be spent on advertising.

**Action Summary:** Councilmembers suggested various options that would not create a TABOR affect. The creation of a special district and supporting the creation and any required vote was one option. Council directed Staff to conduct research and bring back various options to Council.

Mayor Enos Martinez left the meeting at 8:00 p.m. and Mayor Pro Tem Terry presided over the rest of the meeting.

3. **WATER LINE REPLACEMENT DEBT FINANCING PROPOSAL:** Public Works staff, Mark Relph and Greg Trainor, discussed the possibility of incorporating water line improvements in the downtown area with the



combined sewer separation project. This will lend itself to cost savings and less inconvenience to residents to only tear up the streets once.

**Action summary:** Council supported the proposal and gave Staff the direction to move forward. The formal action will be the acceptance of the loan documents.

### **WRITTEN REPORT**

**STORM WATER UTILITY ISSUE:** Public Works staff has included a written report in the packet dealing with the storm water utility issue.

**Action Summary:** City Manager Arnold said he is trying to schedule a meeting with all four entities before any proposals are put before Council.

**ADJOURN:** The meeting adjourned at 8:30 p.m..

## **GRAND JUNCTION CITY COUNCIL MINUTES OF THE REGULAR MEETING**

**DECEMBER 19, 2001**

The City Council of the City of Grand Junction convened into regular session the 19<sup>th</sup> day of December, 2001 at 7:34 p.m. in the City Auditorium. Those present were Harry Butler, Dennis Kirtland, Bill McCurry, Janet Terry, Jim Spehar and President of the Council Cindy Enos-Martinez. Reford Theobald was absent. Also present were City Manager Kelly Arnold, City Attorney Dan Wilson and City Clerk Stephanie Tuin.

Council President Enos-Martinez called the meeting to order and Councilmember Butler led in the pledge of allegiance. The audience remained standing for the invocation by Retired Minister Eldon Coffey.

### **APPOINTMENTS**

#### **APPOINTMENT TO THE HOUSING AUTHORITY**

Councilmember Butler moved to reappoint Gabe DeGabriele to the Grand Junction Housing Authority for another five-year term. Councilmember Spehar seconded. Motion carried.

### **CERTIFICATES OF APPOINTMENT**

TO PLANNING COMMISSION AND BOARD OF APPEALS MEMBERS

None were present to accept their certificates.

### **CITIZEN COMMENTS**

There were no citizen comments.

### **CONSENT CALENDAR**

It was moved by Councilmember Terry, seconded by Councilmember McCurry and carried by roll call vote to approve Consent Items # 1 through #5.

1. **Minutes of Previous Meetings**

*Action: Approve the Summary of the December 3, 2001 Workshop and the Minutes of the December 5, 2001 Regular Meeting*

2. **Setting a Hearing on Ordinance Adopting Amendments to Retirement Plans for Specified City of Grand Junction Employee Groups**

The City of Grand Junction, Colorado Employees Retirement Plan, The New Hire Fire Money Purchase Plan and the New Hire Police Money Purchase Plan have been amended to incorporate Internal Revenue Code (IRC) amendments that have been passed by Congress since 1994. These amendments must be incorporated into the aforementioned Plans by February 28, 2002 in order for the Plans to retain their tax-qualified status. Two minor amendments requested by the respective Plan Boards to add flexibility to the Plans are also included herein.

Proposed Ordinance Adopting Amendments to Retirement Plans for Specified City of Grand Junction Employee Groups

*Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for January 2, 2002*

3. **Indemnification Agreement at Redlands Mesa Golf Club**

As a condition of approval of the Redlands Mesa development, a public trail is required through parcel 9 and the golf course property. The developer has agreed to provide the trail easement provided the City indemnifies the golf landowner and developer from any claims, actions, damages, costs or liabilities arising from errant golf balls striking a user of the public trail easement.

Action: Authorize the City Manager to Sign the Indemnification Agreement

4. **Use of Undergrounding Funds for the Independent Avenue Project**

Overhead to Underground funds have been programmed for the Independent Avenue Project, from North 1<sup>st</sup> Street to approximately 200' west of 25 ½ Road.

Resolution No. 132-01 – A Resolution Authorizing Public Service Company of Colorado D/B/A XCEL Energy to Use the City of Grand Junction Overhead to Underground One Percent (1%) Funds for the Project Defined as Independent Avenue from North 1<sup>ST</sup> Street to Approximately 200' West of 25 ½ Rd.

Action: Adopt Resolution No. 132-01

5. **Sub-recipient Contract with the Grand Junction Housing Authority for the City's Community Development Block Grant (CDBG) Program** [File #CDGB-1999-1]

This contract formalizes the City's Award of \$205,000 to the Grand Junction Housing Authority for purchase of the building at 2853 North Avenue, which is presently used as a temporary homeless shelter. These funds were allocated from the City's 1999 Community Development Block Grant Program.

Action: Authorize the City Manager to Sign the Subrecipient Contract with the Grand Junction Housing Authority

**END OF CONSENT CALENDAR**

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**ITEMS NEEDING INDIVIDUAL CONSIDERATION**

**Authorization to Issue Warning Tickets for Parking Violations**

Approval of this measure would give the Grand Junction Police Department the authority to issue warning tickets for the first part of January 2002 to all overtime and illegal parking violations. The warning does not apply to handicapped parking violations, which will continue to be enforced. These warning tickets would advise the citizen that the fines for parking violations as well as the meter rates have increased.

Administrative Services and Finance Director Ron Lappi reviewed this item.

Councilmember Kirtland asked about the status of installing the new meters. Mr. Lappi said most have been changed over, the new ones are not in yet but will be installed on time. Monthly passes are currently available.

Councilmember Butler asked if there would be meters installed near the new justice center. Mr. Lappi said yes there would be some installed west of 1<sup>st</sup> Street.

Upon motion by Councilmember Spehar, seconded by Councilmember Kirtland, and carried, the measure to issue warning tickets to violators during the first part of January was approved.

**Public Hearing - Revisions to Zoning and Development Code and Review Fees for Growth Plan Amendment Requests** [File # TAC-2001-203]

The Grand Junction Zoning and Development Code was adopted on March 7, 2000, with an effective date of April 22, 2000. As requested by the City Council, this is a review of the Code provisions to determine whether any changes are needed. The majority of the proposed amendments are clerical corrections, formatting and clarifications. The report to the Planning Commission and City Council for the July 30<sup>th</sup> Workshop listed 22 specific issues that were raised by those who commented on the Code. This update has incorporated those that Planning Commission and Council directed staff to change.

The public hearing was opened at 7:40 p.m.

Planning Manager Kathy Portner reviewed the request. She noted that the changes relative to cell towers is not included in this amendment. The other item is the correlation of density to zoning. Those two items will come to Council later.

She then identified the significant changes:

1. Clarification of the neighborhood meeting notices.
2. Revising the rehearing and appeal section to not require a rehearing to perfect an appeal and to clarify that any recommendation by the Planning Commission whether denied or approved can be forwarded to City Council to be heard.
3. Deleting the surety bond as an option for infrastructure warranty.
4. Addition of a provision to allow the RMF-5 zoning to be considered as Residential Medium Low Density provided the density does not exceed the Growth Plan maximum density.

Councilmember Terry asked that the requirements for the RSF-4 be adjusted instead of adjusting the RMF-5 zoning.

5. Allow RO (Residential Office) be considered in zone districts that are transitional without a growth plan amendment.

Councilmember Terry was concerned that this would allow RO in a lot more areas. Ms. Portner said that the intent statement would limit those areas.

6. Add a provision that would allow transitional lots to not be calculated into the overall density.
7. Inclusion of salvage and recycling yards into the outdoor storage section and adding provisions for new yards.
8. Other Staff recommended changes:
  1. The addition of Ordinances 3331, 3303, 3305 and 3385
  2. Limits the amendments to the Growth Plan to individual review process.
  3. Limits Antennae height.
  4. New recycle impounds lots and salvage yards provisions allowing chain link fence with slats unless a higher standard is required. Also deletes some operations from regulations. Increased allowed height of tire racks.
  5. Amend Section 4. 1. I to allow vegetation as an option for screening.
  6. To refine the references in table clarify regarding the definition of "development area" and "hillside".

Ms. Portner stated that they would also like to request a new section that would include the SSIDS (Submittal Standards for Improvements and Development) Manual, and request the establishment of a fee for Growth Plan Amendment requests.

The last item Ms. Portner discussed is a letter from Larry Beckner regarding the proposed amendments on a land use designation to allow medium density in the B-1 zone district. The Planning Commission agreed with staff not to make any change until compatibility standards can be considered, hopefully in about three months. She deferred to Mr. Beckner for the details.

Larry Beckner, 1241 Gunnison, representing the Bank of Grand Junction pointed out some discrepancies in the language in the Code. He gave some examples that support his request. He felt the criteria being referred to by Ms. Portner is already established. He stated that there are only two classifications to be dealt with in this issue. The RO zone and the B-1 zone, because they are the zones that would allow some commercial within a residential zone. Mr. Beckner suggested that there are some areas where the goal is to infill and while these areas are not suitable for residential, they would be very attractive to very limited business use. He suggested that the language already exists in the present Code to allow for this kind of development.

Julie Fisher, Any Auto Wrecking, referred to the letter she sent (see attached) and the thirteen pages of salvage yard regulations she and other recyclers had that worked on and was almost passed. She said they would forgo the landscaping funding assistance if they could have their proposal approved. Their proposal gives them more protection and

is less ambiguous. The new provisions will be applied to them when she and other recyclers have to relocate as anticipated for the new road. Ms. Fisher asks that those that do not move voluntarily be treated as existing (i.e. grandfathered in).

Dick Ennis, 2108 Pheasant Hill Road works for his son on Weslo, (Double D Appliance) re-emphasized how much time was spent working on the thirteen-page proposal that was turned into Council. Council stopped short of adopting due to the funding of the landscaping. Their suggestion allows for complete recycling, otherwise appliances and such get dumped along the roadside or in the desert because the people have no alternative. The County landfill cannot deal with these hazardous wastes like freon any more than the individuals can.

Councilmember Terry asked Ms. Portner to address why the thirteen pages were not accepted. Ms. Portner said the thirteen pages were very detailed for each of the recycling industries and how they would operate within the City. It included financial participation by the City. The major sticking point was that Council had directed that all outdoor storage should be treated the same. Staff was instructed to do an inventory of outdoor storage establishments. The number was pretty big, that made the dollar figure big. Also, there were no provisions there for new businesses. The appliance recycling and illegal dumping provisions allowed more time than others were allowed for junk removal.

City Attorney Dan Wilson explained the history of the writing of the 13 pages, and the overview. The two prime objections were the City's financial participation and the owner's objections that they be treated differently from other outdoor storage. Mr. Wilson detailed some specific examples of how the new regulations would effect this industry, to the detriment of the City, and how important the industry is to this and any City in complying with Federal laws regarding toxic materials. He also addressed the recycling of materials that would otherwise end up in the landfill and ultimately be the responsibility of the City and County.

Councilmember Spehar asked that the differences in the proposed Code and the document submitted earlier be identified.

Mr. Wilson stated that the 13-page document is not as rigorous as what is being proposed by Community Development, but is better than what is allowed presently. Specifically with regard to the expansion of the current businesses.

Councilmember Spehar asked Mr. Wilson to be more specific with regard to the differences using the language of the proposed Code. Mr. Wilson stated that the timeline is one major issue. Mr. Spehar stated that he would need some specifics to be able to understand the issues.

Councilmember Terry questioned whether it is the responsibility of Council to be going through those comparisons at this time without the benefit of detailed information being presented to them.

City Manager Arnold stated that the bottom line in this issue is trust. He stated that Staff has been trying to develop a relationship with the businessmen of the industry, and that Staff believes the Code does work. He further stated that ambiguity with the 13-page document causes problems with enforcement and that is where the real issue of trust emerges. He stated that he is willing to work further on the matter.

Councilmember Terry stated that Council appreciates the time and effort that has been spent on this issue. She indicated that the groups may be real close to consensus, so it might not be a lot more work to find the best solution.

Councilmember Spehar agreed, but stated that without a basis to compare the two sides, he is not comfortable making a decision until there is more information.

Mayor Enos-Martinez asked Ms. Fisher, who was involved in the discussions on this issue, what her main concerns were. Ms. Fisher stated that only two issues are in contention. She agreed it is a matter of trust, and that they also want to take the ambiguity out of the Code. The two issues were the affect on businesses forced to move and the time allowed for processing dumped appliances.

Councilmember Spehar stated that he has a problem with the grandfathering into the Code the future moves and expansions proposed in the 13-page document. Ms. Fisher stated that if that policy were implemented, it would put them out of business.

City Manager Arnold indicated that there is no problem extending the time frame on processing appliances.

Ms. Portner indicated that Code Enforcement has a problem leaving the time frame open-ended. There is no problem just lengthening the time period, but it cannot be left open-ended.

Councilmember Terry indicated that she is not comfortable looking at this issue piecemeal, and would like a description of the changes being proposed. Councilmember Spehar stated that there are two issues on the table that need discussion and that he would like to see some comparison by Staff of the two proposals.

Councilmember Spehar stated that Council should put off Larry Beckner's request, since the appeal is in process, and Council should defer action.

Public hearing closed at 8:54 p.m.

Ordinance No. 3390 – An Ordinance for the Annual Update of the Zoning and Development Code for the City of Grand Junction

Upon a motion by Councilmember Terry, seconded by Councilmember Spehar, and carried by roll call vote, Council approved Ordinance No. 3390 with the exception of 4.11.2.C.1 and 4.3.d. and also defer consideration of B-1 zoning allowing medium-high density until compatibility standards are developed (within 4-6 weeks).

*Resolution 133-01 – A Resolution Amending the Development Application Fee Schedule*

Upon motion by Councilmember Spehar, seconded by Councilmember McCurry, and carried by roll call vote, Council approved Resolution 133-01.

**Public Hearing – Growth Plan Consistency Review and Rezoning which includes the Outline Development Plan for 12<sup>th</sup> Street Medical Plaza and Hospice Care Located at 3090 & 3150 North 12th Street** [File #GPA-2001-179]

The applicant is requesting a consistency review for a 100,570 square foot medical office and Hospice development at the site formerly referred to as the Miller Homestead Planned Development. Accompanying the application is a request to rezone the property to a new Planned Development zone and approve an Outline Development Plan (ODP). At its hearing of November 20, 2001 the Planning Commission recommended approval of these requests.

The public hearing opened at 9:00 p.m.

John Potter, Blythe Design, reviewed the project. There was a previous proposal on this property, which turned out not to be financially feasible. The owners sold the property to Hospice at a reduced price, which makes this project feasible. Primary Care Partners need to expand and will partner with Hospice. Currently PCP has five locations and wants to consolidate into one place. Mr. Potter gave the history and functions of Hospice. Mr. Potter then outlined the timetable for this expansion.

Bill Nebeker, Senior Planner, reviewed the request. His presentation supported the findings of growth plan consistency by combining growth plan policies and the definition of the B-1 Zone District. At the Planning Commission, Staff recommended denial of the proposal because it exceeded the density. However, the Planning Commission found the opposite. Under the rezone request, changing the Planned Development, the ODP process was used, due to the recommendation of Staff. Criteria for Planned Development zones were taken into consideration. The deviation from the standards is in the uses allowed the location and proximity to other commercial uses. Applicants must exceed Code requirements, to meet Planned Development Criteria. The applicant



has offered to build a trail, increase landscaping and the use of art. He listed Planning Commission's findings, including improvements to 12<sup>th</sup> Street, which can handle the increased traffic. Staff recommended approval.

Councilmember Spehar asked how the larger mixed-use development in the whole area compares to residential need. He asked for the quantitative estimate of the office space versus residential space in the overall area. Mr. Nebeker stated that there is only one aspect of consistency, and he didn't know how far it would be necessary to go out to get a true mix, he guessed at 1000 dwelling units. Councilmember Spehar stated that Council is looking at a similar situation to the appeal that is coming to Council. He does not want to set a precedent here that would effect the upcoming issues.

Councilmember Butler asked about the ditch that is located on this property. Mr. Nebeker stated that the ditch is just for drain water and can easily be put underground. Councilmember Butler then asked about the wildlife in the area. Mr. Nebeker said that there is some, but it is not substantial.

Councilmember Kirtland asked for the expectation of what the full build-out will be. Mr. Nebeker stated that in approving a Preliminary Plan, some mechanism for approving each section is built in but there is no build out date. Councilmember Spehar indicated that if this were anyone other than Hospice and Primary Partners, it would be very difficult to approve moving this large a commercial development into a residential neighborhood under the creative theory needed to get it developed.

City Attorney Wilson stated that Code does not allow for a time imposed on the development schedule. Councilmember Kirtland noted that the length of time could allow more residential to be built, allaying Councilmember Spehar's concern. Councilmember Spehar stated that his concern is that this project has gone from being strictly residential to being largely commercial without having a specific growth plan amendment.

There were no public comments.

The public hearing was closed at 9:33 p.m.

Councilmember Terry stated that she looks at the surrounding areas as not strictly residential, since assisted living is somewhat different. Therefore it is more compatible.

Resolution No. 134-01 – Finding the 12<sup>th</sup> Street Medical Plaza and Hospice Planned Development Located at 3090 and 3150 North 12th Street to be Consistent with the Growth Plan

Ordinance No. 3391 – An Ordinance Zoning Two Parcels Located at 3090 and 3150 North 12<sup>th</sup> Street from PD (For Miller Homestead) to PD for the 12<sup>th</sup> Street Medical Plaza and Hospice Care Planned Development

Upon a motion by Councilmember Spehar, seconded by Councilmember McCurry, and carried by roll call vote, Council approved Resolution No. 134-01 and Ordinance No. 3391.

**Public Hearing – Madaris Annexation Located at 539 31 ½ Road** [File# ANX-2001-214]

Resolution for Acceptance of Petition to Annex and Second Reading of the annexation ordinance for the Madaris Annexation located at 539 31 ½ Road. The 5.852–acre Madaris Annexation consists of one parcel of land.

The public hearing opened at 9:36 p.m.

Kathy Portner, Planning Manager, reviewed this item. Ms. Portner stated the property meets annexation requirements and is eligible for annexation.

Sherry Madaris, 539 31 ½ Rd, is trying to buy the house, and it must be zoned residential for financing.

There were no other comments.

The public hearing closed hearing at 9:39 p.m.

Resolution No. 135-01 – A Resolution Accepting Petitions for Annexation, Making Certain Findings, Determining that Property Known as Madaris Annexation is Eligible for Annexation Located at 539 31 ½ Road

Ordinance No. 3392 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Madaris Annexation, Approximately 5.852 acres, Located at 539 31½ Road

Upon a motion by Councilmember Terry, seconded by Councilmember McCurry, and carried by roll call vote, Council passed Resolution No. 135-01 and Ordinance No. 3392.

**Public Hearing - Zoning for the Madaris Annexation Located at 539 31 ½ Road** [File #ANX-2001-214]

Zoning ordinance for the Madaris Annexation located at 539 31 ½ Road. The 5.852-acre Madaris Annexation consists of one parcel of land. Planning Commission recommended

a Residential Single Family with a maximum of four units per acre (RSF-4) zone district. State law requires the City to zone newly annexed areas within 90 days of the annexation. The proposed City zoning confirms to the Growth Plan's Future Land Use map and recommendation for Residential Medium Low, with residential land uses between 2 and 4 units per acre for this area.

The public hearing opened at 9:39 p.m.

Kathy Portner, Planning Manager reviewed this item.

There were no public comments.

The public hearing closed at 9:40 p.m.

Ordinance No. 3393 – An Ordinance Zoning Property Known as the Madaris Annexation to RSF-4 Located at 539 31 ½ Road

Upon motion by Councilmember McCurry, seconded by Councilmember Kirtland, and carried by roll call vote, Council approved Ordinance No. 3393.

### **NON-SCHEDULED CITIZENS & VISITORS**

There were no citizens or visitors wishing to speak.

### **OTHER BUSINESS**

**There was no other business.**

### **EXECUTIVE SESSION**

Upon motion by Councilmember Terry, seconded by Councilmember Kirtland, and carried to go into executive session for the purpose of

**A. PRIVILEGED ATTORNEY - CLIENT COMMUNICATION** - To receive legal advice regarding acquisition of right-of-way based on major street plans, the Colorado River Corridor Plan and similar planning efforts. Open Meetings Act, section 402 (4)(b).

**B. ONGOING NEGOTIATIONS** - To instruct our negotiators regarding the acquisition of right-of-way to be needed for the Colorado River Corridor Plan. Open Meetings Act, section 402 (4)(e).

**C. ONGOING NEGOTIATIONS** - To instruct our negotiations regarding the City's lease purchase of fire fighting equipment, and relating thereto, legal advice regarding the City's options regarding the Colorado EMS Foundation. Open Meetings Act, section 402 (4)(a) and (4)(e) and (4)(b).

**D. PRIVILEGED ATTORNEY - CLIENT COMMUNICATION**- To receive legal advice regarding the City's relationship with the DDA, including specific current issues. Open Meetings Act, section (4)(b).

It was noted that Council will not be making and decisions and will not be returning to regular session. The City Attorney noted the wording for the motion was the simplified version.

## **ADJOURNMENT**

The City Council adjourned into executive session at 9:50 p.m., and moved to the Municipal Hearing Room.

Stephanie Tuin, CMC  
City Clerk

December 17,2001

Councilmembers,

We the representatives of the Recyclers, Impound lot and Wrecking Yard owners continue to oppose the changes to the zoning and development code as proposed by the Planning Department on Nov. 6,2001.

We have invested nearly two years; 14 meetings with Dan Wilson and numerous city council and planning meetings into the thirteen pages of our proposal.

We entered into this process in good faith to help solve a problem city wide. We worked with Dan Wilson amicably during that time. Even with opposing views we were able to compromise.

Our industry perspective allowed Mr. Wilson to incorporate language appropriate to the intention of the Planning & Development code while still addressing the unique needs of these industries.

We present several considerations for your review:

- 1) Use the guidelines developed by this committee and Mr. Wilson with further negotiations regarding the issue of plant materials and forced relocation of existing businesses. It is anticipated that this consideration will have no impact on the landfill and will incorporate current recycling practices.
- 2) Do not segregate us from any other business. Include us in general outdoor storage.
- 3) Accept proposed changes by the Planning Department of 4.3 which would be most cost prohibitive for existing businesses to relocate to accommodate the city's traffic growth plan. The result would be the elimination of said businesses thereby causing an impact on local recycling capability within the entire Western Slope. The resulting effect could be the city being responsible for the collection, processing & disposal including all the environmental impacts of appliances, vehicles and equipment.

In closing, it is our view that consideration 1 would be the most viable for both the city and our industries, and best accommodate the needs of the community.

Recycling, Impound lot & Wrecking Yard Owners Committee

**Attach 2**  
**Meeting Schedules & Posting Notices**

**CITY COUNCIL AGENDA**  
**CITY OF GRAND JUNCTION**

<i>CITY COUNCIL</i>		
<b>Subject:</b>	<b>Meeting Schedule and Posting of Notices</b>	
<b>Meeting Date:</b>	<b>January 2, 2002</b>	
<b>Date Prepared:</b>	<b>December 16, 2011</b>	
<b>Author:</b>	<b>Stephanie Tuin</b>	<b>City Clerk</b>
<b>Presenter Name:</b>	<b>Stephanie Tuin</b>	<b>City Clerk</b>
	<b>Workshop</b>	<b>X      Formal Agenda</b>

**Subject:** Annual Designation of the Location for the Posting of Meeting Notices, the 2002 City Council Meeting Schedule and the Special Meeting Procedure.

**Summary:** State Law requires an annual designation of the City's official location for the posting of meeting notices. The City's Code of Ordinances, Sec. 2-26, requires the meeting schedule and the procedure for calling special meetings be determined annually by resolution.

**Background Information:** In 1991, the Open Meetings Law was amended to include a provision that requires that a "local public body" annually designate the location of the public place or places for posting notice of meetings and such designation shall occur at the first regular meeting of each calendar year (24-6-402(2)(c) C.R.S.). The location designated is to be the glassed-in bulletin board outside the auditorium lobby at 250 N. 5<sup>th</sup> Street.

As of 1994, the revised City Code of Ordinances included a provision whereby the City Council determined annually the City Council meeting schedule and the procedure for calling a special meeting.

**Budget:** NA

**Action Requested/Recommendation:** Adopt the resolution

<b>Citizen Presentation:</b>	<b>No</b>	<b>Yes</b>	<b>If Yes,</b>
<b>Name:</b>			
<b>Purpose:</b>			

<b>Report results back to Council:</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>	
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<b>Placement on Agenda:</b>	<input checked="" type="checkbox"/>	<b>Consent</b>	<input type="checkbox"/>	<b>Indiv. Consideration</b>	<input type="checkbox"/>	<b>Workshop</b>
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**Conflicts that may affect the meeting schedule:**

**Workshops**

Feb. 18, 2002 - Presidents Day  
Sept. 2, 2002 - Labor Day

**Council Meetings**

June 19, 2002 - CML  
July 3, 2002 - Fruita Fireworks



CITY OF GRAND JUNCTION

RESOLUTION NO. \_\_\_\_-02

A RESOLUTION OF THE CITY OF GRAND JUNCTION  
DESIGNATING THE LOCATION FOR THE POSTING OF THE NOTICE  
OF MEETINGS, ESTABLISHING THE CITY COUNCIL  
MEETING SCHEDULE AND THE PROCEDURE FOR CALLING OF  
SPECIAL MEETINGS FOR THE CITY COUNCIL

Recitals.

The City Council of the City of Grand Junction is a "local public body" as defined in C.R.S. §24-6-402 (1)(a).

The City Council holds meetings to discuss public business.

The C.R.S. §24-6-402 (2)(c) provides that "Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than 24 hours prior to the holding of the meeting. The public place or places for posting of such notice shall be designated annually at the local public body's first regular meeting of each calendar year".

The Grand Junction Code of Ordinances, Section 2-26, provides that the meeting schedule and the procedure for calling of special meetings of the City Council shall be established by resolution annually.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO THAT:

1. The Notice of Meetings for the local public body shall be posted on the glassed-in exterior notice board at 250 N. 5<sup>th</sup> Street, City Hall.
2. The meeting schedule for the regular meetings of the City Council is the first and third Wednesday of each month, at the hour of 7:30 p.m.

3. A special meeting may be called by the President of the City Council for any purpose and notification of such meeting shall be posted twenty-four hours prior to the meeting. Each and every member of City Council shall be notified of any special meeting at least twenty-four hours in advance.

Read and approved this \_\_\_\_ day of January, 2002.

\_\_\_\_\_  
Council

\_\_\_\_\_ President of the

ATTEST:

\_\_\_\_\_  
City Clerk

**Attach 3**  
**Sole Source Police Computers**

**CITY COUNCIL AGENDA**  
**CITY OF GRAND JUNCTION**

<i>CITY COUNCIL</i>			
<b>Subject:</b>	<b>Sole Source Approval for Police computers</b>		
<b>Meeting Date:</b>	<b>January 2, 2002</b>		
<b>Date Prepared:</b>	<b>December 19, 2001</b>		
<b>Author:</b>	<b>Susan J. Hyatt</b>	<b>Title: Senior Buyer</b>	
<b>Presenter Name:</b>	<b>Robert Knight</b>	<b>Title: Lieutenant/Police Admin</b>	
	<b>Workshop</b>	<b>X</b>	<b>Formal Agenda</b>

**Subject:** Request approval from City Council for the sole source purchase of 33 Panasonic CF28 computers for Patrol cars plus 1 with an integrated modem for the Communications Center. The purchase will be made from PCS/Portable Computer Systems.

**Summary:** The existing computers have reached the end of their usable life and require replacement.

**Background Information:** The sole source procurement is required for compatibility or conformity with other City-owned equipment in which non-conformance would require the expenditure of additional funds. PCS/Portable Computer Systems is the regional Panasonic Distributor for Colorado located in Golden.

**Budget:** Total budget is **\$134,823**. This purchase will be \$133,080 after PCS provides a trade-in allowance of \$6000 for the return of 20 old devices at \$300 each.

**Action Requested/Recommendation:** City Council approval for the sole source purchase from PCS/Portable Computer Systems for 34 Panasonic computers in the amount of \$133,080.

<b>Citizen Presentation:</b>		<b>No</b>		<b>Yes</b>	<b>If Yes,</b>
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<b>Name:</b>	
<b>Purpose:</b>	

<b>Report results back to Council:</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>	
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<b>Placement on Agenda:</b>	<input checked="" type="checkbox"/>	<b>Consent</b>	<input type="checkbox"/>	<b>Indiv. Consideration</b>	<input type="checkbox"/>	<b>Workshop</b>
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**Attach 4**  
**Special Even Funding**

**CITY COUNCIL AGENDA**  
**CITY OF GRAND JUNCTION**

<i>CITY COUNCIL</i>			
<b>Subject:</b>	<b>Special Event Funding Awards</b>		
<b>Meeting Date:</b>	<b>January 2, 2002</b>		
<b>Date Prepared:</b>	<b>December 19, 2001</b>		
<b>Author:</b>	<b>Debbie Kovalik</b>	<b>Title</b>	<b>Executive Director</b>
<b>Presenter Name:</b>	<b>Debbie Kovalik</b>	<b>Title</b>	<b>Executive Director</b>
	<b>Workshop</b>	<b>X</b>	<b>Formal Agenda</b>

**Subject:** Approve \$14,670 in Special Event funding awards to 6 events.

**Summary:** Ten applications for funding were received by the November 6 deadline. After review and discussion of the applications, the VCB Board recommends funding the following six events:

\$4,500	Colorado Mountain Winefest
\$2,000	Kokopelli Adventure Race
\$ 500	Celtic Festival and Highland Games
\$1,670	Rim Rock Run
\$2,000	Fruita Fat Tire Festival (provisional*)
\$4,000	Country Jam USA (provisional**)

**Background Information:** Applications were reviewed at a Board workshop November 13, with discussions continuing at the regular monthly meeting December 11. The Board voted unanimously to award funds as listed above. Two of the award recommendations are made with provisions: \*(1) Fruita Fat Tire Festival must receive matching funds from the City of Fruita; \*\*(2) Country Jam will not receive a cash distribution, but the VCB will develop and pay for ads promoting the event.

**Budget:** \$30,000 is budgeted for 2002; \$15,000 is earmarked for a VCB-sponsored event that is in the planning stage.

**Action Requested/Recommendation:** Approve funding awards as recommended.

<b>Citizen Presentation:</b>		<b>No</b>		<b>Yes</b>	<b>If Yes,</b>
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<b>Name:</b>	
<b>Purpose:</b>	

<b>Report results back to Council:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>	
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<b>Placement on Agenda:</b>	<input checked="" type="checkbox"/>	<b>Consent</b>	<input type="checkbox"/>	<b>Indiv. Consideration</b>	<input type="checkbox"/>	<b>Workshop</b>
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**Attach 5**  
**Strategic Cultural Plan**

**CITY COUNCIL AGENDA**  
**CITY OF GRAND JUNCTION**

<i>CITY COUNCIL</i>			
<b>Subject:</b>	<b>Approval of the Grand Junction Strategic Cultural Plan</b>		
<b>Meeting Date:</b>	<b>January 2, 2002</b>		
<b>Date Prepared:</b>	<b>December 19, 2001</b>		
<b>Author:</b>	<b>Allison Sarmo</b>	<b>Cultural Arts Coordinator</b>	
<b>Presenter Name:</b>	<b>Allison Sarmo</b>	<b>Cultural Arts Coordinator</b>	
	<b>Workshop</b>	<b>X</b>	<b>Formal Agenda</b>

**Subject:** Adoption of a resolution to approve the 2001 update of the *Grand Junction Strategic Cultural Plan*.

**Summary:** The Grand Junction Commission on Arts and Culture convened a 50 member cultural plan steering committee to revise the 1991 cultural plan. The plan's recommendations are a ten year blue-print for arts and cultural development, activities, organizations, and facilities throughout the community.

**Background Information:** The *Grand Junction Strategic Cultural Plan* was reviewed at the City Council December 3 Workshop. The plan addresses the following needs and issues:

- ◆ Arts Education
- ◆ Cultural Facilities
- ◆ Historic Preservation
- ◆ Funding Resources and Economic Benefits
- ◆ Local Artists and the Arts Industry
- ◆ Marketing, Promotion, and Cultural Tourism
- ◆ Urban Design and Public Art

**Budget:** No specific additional funding required.

**Action Requested/Recommendation:** Adopt a resolution to approve the 2001 update of the *Grand Junction Strategic Cultural Plan*.

<b>Citizen Presentation:</b>		<b>No</b>		<b>Yes</b>	<b>If Yes,</b>
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<b>Name:</b>	
<b>Purpose:</b>	

<b>Report results back to Council:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>	
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<b>Placement on Agenda:</b>	<input checked="" type="checkbox"/>	<b>Consent</b>	<input type="checkbox"/>	<b>Indiv. Consideration</b>	<input type="checkbox"/>	<b>Workshop</b>
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**Attach 6**  
**Grant on the Arts**

**CITY COUNCIL AGENDA**  
**CITY OF GRAND JUNCTION**

<i>CITY COUNCIL</i>		
<b>Subject:</b>	<b>Execution of a contract for a grant from the Colorado Council on the Arts to the Grand Junction Commission on Arts and Culture</b>	
<b>Meeting Date:</b>	<b>January 2, 2002</b>	
<b>Date Prepared:</b>	<b>December 19, 2001</b>	
<b>Author:</b>	<b>Allison Sarmo</b>	<b>Cultural Arts Coordinator</b>
<b>Presenter Name:</b>	<b>Allison Sarmo</b>	<b>Cultural Arts Coordinator</b>
<b>Workshop</b>	<b>X</b>	<b>Formal Agenda</b>

**Subject:** Approval and signing of a state contract with the Colorado Council on the Arts to award a \$3,200 grant to the GJ Commission on Arts and Culture.

**Summary:** The Commission would like to accept a \$3,200 grant from the Colorado Council on the Arts in 2002. This funding will be added to the existing budget for Commission support of local arts and cultural events, projects, and programs.

**Background Information:** Each year the Commission is awarded grant funding from CCA to augment their re-granting program of support for arts and cultural events, projects, and programs throughout Grand Junction. This program was instituted to increase the quantity and enhance the quality of area arts activities, and encourage affordable ticket prices so all citizens have access to the arts, by supporting events and projects produced by arts organizations (since the Commission is not itself a presenting organization). Past grant awards have been: 2001 - \$5,000, 2000 - \$3,500, 1999 - \$5,200, 1998 - \$5,000, 1997 - \$4,000, 1996 - \$1,000, and 1995 - \$2,000. (Amounts vary because of fluctuations in the Colorado Council's budget.)

**Budget:** No additional funding is required other than the \$26,000 already in the Commission's 2002 budget for this program.

**Action Requested/Recommendation:** Approve the City Manager's signing a contract with the Colorado Council on the Arts for a grant to the Arts Commission.

<b>Citizen Presentation:</b>	<b>No</b>	<b>Yes</b>	<b>If Yes,</b>
<b>Name:</b>			
<b>Purpose:</b>			

<b>Report results back to Council:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>	<input type="text"/>
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<b>Placement on Agenda:</b>	<input checked="" type="checkbox"/>	<b>Consent</b>	<input type="checkbox"/>	<b>Indiv. Consideration</b>	<input type="checkbox"/>	<b>Workshop</b>
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**Attach 7  
Independence Ranch Filing 8**

**CITY COUNCIL AGENDA  
CITY OF GRAND JUNCTION**

<i>CITY COUNCIL</i>			
<b>Subject:</b>	<b>Temporary Easement Vacation Independence Ranch Filing 8</b>		
<b>Meeting Date:</b>	<b>January 2, 2002</b>		
<b>Date Prepared:</b>	<b>December 19, 2001</b>		
<b>Author:</b>	<b>Bill Nebeker</b>	<b>Senior Planner</b>	
<b>Presenter Name:</b>	<b>Bill Nebeker</b>	<b>Senior Planner</b>	
	<b>Workshop</b>	<b>X</b>	<b>Formal Agenda</b>

**Subject:** Vacation of a Temporary Turnaround Easement and Stormwater Retention Easement – Independence Ranch Filing 8: File #VE-2001-224.

**Summary:** The applicant proposes to vacate a temporary turnaround easement and a temporary stormwater retention easement at the end of Tranquil Trail in Independence Ranch Filing 8. The subdivision is located at the northeast corner of 20 ½ and F ¾ Road. At its hearing of December 18, 2001 the Planning Commission recommended approval of this request.

**Background Information:** See Attached

**Budget:** N/A

**Action Requested/Recommendation:** Adopt resolution.

<b>Citizen Presentation:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>If Yes,</b>
<b>Name:</b>	<b>Various</b>				
<b>Purpose:</b>					

<b>Report results back to Council:</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>	
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<b>Placement on Agenda:</b>	<input checked="" type="checkbox"/>	<b>Consent</b>	<input type="checkbox"/>	<b>Indiv. Consideration</b>	<input type="checkbox"/>	<b>Workshop</b>
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<b>BACKGROUND INFORMATION</b>					
<b>Location:</b>		NEC 20 ½ & F ¾ Roads			
<b>Applicant:</b>		Hans Brutsche			
<b>Existing Land Use:</b>		Vacant			
<b>Proposed Land Use:</b>		Single family homes (13)			
<b>Surrounding Land Use:</b>	<b>North</b>	Colorado River & open space			
	<b>South</b>	Forrest Hills Subdivision (Single Family)			
	<b>East</b>	Panorama Subdivision (Single Family)			
	<b>West</b>	A. Country Meadows Sub (Single Family)			
<b>Existing Zoning:</b>		PD (PR 1.7)			
<b>Proposed Zoning:</b>		No change proposed			
<b>Surrounding Zoning:</b>	<b>North</b>	County R-2			
	<b>South</b>	County R-2			
	<b>East</b>	County R-2			
	<b>West</b>	County R-2			
<b>Growth Plan Designation:</b>		Res. Medium Low: 2 to 4 units per acre			
<b>Zoning within density range?</b>		X	Yes		No

**STAFF ANALYSIS**

In conjunction with a request to develop Independence Ranch Filing 8 Subdivision the applicant requests to vacate a temporary turnaround easement that was dedicated on the Filing 7 plat at the end of Tranquil Trail. The purpose of the temporary turnaround is to provide a legal easement over an area that has been graded for a turnaround at the end of development in the previous filing. There is no longer a need for the easement because Filing 8 will extend Tranquil Trail an additional 600 feet to the south. Another temporary turnaround will be provided at the end of Tranquil Trail in Filing 8.

Also to be vacated is any interest the City may have in a temporary stormwater detention easement that was to be conveyed to the homeowner's association by separate instrument. This easement is no longer necessary since the road is being extended further north. A new detention area will be provided in Filing 8.

Review Criteria: At its hearing of December 18, 2001 the Planning Commission found that the proposed easement vacations conform to the review criteria set forth in Section 2.11C of the Zoning and Development Code as follows:

1. Granting the easement vacations do not conflict with applicable Sections of the Growth Plan, major street plan and other adopted plans and policies of the City.
2. No parcel becomes landlocked as a result of the vacations.
3. Access to any parcel is not restricted.
4. There are no adverse impacts on health, safety or welfare of the general community. The quality of public facilities and services provided to any parcel is not reduced due to these vacations.
5. The provision of adequate public facilities and services will not be inhibited to any property as required in Chapter 6 of this Code.
6. The proposal provides benefits to the City by allowing further development of this multi-phased subdivision.

**PLANNING COMMISSION RECOMMENDATION:** Approval of both requests.

**ATTACHMENTS:**

1. Aerial photo
2. Vicinity map
3. Easement Vacation Exhibit



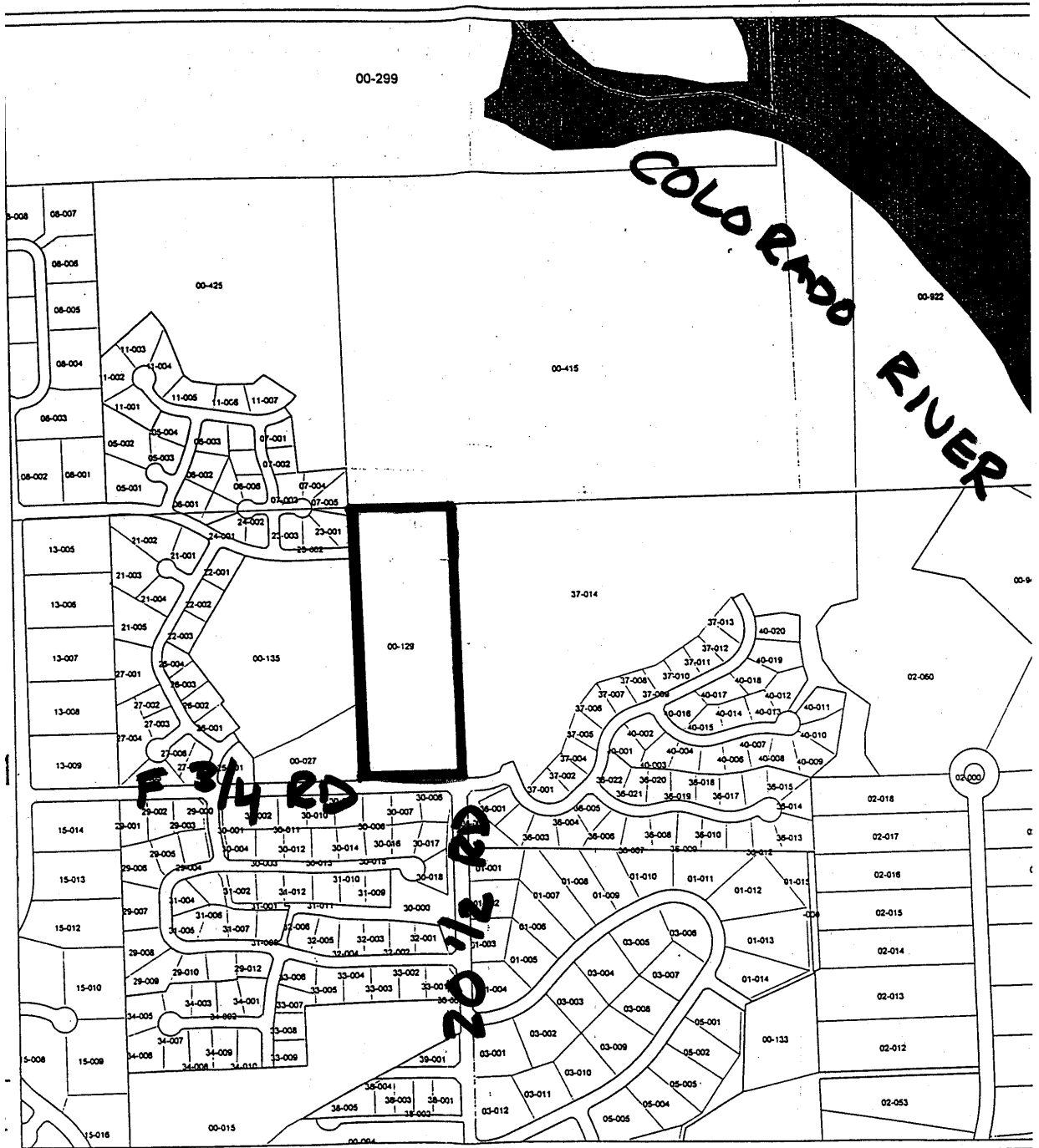


2947-152-00-129















CITY OF GRAND JUNCTION

Resolution No. \_\_\_\_\_

VACATING A TEMPORARY TURNAROUND AND STORMWATER RETENTION  
EASEMENT AT THE END OF TRANQUIL TRAIL IN  
INDEPENDENCE RANCH SUBDIVISION

Recitals.

In conjunction with a request to develop Independence Ranch Filing 8 Subdivision the applicant requests to vacate a temporary turnaround easement that was dedicated on the Filing 7 plat at the end of Tranquil Trail. Also to be vacated is any interest the City may have in a temporary stormwater detention easement that was to be conveyed to the homeowner's association by separate instrument.

After public notice the Planning Commission found at its hearing of December 18, 2001 that the proposed vacation conforms to the review criteria set forth in Section 2.11C and recommended approval.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE  
CITY OF GRAND JUNCTION, COLORADO:

City Council finds that the vacation meets the criteria set forth in Section 2.11C of the Grand Junction Zoning and Development Code and in accordance therewith the following described easements are hereby vacated:

Temporary Turnaround Easement:

A Temporary Turnaround Easement as dedicated and shown on the plat of Independence Ranch Filing 7, which is on file with the Mesa County Clerk and Recorder at Reception No. 2006386; said easement described by metes and bounds as follows:

Beginning at the Northwest corner of Lot 4 Block 4, Independence Ranch Filing 7; Thence along the Northerly right-of-way line of Tranquil Trail, North 79°33'00" West, a distance of 44.00 feet to the Westerly right-of-way line of Tranquil Trail, being a point on

a 45.00 foot radius non-tangent curve to the right, whence the radius point bears North 39°43'03" East; Thence 236.77 feet along the arc of said curve, through a central angle of 301°27'53" to the Point of Beginning.

Temporary Stormwater Retention Easement:

A Temporary Stormwater Retention Easement as shown on the plat of Independence Ranch Filing 7, which is on file with the Mesa County Clerk and Recorder at Reception No. 2006386; said easement described by metes and bounds as follows:

Commencing at the Northwest corner of Lot 4 Block 4, Independence Ranch Filing 7; Thence along the Northerly right-of-way line of Tranquil Trail, North 79°33'00" West, a distance of 22.00 feet;

Thence North 10°27'00" East, a distance of 39.26 feet to the Point of Beginning.

Thence North 03°04'48" East, a distance of 85.00 feet to the beginning of a 85.00 foot radius curve radial to said line;

Thence 157.55 feet southeasterly along the arc of said curve, through a central angle of 106°11'58", with a chord bearing South 33°49'13" East, a distance of 135.95 feet

Thence radial to said curve, North 70°43'14" West, a distance of 85.00 feet to the Point of Beginning.

PASSED and ADOPTED this     day of     , 2002.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President of City Council

**Attach 8**  
**Riverside Market**

**CITY COUNCIL AGENDA**  
**CITY OF GRAND JUNCTION**

<i>B. CITY COUNCIL</i>			
<b>C. Subject:</b>	<b>D. Riverside Market, 215 Chuluota Avenue</b>		
<b>E. Meeting Date:</b>	<b>F. January 2, 2002</b>		
<b>G. Date Prepared:</b>	<b>H. December 17, 2001</b>		
<b>Author:</b>	<b>I. Lisa Gerstenberger</b>	<b>K. Senior Planner</b>	
<b>Presenter Name:</b>	<b>Lisa Gerstenberger</b>	<b>Senior Planner</b>	
	<b>M. Workshop</b>		<b>O. Formal Agenda</b>

**Subject:** First reading of the Rezoning Ordinance for 215 Chuluota Avenue, RZ-2001-226.

**Summary:** First reading of the Rezoning Ordinance to rezone 215 Chuluota Avenue from Residential Multi-Family-8 (RMF-8) zone district, to Planned Development (PD) with the Neighborhood Business (B-1) zone as the underlying default zone.

**Background Information:** See Attached

**Budget:** N/A

**Action Requested/Recommendation:** It is recommended that City Council approve first reading of the Rezoning Ordinance.

<b>Citizen Presentation:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>If Yes,</b>
<b>Name:</b>					
<b>Purpose:</b>					

<b>Report results back to Council:</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>	
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Placement on Agenda:	X	Consent		Indiv. Consideration		Workshop
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**AGENDA TOPIC:** RZ-2001-226, Riverside Market.

**SUMMARY:** First reading of the Rezoning Ordinance to rezone 215 Chuluota Avenue from Residential Multi-Family-8 (RMF-8) zone district, to Planned Development (PD) with the Neighborhood Business (B-1) zone as the underlying default zone.

<b>BACKGROUND INFORMATION</b>			
<b>Location:</b>		215 Chuluota Avenue	
<b>Applicants:</b>		<b>Jose Martinez and Cindy Enos-Martinez, Owners</b> <b>Mike Joyce, Representative</b>	
<b>Existing Land Use:</b>		Vacant Comm. building/Residential	
<b>Proposed Land Use:</b>		Commercial/Residential	
<b>Surrounding Land Use:</b>	<b>North</b>	Vacant church building	
	<b>South</b>	<b>Residential</b>	
	<b>East</b>	<b>Residential</b>	
	<b>West</b>	<b>Residential</b>	
<b>Existing Zoning:</b>		<b>RMF-8</b>	
<b>Proposed Zoning:</b>		<b>Planned Development w/B-1 default zone</b>	
<b>Surrounding Zoning:</b>	<b>North</b>	RMF-8	
	<b>South</b>	<b>RMF-8</b>	
	<b>East</b>	<b>RMF-8</b>	
	<b>West</b>	<b>RMF-8</b>	
<b>Growth Plan Designation:</b>		<b>Residential Medium, 4-8 du/ac</b>	
<b>Zoning within density range?</b>		<b>X</b>	<b>Yes</b>
			<b>No</b>

**ACTION REQUESTED:** Consideration of request to rezone from Residential Multi-Family 8 (RMF-8) to Planned Development (PD) with B-1 default zone.

**Project Background/Summary**

The applicant has requested a Growth Plan Consistency Review to allow redevelopment of a neighborhood grocery market in the Riverside Neighborhood which

is currently zoned RMF-8. A Consistency Review determines if the proposed project is consistent with the goals and policies of the Plan and is the basis for the applicant's request to rezone from the RMF-8 to PD zone district. The Consistency Review will be considered by Council during the second reading and public hearing of the Rezoning Ordinance.

The subject property is located at 215 Chuluota Avenue, although Mesa County Assessor's records indicate the property is addressed as 502 W. Colorado Avenue because of the property's previous affiliation with the Riverside Baptist Church across the street. The property is currently developed with an existing non-residential building of approximately 1,500 square feet located on the corners of Colorado Avenue and Chuluota Avenue, and a single family residence facing Chuluota Avenue. The existing non-residential building was constructed in 1911 as a grocery store and is constructed almost to the front property lines along Colorado Avenue and Chuluota Avenue. There is no off-street parking available on the site due to the location of existing structures.

The grocery market was in business from 1911 until 1984 when the building was purchased by the Baptist church for use as Sunday school classrooms. The applicant would like to redevelop the existing non-residential building as a neighborhood grocery market and continue to utilize the single family residence for residential purposes. The current RMF-8 zoning allows the residential use but precludes the redevelopment of a neighborhood market.

### **Access/Streets/Parking**

Access for the proposed project will be provided by street frontage on Colorado Avenue and Chuluota Avenue. There is no off-street parking available on the site. The grocery market is intended to serve the Riverside community and is expected to be accessed by primarily pedestrian traffic which will be accommodated by existing sidewalks in the neighborhood. The proposed PD zone district will not require off-street parking for the grocery store due to the neighborhood orientation of the proposed uses.

### **Lot Configuration and Bulk Requirements**

The Neighborhood Business, B-1 zone district is being proposed as the underlying default district. Bulk standards are specified in table format on the Final Plan and will be incorporated into the rezoning ordinance for the PD zone district.

### **Drainage/Irrigation/Utilities**

Because existing structures are being utilized, there will not be an increase in stormwater runoff from the proposed project. Existing infrastructure will accommodate the minute stormwater runoff from the proposed deck/patio area. Irrigation water is not proposed for this development, and all required utilities are currently available.

CHAPTER 5, PLANNED DEVELOPMENT DISTRICTS:



Staff finds that the request to rezone to PD is consistent with the applicable portions of the intent and purpose of Chapter 5. The applicant has addressed the permitted uses, development standards and non-residential intensity use standards, and identified the deviations from the underlying default zone district standards.

The minimum district size of 5 acres can not be met; however, Section 5.4.E of the Code allows the Planning Commission to consider a smaller site that is determined to be appropriate for redevelopment as a Planned District. Because the applicant plans to utilize an existing non-residential structure and offer neighborhood services to the surrounding community, staff has recommended approval of the site for redevelopment as a Planned District. After consideration of the proposed redevelopment project, the Planning Commission determined that the site was appropriate for redevelopment as a Planned District.

#### **REZONING CRITERIA:**

The rezone request must be evaluated using the criteria noted in Section 2.6.A of the Zoning and Development Code. The criteria are as follows:

- 1. The existing zoning was in error at the time of adoption.** The existing zoning was not in error at the time of adoption. The zoning was based on the existing use (church classrooms) at the time the RMF-8 zone district was applied.
2. There has been a change of character in the neighborhood due to installation of public facilities, other zone changes, new growth trends, deterioration, development transitions, etc. **The property is located in an area that is primarily built out and is residential in character with supporting services such as a church and Head Start program located in the community. Even with the proposed market, the character of the neighborhood remains residential in nature.**
3. The proposed rezone is compatible with the neighborhood and will not create adverse impacts such as: capacity or safety of the street network, parking problems, storm water or drainage problems, water, air or noise pollution, excessive nighttime lighting, or other nuisances. **The proposed rezone is compatible with the neighborhood because it is intended to support the neighborhood in which the proposed grocery market is located. There are no anticipated adverse impacts because existing buildings and infrastructure will be redeveloped and utilized.**
4. The proposal conforms with and furthers the goals and policies of the Growth Plan, other adopted plans, and the policies, the requirements of the Code and other City

regulations and guidelines. **The proposal conforms with a number of goals and policies of the Growth Plan as have been noted earlier in staff's report.**

5. Adequate public facilities and services are available or will be made available concurrent with the projected impacts of the proposed development. **Adequate public facilities are currently available.**
6. There is not an adequate supply of land available in the neighborhood and surrounding area to accommodate the zoning and community needs. **The neighborhood has a limited amount of land that is undeveloped. The applicant would like to utilize an existing building and infrastructure for the proposed redevelopment project.**
7. The community or neighborhood will benefit from the proposed zone. **The proposed rezone would provide the neighborhood with many benefits such as the utilization of a vacant building and provision of neighborhood services which will eliminate the need for additional vehicular trips. The proposed redevelopment project will also help to preserve some of the history of the neighborhood.**

**FINDINGS OF FACT/CONCLUSIONS:**

**After reviewing the request to rezone from RMF-8 to PD with a B-1 underlying default zone, staff makes the following findings of fact and conclusions:**

1. **The proposed redevelopment of the existing non-residential structure is consistent with and supported by certain goals and policies of the Growth Plan.**
2. **The proposed redevelopment project and request to rezone the property to Planned Development (PD) meets applicable criteria of Chapter 5, Planned Development Districts.**
3. **The request to rezone meets the applicable approval criteria of Section 2.6.A of the Zoning and Development Code, Code Amendment and Rezoning.**

**STAFF RECOMMENDATION:**

Staff recommends approval of the request to rezone from Residential Multi-Family 8 (RMF-8) to Planned Development (PD) with the Neighborhood Business (B-1) as the default zone subject to the following conditions, with the finding that the request to rezone is consistent with the goals and policies of the Growth Plan, the intent and purpose of Chapter 5 and the rezone criteria of Section 2.6.A of the Zoning and Development Code:

1. Dedicate property between the ROW line (to be located by a licensed surveyor) and a line one foot from the building footprint as a multipurpose

easement. If the existing 1/2 street ROW exceeds the required 1/2 street ROW for urban residential street (22 ft), then excess ROW can be counted as equivalent easement footage.

**PLANNING COMMISSION RECOMMENDATION:**

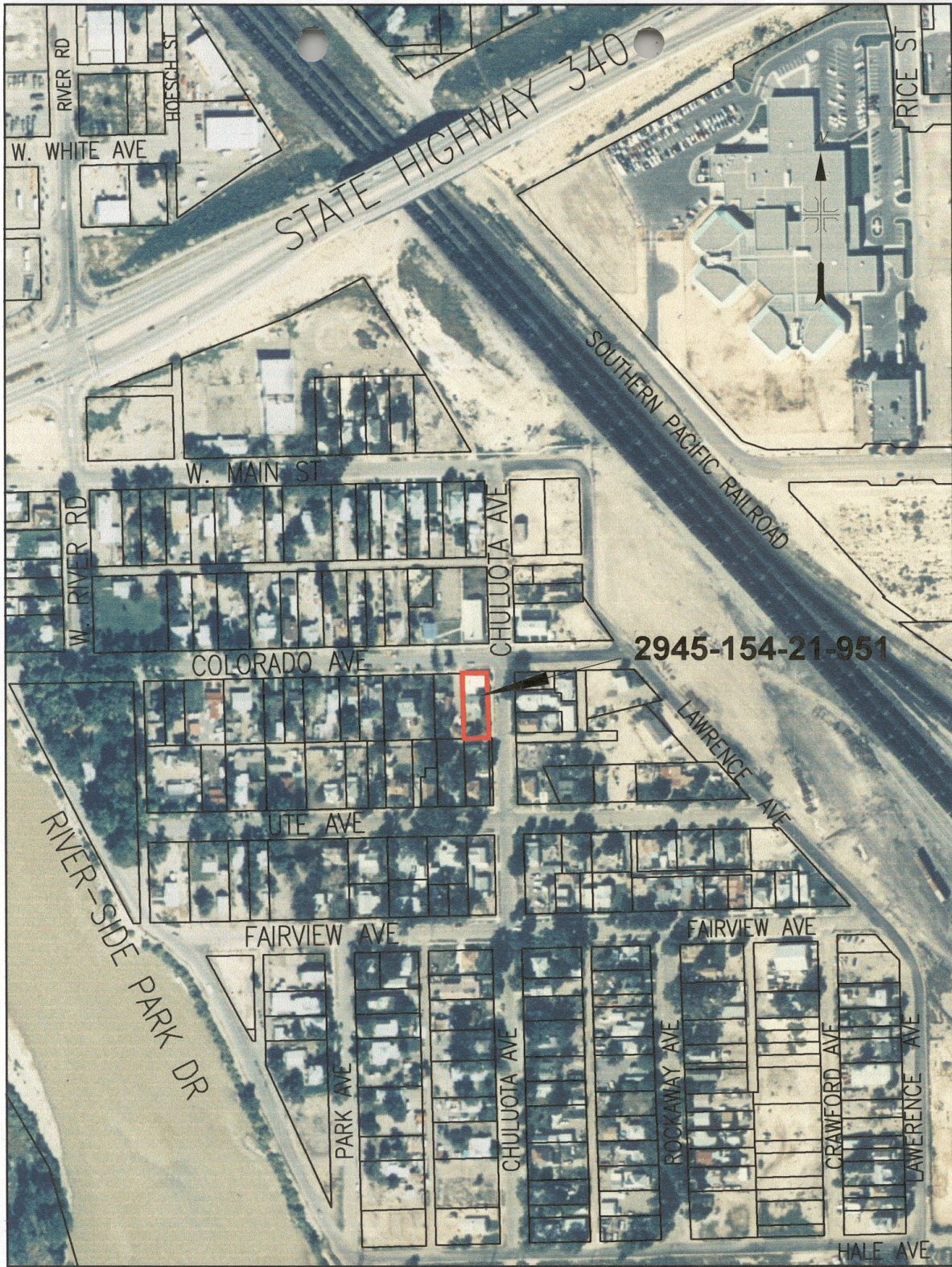
Recommend approval of the request to rezone from Residential Multi-Family 8 (RMF-8) to Planned Development (PD) with the Neighborhood Business (B-1) as the default zone with the following findings:

- The Planned Development zone district is consistent with the goals and policies of the Growth Plan.
- The Planned Development zone district meets the intent and purpose of Chapter 5
- The Planned Development zone district meets the criteria found in Section 2.6(A) of the Zoning and Development Code.

Attachments: Site location map  
Final Plan  
Rezoning Ordinance

H:\Projects2001\RZ-2001-226\RMCityReZord1.doc





STATE HIGHWAY 340

SOUTHERN PACIFIC RAILROAD

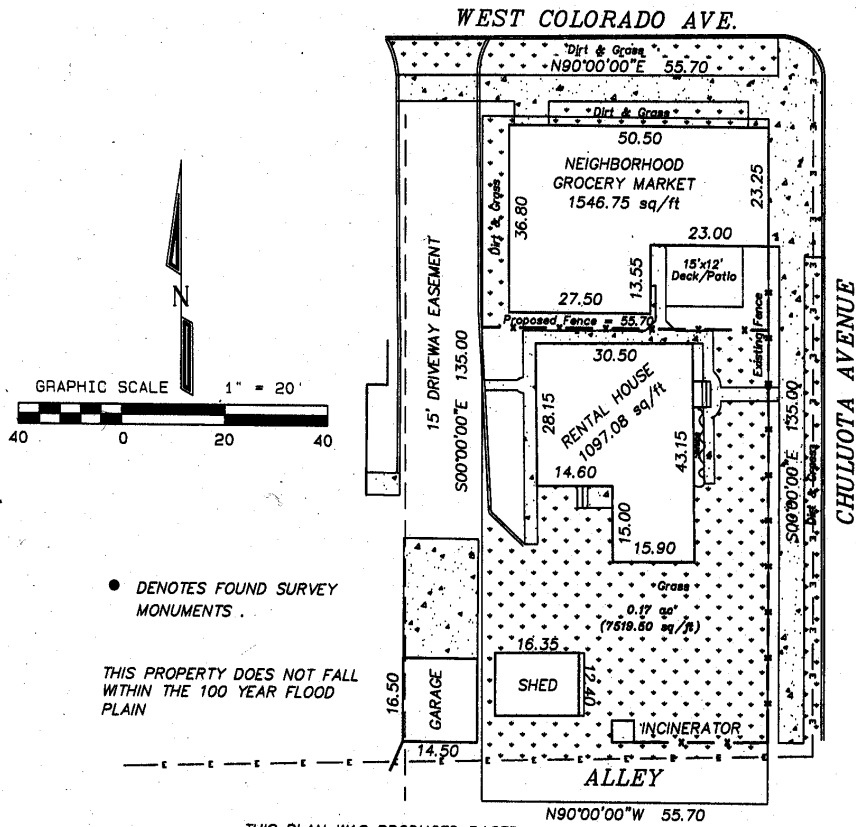
2945-154-21-951

RIVER RD  
HOESCH ST  
W. WHITE AVE  
RICE ST  
W. MAIN ST  
W. RIVER RD  
CHULUOTA AVE  
COLORADO AVE  
UTE AVE  
LAWRENCE AVE  
FAIRVIEW AVE  
RIVER-SIDE PARK DR  
PARK AVE  
CHULUOTA AVE  
ROCKAWAY AVE  
CRAWFORD AVE  
LAWRENCE AVE  
HALE AVE





# FINAL DEVELOPMENT PLAN



THIS PLAN WAS PRODUCED BASED ON INFORMATION PROVIDED BY QED SURVEYING DATED 10-03-01

### Utility Providers

Public Service Company - Electric and Natural Gas  
 Grand Valley Irrigation Company - Irrigation Water  
 Grand Junction Drainage District - Drainage  
 Paragon 201 District - Sanitary Sewer  
 Ute Water District - Potable Water  
 Qwest (US West) - Telephone  
 AT&T Cable Services - Cable Television  
 Grand Junction Fire Department - Fire Protection district  
 Grand Junction Police Department - Police Protection

Table 1  
 Flood Development Zone District Built Standards of Neighborhood Business (B-1) Dimensional Zoning Standards

Maximum Building Height (ft)	Maximum Floor Area (sq ft)	Maximum Lot Coverage (%)	Maximum Setback (ft)	Maximum Sign Area (sq ft)	Maximum Sign Height (ft)	Maximum Sign Spacing (ft)	Maximum Sign Spacing (ft)	Maximum Sign Spacing (ft)	Maximum Sign Spacing (ft)
120	30	30	00	30	10/5	NA	000		40

Revision: 1 Scale: 1" = 20' Date: 11-29-01 Drawn By: JH Checked By: JH Designed By: JH	FINAL DEVELOPMENT PLAN EXHIBIT II FOR: JOSE MARTINEZ AND CINDY ENOS-MARTINEZ GRAND JUNCTION, COLORADO	DEVELOPMENT CONCEPTS, INC. Planning and Development Services 2764 Compass Drive, Suite 201 Grand Junction, CO 81506 Phone (970) 258-1131 Fax (970) 258-1159 E-mail Address - yobubba@dcj.net
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**CITY OF GRAND JUNCTION, COLORADO**

**REZONING ORDINANCE No. \_\_\_\_**

**Ordinance Rezoning 215 Chuluota Avenue  
from the Residential Multi-Family-8 (RMF-8) zone district  
to Planned Development with  
Neighborhood Business (B-1) as the default zone**

Recitals.

After public notice and public hearing as required by the Grand Junction Zoning and Development Code, the Grand Junction Planning Commission recommended approval of rezoning 215 Chuluota Avenue to the Planned Development (PD) zone district with B-1 default zone, for the following reasons:

1. The zone district is consistent with the goals and policies of the Growth Plan.
2. The zone district meets the intent and purpose of Chapter 5.
3. The zone district meets the criteria found in Section 2.6 of the Zoning and Development Code.

After public notice and public hearing before the Grand Junction City Council, City Council finds that the Planned Development (PD) zone district be established.

The Planning Commission and City Council find that the Planned Development (PD) zoning is in conformance with Chapter 5 and the stated criteria of Section 2.6 of the Grand Junction Zoning and Development Code.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION  
THAT:**

The following property shall be rezoned to the Planned Development (PD) zone district:

That part of Lot 3, Blk 10 Mobley's Subd, West of Plank Avenue in Sec 15, T1S, R1W of the UM, Mesa Co., CO.

The underlying default zone shall be Neighborhood Business (B-1) with bulk standards to be specified on the Final Plan.

Introduced on first reading this 2nd day of January, 2002.

PASSED and ADOPTED on second reading this \_\_\_\_ day of January, 2002.

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Mayor

ATTEST:

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City Clerk



**Attach 9**  
**Saccomanno Park Farm Lease**

**CITY COUNCIL AGENDA**  
**CITY OF GRAND JUNCTION**

<i>CITY COUNCIL</i>		
<b>Subject:</b>	<b>Resolution Authorizing a one-year Farm Lease of the City's Saccomanno Park Property to Robert H. Murphy.</b>	
<b>Meeting Date:</b>	<b>January 2, 2002</b>	
<b>Date Prepared:</b>	<b>December 24, 2001</b>	
<b>Author:</b>	<b>Tim Woodmansee</b>	<b>Real Estate Manager</b>
<b>Presenter Name:</b>	<b>Tim Woodmansee</b>	<b>Real Estate Manager</b>
	<b>Workshop</b>	<b>X    Formal Agenda</b>

**Subject:** Resolution authorizing a one-year farm lease of the City's Saccomanno Park property to Robert H. Murphy.

**Summary:** The proposed lease will allow the property to remain in a productive condition pending its development as a community park.

**Background Information:** The 30 acre Saccomanno Park property is located at the southwest corner of 26 ½ Road and H Road. The City purchased the property in 1994 as a Community Park site in accordance with the recommendation of the Parks, Recreation and Open Space Master Plan. Development of the property as a park is scheduled for 2008.

Proposed rent for the 2002 farm lease is \$1,200.00. Mr. Murphy will be required to maintain all aspects of the property and pay for expenses attributed to his use of the property.

Parks Department staff have consented to the terms and conditions of the proposed lease.

**Action Requested/Recommendation:** Pass and adopt Resolution Authorizing a one-year farm lease of the Saccomanno Park property to Robert H. Murphy.

**Attachments:** Vicinity Map; Resolution; Lease Agreement.

<b>Citizen Presentation:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>If Yes,</b>
<b>Name:</b>					
<b>Purpose:</b>					
<b>Report results back to Council:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>
<b>Placement on Agenda:</b>	<input checked="" type="checkbox"/>	<b>Consent</b>	<input type="checkbox"/>	<b>Indiv. Consideration</b>	<input type="checkbox"/>
					<b>Workshop</b>



**RESOLUTION NO. \_\_\_\_\_**

**AUTHORIZING A ONE-YEAR FARM LEASE OF THE  
"SACCOMANNO PARK PROPERTY"  
TO ROBERT H. MURPHY**

WHEREAS, the City of Grand Junction is the owner of that certain real property in the City of Grand Junction, County of Mesa, State of Colorado, described as Lot 4 of the Replat of Lot 2 of Saccomanno Minor Subdivision, situated at the southwest corner of the intersection of 26½ Road and H Road and commonly known as the Saccomanno Park property; and

WHEREAS, Robert H. Murphy desires to lease the farming rights associated with said property during a term which commences on January 1, 2002, and expires on December 31, 2002.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

That the City Manager be authorized, on behalf of the City and as the act of the City, to execute and enter into the attached Farm Lease Agreement with Robert H. Murphy for the lease of the farming rights associated with the above described Property for a term which commences on January 1, 2002, and expires on December 31, 2002, and for a rental fee of \$1,200.00, subject to each and every term and condition of the attached Farm Lease Agreement.

PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2002.

Attest:

\_\_\_\_\_  
President of the City Council

\_\_\_\_\_  
City Clerk

## **FARM LEASE AGREEMENT**

THIS FARM LEASE AGREEMENT is entered into as of the 1<sup>st</sup> day of January, 2002, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Robert H. Murphy, hereinafter referred to as "Lessee", whose address for the purpose of this Agreement is 778 26 ½ Road, Grand Junction, Colorado 81506-8351.

### RECITALS

A. The City is the owner of that certain real property in the City of Grand Junction, County of Mesa, State of Colorado, described as Lot 4 of the Replat of Lot 2 of Saccomanno Minor Subdivision, situated at the southwest corner of the intersection of 26½ Road and H Road and hereinafter referred to as "the Property". The City acquired the property for park purposes and intends to develop the Property as a community park; however, timing for development and use of the Property as a community park is uncertain. Until the Property is developed as a community park, the City believes it is in the best interest of the community that the Property continue to be maintained as a productive farm, that the water rights and ditch rights appurtenant to the Property be used to their full and maximum extent, that all aspects of the Property be maintained to the highest practicable standard, and that expenses be kept to a minimum without waste.

B. Lessee desires to lease the farming rights associated with the Property in accordance with the desires and express intent of the City. Lessee has represented to the City that Lessee possesses the knowledge, experience, equipment, personnel and financial resources to maintain the Property to the highest practicable standard and to use the water and water rights and ditches and ditch rights to their full and maximum extent, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, In consideration of the payment of rent and the performance of the promises, covenants, conditions, restrictions, duties and obligations set forth herein, the parties agree as follows:

1. Grant and Acceptance of Lease. The City hereby leases the farming rights associated with the Property to Lessee, and Lessee hereby accepts and leases the farming rights associated with the Property from the City, for the term stated in paragraph 2 below and for the specific purposes and duties of maintaining all aspects of the Property, including water and water rights and ditches and ditch rights, all in accordance with the terms and conditions of this Agreement.

2. Term. The term of this Lease shall commence on January 1, 2002, and continue through December 31, 2002, at which time this lease shall expire; provided, however, that the City may, in its sole discretion, allow Lessee to continue to occupy a designated portion of the Property for a reasonable period of time for the sole purpose of storing crops which have been harvested from the Property pending the sale and/or delivery of said crops to market.

3. Rental. Rental for the farming rights hereby leased during the term hereinabove specified shall be \$1,200.00, which amount shall be due and payable, without demand by the City, on or before January 31, 2002. In the event payment of rent is not received by the City on or before January 31, 2002, Lessee agrees to pay to the City a late charge of \$100.00, which amount shall be added to the amount of rent(s) due. In the event payment of rent and any late charge is not received by the City on or before February 15, 2002, this lease shall automatically terminate and neither party shall have any further rights, duties or obligations under this Agreement.

4. Reservations from Lease. The City withholds from this Lease and hereby retains and reserves unto itself: (a) all oil, gas, coal and other minerals and mineral rights underlying and/or appurtenant to the Property; (b) all water and water rights, ditches and ditch rights appurtenant to and/or connected with the Property, including, but not limited to, any water and/or water rights which may have been previously used on or in connection with the Property, for whatever purpose; (c) all rights to grant, sell, bargain and convey ownership interest(s) in and to the Property, or any division thereof, to any other party, including the conveyance of easements, so long as such action will not interfere with Lessee's use and quiet enjoyment of the Property for the purposes set forth in this Agreement; (d) the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, in whole or in part, even if such taking is made by and/or for the purposes of the City, or for any conveyance in lieu of condemnation. Lessee hereby assigns and transfers to the City any claim Lessee may assert to compensation, including claims for damages, as a result of any condemnation.

5. Use and Condition of the Property.

5.1 Lessee agrees that Lessee's use the Property is strictly limited to the growing and cultivating of corn and for no other purposes. In connection therewith, Lessee agrees to thoroughly plow, irrigate, cultivate, fertilize and farm all farmable lands upon the Property in a responsible and prudent farm-like manner. This Lease does not authorize Lessee to permit stock of any kind to run in any field on the Property.

5.2 Lessee agrees that Lessee's use and occupancy of the Property shall be subject to all applicable laws, rules, rulings, codes, regulations and ordinances of any governmental authority, either now in effect or hereafter enacted, having jurisdiction over the Property and Lessee's use, occupancy and operations thereon. Lessee agrees that Lessee shall not use nor permit the Property to be used for any other purpose or in any other fashion or manner contrary to this Lease or the laws, ordinances, codes or regulations of any governmental unit or agency exercising jurisdiction over the Property or any use thereon.

5.3 Lessee agrees to maintain, clean and repair all aspects of the Property at Lessee's sole cost and expense, including, but not limited to driveways, fences, gates, ditches, headgates, piping and other irrigation facilities located upon the Property, and to not allow irrigation water to overrun any furrows or otherwise cause damage to the Property or to the real or personal property of any other party. Lessee agrees that the City shall not be obligated nor required to repair damages to any portion or aspect of the Property.

5.4 Lessee agrees to make a reasonable effort to keep the Property free from noxious weeds. Lessee further agrees that Lessee shall not commit nor permit waste, damage or injury to the Property.

5.5 Lessee has inspected the Property, the rights and privileges appurtenant thereto, and the rules, regulations, codes and ordinances governing Lessee's use, occupancy and operations thereon. Lessee agrees that the condition of the Property and such rights, privileges, rules, regulations, codes and ordinances are sufficient for the purposes of Lessee. The City makes no warranties, promises or representations, express or implied, that the Property is sufficient for the purposes of Lessee. If the Property is damaged due to fire, flood or other casualty, or if the Property or any aspect thereto is damaged or deteriorates to the extent where it is not longer functional for the purposes of Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at Lessee's own risk.

6. Irrigation of the Property. Irrigation of the Property is an essential duty and obligation to be undertaken by Lessee on behalf of the City. Irrigation of the Property shall be undertaken in accordance with the following provisions:

6.1 The City agrees to pay the base water assessments, when the same become due and payable, which are levied by authorities having jurisdiction and control over the irrigation water appropriated to the Property.

6.2 Lessee agrees to pay for all costs and fees, when the same become due and payable, which are charged for water usage in excess of the base amounts set forth in subparagraph 6.1 above.

6.3 Lessee shall apply the base water and such additional water as is necessary to the Property to irrigate crops during the historical irrigating season. Any failure by Lessee to irrigate the Property as set forth above, or any of the following acts or omissions on the part of Lessee with respect to the water rights appurtenant to the Property, shall be grounds for immediate termination of this Lease:

- a. failure or refusal to cultivate the Property and/or make use of available water upon the Property without the prior written consent of the City; or
- b. failure to maintain and preserve the irrigation structures, ditches, pipes and other irrigation facilities and appurtenances on the Property in such a manner as to allow the full application of water rights to the Property.

7. Fees and Charges. Lessee shall hold the City harmless from and indemnify the City against any and all fees, charges, costs and expenses associated with the Property, excepting the base water assessment which the City shall pay as set forth in paragraph 6.1. If Lessee shall fail to pay any of the foregoing when the same become due and payable, the City may, without obligation to do so, pay such amount(s) and , in such event, the amount(s) paid by the City, plus interest at the rate of fifteen percent (15%) per annum from the date of such payment by the City, shall be due and payable from Lessee to the City.

8. Nonliability of the City for Damage.

8.1 The City shall not be liable for liability or damage claims for injury to persons or property, including property of Lessee, from any cause relating to the occupancy and use of the Property by Lessee, including those arising out of damages or losses occurring on areas adjacent to the Property or easements used for the benefit of the Property during the term of this Lease or any extension thereof, nor for any injury or damage to any property of Lessee or any other party, from any cause. Lessee shall indemnify the City, its officers, employees and agents, and hold the City, its officers, employees and agents, harmless from all liability, loss or other damage claims or obligations resulting from any injuries, including death, or losses of any nature.

8.2 The City shall not be liable to Lessee for any damages or any loss of profits or loss of opportunities claimed by Lessee or for interruption of Lessee's business or



operations resulting from fire, the elements, casualty of any kind or the closure of any public highway providing access to and from the Property.

9. Hazardous Substances.

9.1 The term "Hazardous Substances", as used in this Agreement, shall mean any substance which is: defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or herbicide regulated under state or federal law. The term "Environmental Law", as used in this Lease Agreement, shall mean each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.

9.2 Lessee shall not cause or permit to occur by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees or employees:

- a. any violation of any Environmental Law on, under or about the Property or arising from Lessee's use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or
- b. the use, generation, accidental or uncontrolled release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance or regulation either now in force or hereafter enacted.

10. Environmental Clean-Up.

10.1 The following provisions shall be applicable to Lessee and to Lessee's agents, guests, invitees, contractors, licensees and employees:

- a. Lessee shall, at Lessee's sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;

- b. Lessee shall, at Lessee's sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all governmental authorities ("the Authorities") under Environmental Laws and other applicable laws.
- c. Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, Lessee shall, at Lessee's sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.
- d. Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Lessee fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability of Environmental Laws to the Property and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessee's obligations hereunder.
- e. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

10.2 Lessee shall indemnify, defend and hold the City, its officers, employees and agents harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances and the violation of any Environmental Law and other applicable law by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees and employees that occur during the term of this Lease or any extension thereof, or from Lessee's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Environmental Laws and other applicable laws. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

11. Default, Sublet, Termination, Assignment.

11.1 Should Lessee: (a) default in the performance of its agreements or obligations herein and any such default continue for a period of thirty (30) days after written notice thereof is given by the City to Lessee; or (b) abandon or vacate the Property; or (c) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed; the City, at the City's option, may cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry shall not operate as a waiver or satisfaction in whole or in part of any claim or demand arising out of or connected with any breach or violation by Lessee of any covenant or agreement to be performed by Lessee. Upon reentry, the City may remove the property and personnel of Lessee and store Lessee's property in a warehouse or at a place selected by the City, at the expense of Lessee and without liability to the City. Any such reentry shall not work a forfeiture of nor shall it terminate the rent(s) to be paid or the covenants and agreements to be performed by Lessee for the full term of this Lease; and, upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting Lessee with the rent so obtained after deducting the cost reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights or remedies which the City may have against Lessee, including, but not limited to, the right of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

11.2 Except as otherwise provided for (automatic and immediate termination), if Lessee is in default in the performance of any term or condition of this Lease Agreement, the City may, at its option, terminate this Lease upon giving thirty (30) days written notice.

If Lessee fails within any such thirty (30) day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If Lessee remedies such default, Lessee shall not thereafter have the right of thirty (30) days (to remedy) with respect to a similar subsequent default, but rather, Lessee's rights shall, with respect to a subsequent similar default, terminate upon the giving of notice by the City.

11.3 Lessee shall not assign or sublease the Property, or any right or privilege connected therewith, or allow any other person, except officers, employees, agents and clientele of Lessee, to occupy the Property or any part thereof without first obtaining the written consent of the City, which consent must be approved and ratified by the City Council of the City. Any attempt to sublet, assign or transfer without the prior written consent of the City shall be void *ab initio*. In the event an assignment of this Lease or a sublease is authorized by the City, Lessee shall not be released from Lessee's



Grand Junction, Colorado 81501-2668  
Fax: (970) 256-4022

To Lessee: Robert H. Murphy  
778 26 ½ Road  
Grand Junction, Colorado 81506-8351  
Fax: (970)

13.2 All notices shall be deemed given: (a) if sent by mail, when deposited in the mail; (b) if delivered by hand or courier service, when delivered; or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

14. Not a Partnership.

14.1 The City, by entering into this Lease Agreement, does not part with its entire possession of the Property, but only so far as it is necessary to enable Lessee to farm the Property and carry out the terms and provisions of this Lease. It is expressly agreed between the parties that this Agreement is one of lease and not of partnership and that the City shall not be or become responsible for any debts contracted or incurred by Lessee. Lessee shall save, indemnify and hold the City, its officers, employees and agents harmless against all liability and loss, and against all claims or actions based upon or arising out of any claim, lien, damage or injury (including death), to persons or property caused by Lessee or sustained in connection with Lessee's performance of the terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code or regulation, either now in force or hereinafter enacted, and the defense of any such claims or actions, including the costs and fees of attorneys, consultants and experts. Lessee shall also save, indemnify and hold the City, its officers, employees and agents harmless from and against all liability and loss in connection with, and shall assume full responsibility for the payment of, all federal, state and local taxes, fees or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged by Lessee.

14.2 The City hereby reserves the right to at all times have its officers, employees and agents enter into and upon the demised premises and every part thereof and to do such acts and things as may be deemed necessary for protection of the City's interests therein.

15. Enforcement, Partial Invalidity, Governing Law.

15.1 If the City uses the services of a city attorney, or engages another attorney or attorneys to enforce its rights hereunder, or to terminate this Agreement, or to defend a claim by Lessee or any person claiming through Lessee, and/or to remove Lessee or Lessee's personal property from the Property, Lessee agrees to pay the reasonable attorney's fees of the City in such regard, plus the costs or fees of any experts, incurred in such action.

15.2 The invalidity of any portion of this Lease Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provisions.

15.3 This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained in this Agreement shall be in Mesa County, Colorado.

16. Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, surrender the Property to the City in good order, condition and state of repair, reasonable wear and use excepted. In the event Lessee fails, for whatever reason, to vacate and surrender the Property upon the expiration or termination of this Lease and the parties have not reached an agreement which would allow Lessee to continue to occupy any portion of the Property, Lessee agrees that Lessee shall pay to the City the sum of \$25.00 per day for each and every day thereafter until Lessee has effectively vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Lessee fails to vacate and surrender the Property upon the expiration or termination of this Lease, and that said \$25.00 daily fee is an appropriate liquidated damages amount.

17. Total Agreement; Applicable to Successors. This Lease contains the entire agreement between the parties and, except for automatic expiration or termination, cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This Lease and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.

The parties hereto have each executed and entered into this Lease Agreement as of the day and year first above written.

Attest:

The City of Grand Junction,  
a Colorado home rule municipality

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City Clerk

---

City Manager

Lessee:

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Robert H. Murphy

**Attach 10**  
**Botanical Society**

**CITY COUNCIL AGENDA**  
**CITY OF GRAND JUNCTION**

<i>CITY COUNCIL</i>		
<b>Subject:</b>	<b>Resolution Authorizing the Exchange of Real Estate with The Western Colorado Botanical Society.</b>	
<b>Meeting Date:</b>	<b>January 2, 2002</b>	
<b>Date Prepared:</b>	<b>December 20, 2001</b>	
<b>Author:</b>	<b>Tim Woodmansee</b>	<b>Real Estate Manager</b>
<b>Presenter Name:</b>	<b>Tim Woodmansee</b>	<b>Real Estate Manager</b>
	<b>Workshop</b>	<b>X    Formal Agenda</b>

**Subject:** Resolution Authorizing the Exchange of Real Estate with The Western Colorado Botanical Society.

**Summary:** The proposed resolution will authorize the exchange of real estate between the City and The Western Colorado Botanical Society.

**Background Information:** The Botanical Society presently leases 15 acres of City property located east of 5<sup>th</sup> Street between Struthers Avenue and the Colorado River. In addition to utilizing the leased premises, the Botanical Society owns an adjoining parcel of land containing 1/3 of an acre.

The Botanical Society's office and Children's Library are situated partially on City property and partially on the parcel owned by the Botanical Society. The Botanical Society has formerly requested the exchange of an equal amount of real estate – essentially a boundary line adjustment – which will place the office and library on property owned entirely by the Botanical Society.

The requested action will require a Simple Subdivision, an Exchange Agreement and the exchange of deeds. The Botanical Society has submitted all necessary documents and information required to accomplish this request.

**Budget:** Staff recommends the Exchange Agreement be structured in a manner that will not obligate the City to pay any expenses related to this request. As a consequence, the Botanical Society will be expected to pay the following estimated costs:

Estimated 2001 Property Taxes	\$ 2,475
Title Insurance	\$ 100



Plat Recording Fee	\$ 10
Deed Recording Fees	\$ 10
Certificate of Taxes Due	\$ <u>10</u>
<b>Total</b>	<b>\$ 2,605</b>

**Action Requested/Recommendation:** Pass and Adopt proposed Resolution authorizing the exchange of real estate with The Western Colorado Botanical Society.

**Attachments:** Vicinity Map; Resolution.

<b>Citizen Presentation:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>If Yes,</b>
<b>Name:</b>					
<b>Purpose:</b>					
<b>Report results back to Council:</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>
<b>Placement on Agenda:</b>	<input checked="" type="checkbox"/>	<b>Consent</b>	<input type="checkbox"/>	<b>Indiv. Consideration</b>	<input type="checkbox"/>
					<b>Workshop</b>

PROPOSED CITY/BOTANICAL SOCIETY PROPERTY EXCHANGE



RESOLUTION NO. \_\_\_\_\_

**AUTHORIZING THE EXCHANGE OF REAL ESTATE  
WITH THE WESTERN COLORADO BOTANICAL SOCIETY**

WHEREAS, the City and the Western Colorado Botanical Society have cooperated for years to create a viable and attractive Botanical Gardens along the banks of the Colorado River; and

WHEREAS, with the prior consent of the City, the Botanical Society has constructed an office and Children's Library which are situated partially on City property and partially on property owned by the Botanical Society; and

WHEREAS, the Botanical Society has requested the exchange of an equal amount of real estate to place the office and children's library on property which will be owned entirely by the Botanical Society; and

WHEREAS, the City Council has determined that the exchange of real estate as requested by the Botanical Society will help further the goals and objectives of both entities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager is hereby authorized to take all actions and execute all documents necessary or appropriate to effectuate the exchange of real estate with the Western Colorado Botanical Society.

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Attest:

\_\_\_\_\_  
President of the Council

\_\_\_\_\_  
City Clerk

**Attach 11**  
**Storm Line Independent Ave Phase 1B**

**CITY COUNCIL AGENDA**  
**CITY OF GRAND JUNCTION**

<i>CITY COUNCIL</i>		
<b>Subject:</b>	<b>Award of Construction Contract for Independent Avenue Utility Improvements Phase IB</b>	
<b>Meeting Date:</b>	<b>January 2, 2002</b>	
<b>Date Prepared:</b>	<b>December 21, 2001</b>	
<b>Author:</b>	<b>Mike Curtis/Don Newton</b>	<b>Project Engineer/Engineering Projects Manager</b>
<b>Presenter Name:</b>	<b>Tim Moore</b>	<b>Public Works Manager</b>
	<b>Workshop</b>	<b>X Formal Agenda</b>

**Subject:** Award of a Construction Contract for **Independent Avenue Utility Improvements Phase IB** to Bogue Construction in the amount of **\$377,846.45**.

**Summary:** Bids were received and opened on December 20, 2001 for **Independent Avenue Utility Improvements Phase IB**. Bogue Construction submitted the apparent low bid in the amount of \$377,846.45.

**Background Information:** This project consists of installation of approximately 114 lineal feet of 60-inch, 77 lineal feet of 36-inch, 292 lineal feet of 24-inch, 1,654 lineal feet of 18-inch, 1,141 lineal feet of 12-inch diameter storm drain, manholes, storm drain inlets, 1,206 lineal feet of 6-inch irrigation pipe, irrigation manholes and service connections, construction surveying, and traffic control. The work is between 25 1/2 Road and First Street on Independent Avenue and along 25 1/2 Road just north of Independent Avenue. A portion of the storm drain work is for the 25 1/2 Road Drainage Improvements, Phase I and must be done in preparation for the street reconstruction scheduled for the spring of 2002.

This project was originally bid with sanitary sewer and water replacements and retaining wall construction. Only one bid was received from M. A. Concrete Construction on November 6, 2001. The bid was not read aloud at the bid opening because it was considerably higher than the Engineer's estimate. A letter was sent to M. A. Concrete stating that their bid was not accepted because it was the only one received and was 23 percent higher than the Engineer's estimate. It was repackaged into two phases and rebid. Phase 1A consists of sanitary sewer and water line replacements. Phase 1B consists of storm drain and irrigation improvements. The retaining walls will be constructed during Phase II, street construction.

Work is scheduled to begin on or about January 21, 2002 and continue for 14 weeks with an anticipated completion date of April 26, 2002.

The following bids were received for this project:

<u>Contractor</u>	<u>From</u>	<u>Bid Amount</u>
Bogue Construction, Inc.	Fruita	\$377,846.45
Skyline Contracting, Inc.	Grand	\$458,794.33
Downey Excavation, Inc.	Montrose	\$501,877.60
M. A. Concrete Construction, Inc.	Grand	\$516,193.17
R. W. Jones Construction, Inc.	Fruita	\$550,339.21
Continental West Constructors,	Eagle	\$568,758.85
Spallone Construction, Inc.	Gunnison	\$580,861.02
Engineer's Estimate		\$517,007.17

**Budget:** This project was budgeted for 2002 construction.

Funding:

2001-2002 Budget -Fund 201-1 Independent	\$1,345,000.00
2001-2002 Budget -Fund 201-25 1/2 Road Drainage	\$20,856.00
2002 Budget-Common Utility Trench	\$25,200.00
<b>Total Funding</b>	<b>\$1,391,056.00</b>

Project Costs:

Phase 1B Utilities Construction Contract	\$377,846.45
Electric Service Conversions Estimate	\$43,000.00
Street Lighting Estimate	\$26,009.00
ROW Acquisition Estimate	\$42,000.00
Phases 1B & II Engineering & Administration	\$105,000.00

Estimate	
Phase II Retaining Walls Construction Estimate	\$87,000.00
Phase II Street Reconstruction Estimate	\$710,000.00
<b>Total Costs</b>	<b>\$1,418,855.45</b>

**Remaining Balance** **\$200.55**

**Action Requested/Recommendation:** City Council motion authorizing the City Manager to execute a Construction Contract for the **Independent Avenue Utility Improvements Phase IB** with Bogue Construction in the amount of **\$377,846.45**.

<b>Citizen Presentation:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>			
<b>Report results back to Council:</b>	<input checked="" type="checkbox"/>	<b>X</b>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>	<input type="checkbox"/>
<b>Placement on Agenda:</b>	<input checked="" type="checkbox"/>	<b>X</b>	<b>Consent</b>	<input type="checkbox"/>	<b>Indiv. Consideration</b>	<input type="checkbox"/>	<b>Workshop</b>

**Attach 12**  
**26 Road Sewer**

**CITY COUNCIL AGENDA**  
**CITY OF GRAND JUNCTION**

<i>CITY COUNCIL</i>		
<b>Subject:</b>	<b>Award of Construction Contract for 26 Road Sewer Trunk Line Extension</b>	
<b>Meeting Date:</b>	<b>January 2, 2002</b>	
<b>Date Prepared:</b>	<b>December 19, 2001</b>	
<b>Author:</b>	<b>Bret Guillory / Trent Prall</b>	<b>Project Engineer / City Utility Engr</b>
<b>Presenter Name:</b>	<b>Trent Prall</b>	<b>City Utility Engineer</b>
	<b>Workshop</b>	<b>X Formal Agenda</b>

**Subject:** Award of a Construction Contract for the **26 Road Sewer Trunk Line Extension** to Precision Excavating in the amount of **\$408,186.00**.

**Summary:** This contract would construct over 5,200 feet of sanitary sewer along the 26 Road corridor from F½ Road to a proposed development northwest of the intersection of 26 Road and G Road and eliminate the Jasmine Lane Lift Station.

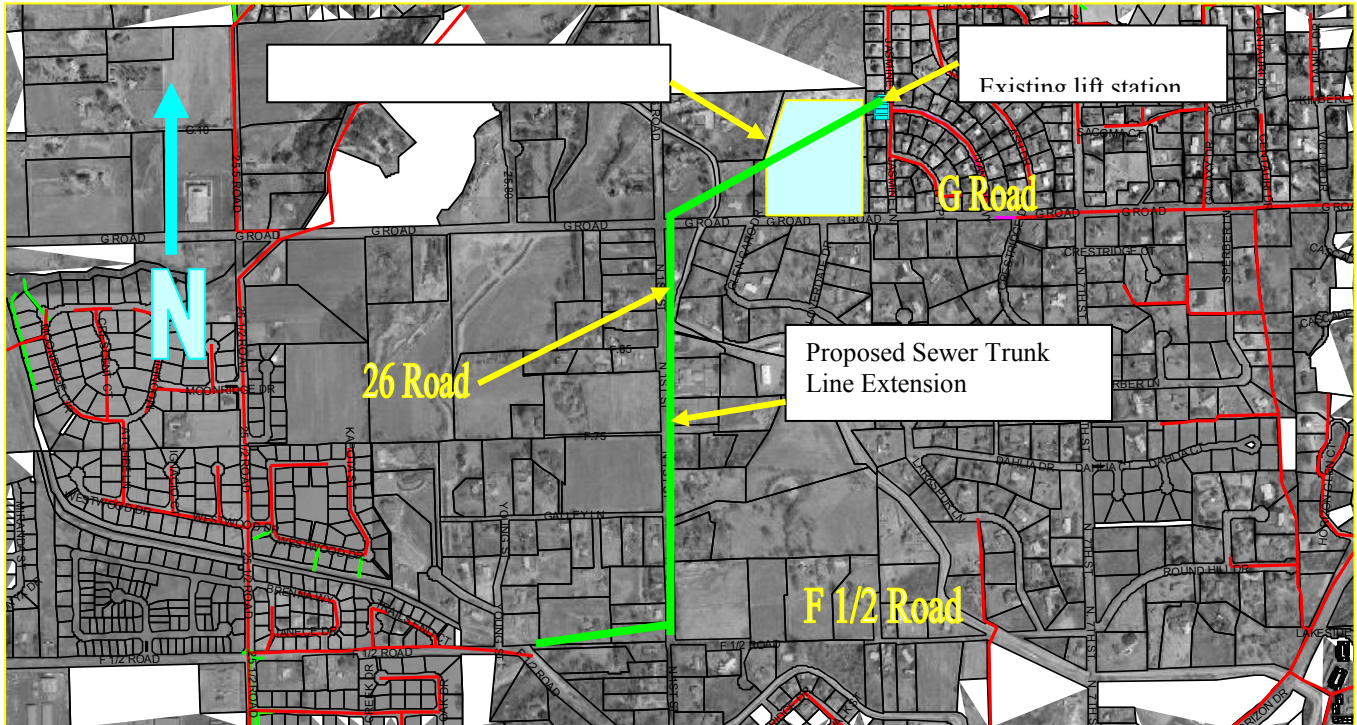
**Background Information:** This project consists of installation of approximately 5,238 lineal feet of 10" & 8" Diameter PVC sewer line, 21 manholes, 23 sanitary sewer taps, 520 lineal feet of 4" PVC service line, aggregate base course, asphalt removal and replacement.

Work is scheduled to begin on or about January 14, 2002 and continue for 81 calendar days with an anticipated completion date of May 8, 2002.

The following bids were received for this project:

<u>Contractor</u>	<u>From</u>	<u>Bid Amount</u>
Precision Excavating, Inc.	Hayden, CO	\$408,186.00
Mendez, Inc.	Grand Jct., CO	\$445,650.00
M.A. Concrete Const.	Grand Jct., CO	\$452,985.00
Downey Excavation, Inc.	Montrose, CO	\$505,972.50
Spallone Construction, Inc.	Gunnison, CO.	\$524,563.00
Bogue Construction, Inc.	Fruita, CO	\$551,447.30
Engineer's Estimate		\$455,255.00

## Project Location:



**Budget:** This project was budgeted for 2002 construction. A letter of credit has been issued to the City of Grand Junction in the amount of \$57,500 from YY-N-Vestments, LLC. \$586,000 has been budgeted in fund 903, the sewer system “trunk extension fund”, for year 2002 sewer trunk extensions.

### Project Costs:

Estimated Project Costs	\$453,000.00
YY-N-Vestments, LLC Contribution	(\$57,500.00)
Total Estimated cost to City of Grand Junction	<u>\$395,500.00</u>

Benefiting properties will repay the Sewer Trunk Extension Fund in accordance with City Resolution 47-93. This ordinance states that existing properties less than 1/3 acre will pay \$1,000, less than 1 acre will pay \$1,500 and greater than 1 acre will pay \$1,750 per lot.

This work was also included in the 2002 Sewer Fund Budget which was recently adopted by the Mesa County Commissioners.



**Action Requested/Recommendation:** City Council motion authorizing the City Manager to execute a Construction Contract for the 26 Road Sewer Trunk Extension with Precision Excavating in the amount of **\$408,186.00**.

<b>Citizen Presentation:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>		
<b>Report results back to Council:</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>	<input type="checkbox"/>
<b>Placement on Agenda:</b>	<input checked="" type="checkbox"/>	<b>Consent</b>	<input type="checkbox"/>	<b>Indiv. Consideration</b>		<b>Workshop</b>

**Attach 13**  
**Redlands Area Study**

**MEMORANDUM**

**December 26, 2001**

Memo To: City Council

From: Tim Moore

CC: Kelly Arnold, Mark Relph

**RE: Redlands Area Transportation and Neighborhood Plan update**

At the request of the City Manager, I have prepared this update on the Redlands Area planning efforts currently underway. The project is nearing completion with the last Public Forum scheduled for January 8<sup>th</sup> and anticipates City Council review and adoption in February.

**BACKGROUND:**

The cities of Grand Junction and Fruita together with Mesa County and CDOT are collectively evaluating the long-term transportation needs of the area. At the same time the Community Development Departments of Grand Junction and Mesa County are updating their associated Land Use Plans for the Redlands Area. I have attached a letter from the transportation consultant, Bob Hazlett, and a memo from Kathy Portner describing the process and next steps for your review. I also attached the January 8<sup>th</sup> newsletter/map for additional information.

**TRANSPORTATION ISSUES:**

Several safety and capacity improvements will be recommended for the area to accommodate current and 2020 projected traffic including:

- a) Widening Redlands Parkway to five lanes from I-70B to Broadway.
- b) Intersection improvements at all major corridor crossings.
- c) Adoption of the recommended Access Management Plan for SH 340.
- d) Vertical and horizontal alignment improvements to various locations.
- e) Widening roadway cross-sections to include striped bike lanes and separated paths.
- f) Additional neighborhood connections to improve traffic flow.

**NEIGHBORHOOD PLAN UPDATE:**

**In addition to the Transportation Plan meetings, a public forum that just focused on future commercial development in the area was held on November 27<sup>th</sup>. Three newsletters have also been sent out to all property owners within the plan outlining issues and soliciting input. The January 8<sup>th</sup> forum will also include a discussion about future land uses. After the January 8<sup>th</sup> meeting, a draft plan will be presented**

**to City and County Planning Commissions and ultimately to City Council for adoption.**

## Memorandum

Date: December 21, 2001

To: Tim Moore

From: Kathy Portner

**RE: Redlands Neighborhood Plan Update**

In conjunction with the Redlands Area Transportation Plan, the City and County are updating the *1986 Redlands Plan and Policies*. The *Mesa Countywide Land Use Plan* and *City of Grand Junction Growth Plan* adopted in 1996 provide the basis for this more detailed neighborhood plan.

The purpose of the plan is to identify issues and changes in the Redlands area and provide specific guidance, priorities and implementation strategies for land use, growth management, community image and character, services and facilities, and open lands and recreation.

Land use issues have been presented and discussed at the Transportation Plan meetings, as well as at an open house and public forum held on November 27<sup>th</sup> that just focused in on future commercial development on the Redlands, including design standards, and proposed changes to the land use map. Three newsletters have been sent to all property owners within the plan area outlining issues, announcing upcoming meetings and soliciting input. Land use issues will again be a part of the discussion at the upcoming January 8<sup>th</sup> open house and public forum.

After the January 8<sup>th</sup> meeting, a draft plan will be put together to be presented to the City and County Planning Commissions and, ultimately, to the City Council for adoption.





Kimley-Horn  
and Associates, Inc.

December 20, 2001

■  
Tower 1, Suite 500  
1515 Arapahoe Street  
Denver, Colorado  
80202

Grand Junction City Council  
Grand Junction City Hall  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

Mesa County Board of Commissioners

Re: Redlands Area Transportation Study

Dear Council Member/Commissioner:

**A Balance for Development**

Development in the Redlands area is growing dramatically. New homes seem to be sold daily, more housing developments are planned for the near future, and at least one new shopping center and the golf course opened this spring. Everyone is recognizing what a great area this is in which to live, and it continues to be a popular recreation area as it has been for years. The growth is putting pressure on the roadway network within the area. Congestion and safety issues may be arising as a problem.

In response to this rapid growth, the Grand Junction/Mesa County Metropolitan Planning Organization (MPO) is undertaking the Redlands Area Transportation Study. With the help of the Colorado Department of Transportation, the Cities of Grand Junction and Fruita, and that of citizens living and working in the area, the existing roadway network was studied to identify existing deficiencies and potential problem areas. An access management plan was developed for SH- 340 to pinpoint and correct potential safety hazards to motorists, bicyclists, and pedestrians along the corridor. Other transportation system needs and improvements were also evaluated. The study will provide options for the area that should be incorporated into the Redlands area development plans that are currently in place, and those which will be developed in the future. This transportation study should be completed in early 2002.

**Citizens Speak Out on SH-340 Improvement Issues**

The first public forum was held on June 5, 2001, with great success. An open house started the meeting off with the public being able to view and comment on information gathered to date for the project as well as

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TEL 303 446 8552  
FAX 303 446 8678



Kimley-Horn  
and Associates, Inc.

information provided by the City Planning Department covering current land use plan updates. After the formal presentation by Bob Hazlett, Kimley-Horn & Associates, those in attendance divided up into “break-out discussion groups” for about 45 minutes of brainstorming to determine important project issues as they relate to the SH-340 corridor. Each group then presented its priority issues to those present. The Project Team has recorded all group comments, citizen surveys, hotline messages, and other comments to date into a Project Response Log for use during the course of the project. As additional comments are generated, they will be recorded into the log and the Project team will provide a response to each comment and how it has been used or not used in the study. Copies of the current Project Response Log will be available for viewing at the next public forum. The following is a list of the recurring issues that the groups discussed and presented:

1. Widen SH-340 for Bicycle and Pedestrians (3 lanes with shoulders and separated sidewalks.)
2. Vertical and horizontal site distances safety improvements
3. Better define school zones
4. Aesthetics
5. Better traffic law enforcement
6. Additional fire protection, both urban and wildfire (Additional fire station?)
7. Additional / improved access to SH-340
8. Improve intersection at Redlands Parkway and SH-340

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Since the Redlands Area Transportation Study began in May, progress has been made toward establishing a transportation plan for the area bordered by the Colorado National Monument, the Colorado River, and the Gunnison River. According to the Mesa County/Grand Junction MPO, the development in the area is predicted to double in size during the next 20 years, which will lead to growing traffic volumes on the roadway network. The goals of this study are to develop consensus on a long-range plan or vision of coordinated state and local transportation improvements for the Redlands area and to evaluate roadway capacity issues on the state and local system.

This project is being developed by Kimley-Horn and Associates, Inc. of Denver, with assistance from Rolland Engineering of Grand Junction. The advisory team consists of members representing the City of Grand Junction, the City of Fruita, Mesa County, CDOT, and the Colorado



Kimley-Horn  
and Associates, Inc.

National Monument. The advisory team has met in six project meetings, held two public forums and a meeting with the Fruita Planning Commission, and participated in a project "charette." The charette was a two-day planning session, in which the team evaluated the alternatives for the area and selected the recommended improvement package for the area. The improvements are described in the third project newsletter, attached to this letter, and will also be presented at a third and final public meeting on January 8, 2002, at the Redlands United Methodist Church. After receiving input from the public, the plan will be presented to the City Council and the County Board of Commissioners before the final plan is written to give you the opportunity to ask questions and make comments regarding the project and our recommendations.

Meanwhile, if you have any questions, please feel free to call me at (303) 228-2300 or e-mail me at [bob.hazlett@kimley-horn.com](mailto:bob.hazlett@kimley-horn.com)

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Robert C. Hazlett, Jr., P.E.  
*Project Manager*

Attachment: Project Newsletter #3



**How can I get involved?**

- Attend public meetings: Final meeting January 8th, 5:30-6:30PM, at Redlands United Methodist Church, 527 Village Way, Grand Junction.
- Visit the Mesa County website ([www.co.mesa.co.us](http://www.co.mesa.co.us))
- Call the project comment hotline at 800-653-2858
- Completed return the public questionnaire distributed at the public forums and on the website

Grand Junction/Mesa County  
Metropolitan Planning Organization  
Box 20,000-5093  
Grand Junction, CO 81502



**Mesa County**  
Ken Serris, MPO Project Manager  
Keith Fife  
Kurt Larson  
Michael Wilson  
Joe Beltman

**City of Grand Junction**  
David Thomson  
Kathy Palmer  
Jody Klara

**City of Fruita**  
Doreen Swendeman  
Dusty Dunbar

**Colorado Department of Transportation, Region 3**  
James Patton

**Kimley-Horn and Associates, Inc.**  
Bob Hazlett, Consultant  
Margo Kell, Project Manager  
Pat Hut

**Rolland Engineering**  
Sam Rolland  
Trevor Brown

**Project Teams**  
Phone: 1-800-653-2858

## Redlands Area Transportation Study Newsletter

A project by the Mesa County - Grand Junction Metropolitan Planning Organization  
in Kimley-Horn and Associates, Inc. Project Phone Number: 1-800-653-2858

No. 3 January 2002



### Second Public Forum - Preliminary Solution Alternatives for Redlands

Our Second Public Forum for the SH-340 project again showed the great public interest in the project with more than 100 citizens in attendance. An open house started the forum, giving the Project Team the opportunity to interact and discuss the project findings with everyone gathered. Bob Hazlett of Kimley-Horn and Associates, Inc., followed the open house with a formal presentation covering traffic/transportation issues within the Redlands Study Area, 20-year and 50-year planning for the Study Area, access issues, and how the Project Team has addressed citizen comments from the first Public Hearing. This culminated in the Project Team's presentation of the various solution alternatives identified to date. Citizen interaction began again as they divided into groups and discussed more detailed looks at the various solution alternatives with members of the Project Team. These discussions led to modifications and new solutions to Study Area problems.

- Some recurring issues from these group discussions include:
- Widen SH-340 for bicycles and pedestrians, \*
  - Vertical and horizontal sight distances, \*
  - Better defined school zones, \*
  - Better traffic law enforcement, \*
  - Additional fire protection, \*
  - Additional/improved access to SH-340,
  - Improve intersection at Redlands Parkway and SH-340.
- \*Recurring issues from Public Forum #1



Thank you to those of you returning for "Round 2" and those who were "first timers." The Project Team very much appreciates your continued interest and willingness take personal time out to participate in the solution process. We are looking forward to working with you in the future. Have a happy Holiday Season and we look forward to seeing you again at the next Public Forum on January 8.

**Give us your ideas! Participate in Redlands Area Transportation Study Public Forums.**  
The public is invited to participate in the Redlands Area Transportation Study public forums. The first Public Forum will begin at 5:30 PM, with an open house followed by a formal presentation at 6:00 PM, with Citizen "Breakout Groups" afterward.



### Forum #3 January 8, 2002

**Vision of Area Growth and Transportation**  
Time: 5:30-8:30 PM, (see above)  
Location: Redlands United Methodist Church  
527 Village Way, Grand Junction.  
The alternatives that are most appropriate for this area will be reviewed and refined. We will ensure that these alternatives provide connections between cars, buses, bicycles, and pedestrians, as well as support the overall vision for the area.

### Schedule of activities and milestones

May and June 2001	Public Forum, project goals and objectives, meetings with the media, access management and safety plan
July and August 2001	Evaluate existing and future conditions, determine roadway network, delineations
September 2001	Determine possible improvement alternatives (parking, signage and pedestrian, Grand Village Transit) and related costs, Public Forum, meet with city and county councils
October 2001	Evaluate combinations of alternatives for benefit and impacts to the area, meet with city and county councils
November and December 2001	Develop the combination of alternatives that are most appropriate for this area
January and February 2002	Public Forum, city and county planning commissions and councils consider adoption of Redlands Area Transportation Study

### Recommended Transportation Improvement Package

After considering recurring themes/concerns from public meetings [listed on the front page of this newsletter] and the analysis of the area completed by the project team, the following improvement package is recommended for the Redlands area over the next 20 years. The improvements can be grouped into four categories: capacity improvements, safety improvements, additional neighborhood connections, and provisions for alternative transportation.

#### Capacity improvements include:

- Widening Redlands Parkway to five lanes from 1-708 to SH-340 (Broadway). The volumes on this roadway will nearly double in the next 20 years.
- Potential intersection improvements at:
  - SH-340 (Broadway)/Redlands Parkway/South Broadway
  - Monument Road/South Camp Road
  - South Camp Road/South Broadway
  - SH-340/US-6 in Fruta

Roundabouts have been proven to accommodate greater traffic volumes than traditional intersections. Also, accident rates have been shown to decline after a roundabout has been constructed. These locations have been chosen as candidates for roundabouts to improve traffic flow in and provide gateway/entry points to the Redlands area.

- Rehabilitate and add capacity to the SH-340/Interstate 70 interchange in Fruta. As development continues south of the interchange, and the Gateway Business Park is realized, increased traffic will prompt the need for additional capacity. The project should include the Access management Plan recommendations that address the close proximity of the Frontage Roads along the south side of Interstate 70. Additional studies are needed to identify specific improvements.

#### Safety improvements include:

- Adopting the SH-340 Access Management Plan as presented in this project. This plan includes recommendations for adjacent property access, improved intersection geometry and locations, and barrier medians along certain segments to improve traffic flow. This plan is recommended to be implemented as improvements are made along SH-340.
- Improving vertical and horizontal alignments to provide better sight distances along:
  - SH-340 from Redlands Parkway to 20 Road
  - Monument Road from Broadway to Manjopo Drive
  - The 20% and 20% Road corridor between South Broadway and SH-340.
- Improving the school zones as recommended in the access management plan and providing better signing.

#### Neighborhood Connections:

Additional connections between neighborhoods improve overall traffic flows on the Redlands principal roadways, as well as better neighborhood access for residents and emergency vehicles. Proposed neighborhood connections include:

- 23 Road to the intersection of South Camp Road/Canyon View Drive and also to the intersection of South Camp Road/Arenal Lane, as shown in the figure
- Son Miguel Drive to West Scenic Drive
- Colonial Drive to Monument Village Drive
- Ridgeview Court to Monument Village Drive
- Pleary Drive to Baseline Drive to SH-340 (Broadway)/South Broadway

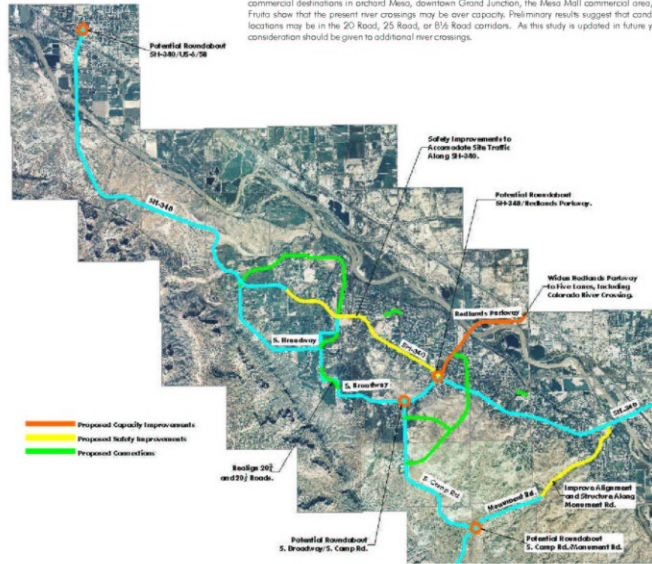
#### Alternative Transportation Recommendations:

- Coordination with Grand Valley Transit for a transit center at the Sefway Plaza and in the 23 Road corridor. This improves the ability of transit to function in the Redlands by focusing service to three major activity centers.
- Widening the typical roadway cross-section to include striped bike lanes and separated paths. This provides better facilities to separate bikes and pedestrians from vehicular traffic.
- Incorporate the Urban Trails Master Plan

### Beyond 2020

As transportation planning efforts continue in the Redlands area, it is recommended that consideration be given to the following:

- Widening SH-340 from Redlands Parkway/South Broadway to The Ridges Boulevard. Preliminary 2050 traffic volumes show traffic will continue to increase beyond 2020, thereby prompting the need for added travel lanes.
- Developing additional river crossings of the Colorado River. By 2050, travel demand between the Redlands and commercial destinations in Orchard Mesa, downtown Grand Junction, the Mesa Mall commercial area, and Fruta show that the present river crossings may be over capacity. Preliminary results suggest that candidate locations may be in the 20 Road, 25 Road, or 01/6 Road corridors. As this study is updated in future years, consideration should be given to additional river crossings.



Comments: 1-800-633-2838

## MEMORANDUM

December 26, 2001

**Memo To: City Council**

**From: Tim Moore**

CC: Kelly Arnold, Mark Relph

**RE: Redlands Area Transportation and Neighborhood Plan update**

At the request of the City Manager, I have prepared this update on the Redlands Area planning efforts currently underway. The project is nearing completion with the last Public Forum scheduled for January 8<sup>th</sup> and anticipates City Council review and adoption in February.

### **BACKGROUND :**

The cities of Grand Junction and Fruita together with Mesa County and CDOT are collectively evaluating the long-term transportation needs of the area. At the same time the Community Development Departments of Grand Junction and Mesa County are updating their associated Land Use Plans for the Redlands Area. I have attached a letter from the transportation consultant, Bob Hazlett, and a memo from Kathy Portner describing the process and next steps for your review. I also attached the January 8<sup>th</sup> newsletter/map for additional information.

### **TRANSPORTATION ISSUES :**

Several safety and capacity improvements will be recommended for the area to accommodate current and 2020 projected traffic including.

- g) Widening Redlands Parkway to five lanes from I-70B to Broadway.
- h) Intersection improvements at all major corridor crossings.
- i) Adoption of the recommended Access Management Plan for SH 340.
- j) Vertical and horizontal alignment improvements to various locations.
- k) Widening roadway cross-sections to include striped bike lanes and separated paths.
- l) Additional neighborhood connections to improve traffic flow.

### **NEIGHBORHOOD PLAN UPDATE :**

**In addition to the Transportation Plan meetings, a public forum that just focused on future commercial development in the area was held on November 27<sup>th</sup>. Three newsletters have also been sent out to all property owners within the plan outlining issues and soliciting input. The January 8<sup>th</sup> forum will also include a discussion about future land uses. After the January 8<sup>th</sup> meeting, a draft plan will be presented**

**to City and County Planning Commissions and ultimately to City Council for adoption.**

## Memorandum

Date: December 21, 2001

To: Tim Moore

From: Kathy Portner

### **RE: Redlands Neighborhood Plan Update**

In conjunction with the Redlands Area Transportation Plan, the City and County are updating the *1986 Redlands Plan and Policies*. The *Mesa Countywide Land Use Plan* and *City of Grand Junction Growth Plan* adopted in 1996 provide the basis for this more detailed neighborhood plan.

The purpose of the plan is to identify issues and changes in the Redlands area and provide specific guidance, priorities and implementation strategies for land use, growth management, community image and character, services and facilities, and open lands and recreation.

Land use issues have been presented and discussed at the Transportation Plan meetings, as well as at an open house and public forum held on November 27<sup>th</sup> that just focused in on future commercial development on the Redlands, including design standards, and proposed changes to the land use map. Three newsletters have been sent to all property owners within the plan area outlining issues, announcing upcoming meetings and soliciting input. Land use issues will again be a part of the discussion at the upcoming January 8<sup>th</sup> open house and public forum.

After the January 8<sup>th</sup> meeting, a draft plan will be put together to be presented to the City and County Planning Commissions and, ultimately, to the City Council for adoption.



**Attach 14**

**Amendments to Retirement Plan**

**CITY COUNCIL AGENDA  
CITY OF GRAND JUNCTION**

<b>CITY COUNCIL</b>			
<b>Subject:</b>	<b>An Ordinance to Amend Retirement Plans for Specified City of Grand Junction Employee Groups</b>		
<b>Meeting Date:</b>	<b>January 2, 2002</b>		
<b>Date Prepared:</b>	<b>December 13, 2001</b>		
<b>Author:</b>	<b>Claudia Hazelhurst</b>	<b>Human Resources Manager</b>	
<b>Presenter Name:</b>	<b>Ron Lappi</b>	<b>Administrative Services Director</b>	
	<b>Workshop</b>	<b>X</b>	<b>Formal Agenda</b>

**Subject:** An Ordinance to Adopt Amendments to the Employees Retirement Plan and the New Hire Police and New Hire Fire Money Purchase Defined Contribution Retirement Plans

**Summary:** The City of Grand Junction, Colorado Employees Retirement Plan, the New Hire Fire Money Purchase Plan and the New Hire Police Money Purchase Plan have been amended to incorporate Internal Revenue Code (IRC) amendments that have been passed by Congress since 1994. These amendments must be incorporated into the aforementioned Plans by February 28, 2002 in order for the Plans to retain their tax-qualified status. Two minor amendments requested by the respective Plan Boards to add flexibility to the Plans are also included herein.

**Background Information:** In 1994, the City of Grand Junction submitted the above-referenced Plans to the Internal Revenue Service (IRS) for a determination letter affirming each Plan's tax-qualified status. The desired determination letters were received from the IRS in 1994 affirming that the Plans were qualified. Various IRC amendments have been made since 1994. These tax law changes have little or no substantive effect on the operation of the Plans yet must be incorporated into the Plans in order to retain their tax-qualified status. Furthermore, the Plans must be filed with the IRS by the end of February 2002 in order to receive a new IRS determination that the Plans have been tax-qualified from 1994 through 2001. Attached is a brief explanation of the Plan amendments. The City Clerk has a full copy of each Plan document.

**Budget:** N/A

**Action Requested/Recommendation:** Pass the Ordinance on Second Reading after a Public Hearing.

<b>Citizen Presentation:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>If Yes,</b>
<b>Name:</b>					
<b>Purpose:</b>					

<b>Report results back to Council:</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>	
<b>Placement on Agenda:</b>	<input checked="" type="checkbox"/>	<b>Consent</b>	<input type="checkbox"/>	<b>Indiv. Consideration</b>	<input type="checkbox"/>	<b>Workshop</b>



**Explanation of Amendments to  
City of Grand Junction, Colorado**

**Employees Retirement Plan**  
**New Hire Fire Money Purchase Defined Contribution Plan**  
**New Hire Police Money Purchase Defined Contribution Plan**

The Plans are being amended to comply with various tax law changes that Congress has passed since 1994, the year the City last requested and received an IRS determination that these three Plans were tax-qualified. The tax law changes incorporated into these Plans have little or no substantive effect on the operation of the Plans. Nonetheless, the changes must be made in order to satisfy the IRS requirements to keep the Plans tax-qualified. In addition, the Plans must be filed with the IRS by February 28, 2002 in order to receive an IRS determination that the Plans have been tax-qualified from 1994 through December 31, 2001. It is important to keep the Plans tax-qualified. Otherwise, participants could be taxed on their vested Plan accounts and the trusts could be taxed on investment earnings.

All three of the Plans include the following amendments:

1. Required wording regarding service credit and contributions for periods of military service, as required by federal law.
2. Wording that allows participants more flexibility in choosing the form and timing of payments from the Plan, subject to tax law requirements. This amendment was initiated by the respective Retirement Boards.
3. Revised wording to describe new, more liberal, rules regarding annual limits on contributions to participants' accounts.
4. Clarification that Plan communications may be electronic instead of written to the extent permitted by IRS rules.
5. Correction of out-of-date references to Colorado statutes.
6. Clarification of loan rules.
7. A rule allowing a participant who transfers to a job covered by another Grand Junction Plan to transfer his account balance to that other Plan (subject to the conditions that the participant's account must be 100% vested, must have no outstanding loans and must not be paid from the other Plan before the individual leaves employment with the City). This amendment was initiated by the respective Retirement Boards.

ORDINANCE NO.

ORDINANCE ADOPTING AMENDMENTS TO RETIREMENT PLANS FOR SPECIFIED CITY OF GRAND JUNCTION EMPLOYEE GROUPS AND AUTHORIZING PUBLICATION OF THE RETIREMENT PLANS BY PAMPHLET

Recitals:

Article XI, Paragraph 88 of the Grand Junction City Charter requires that the City Council act by ordinance to continue, alter, establish, provide for and amend pension plans. Consistent with that authority and given that the Congress has changed the tax laws and that those changes must be incorporated into certain governmental retirement plans by February 28, 2002 in order for the plans to retain their tax-qualified status, this ordinance is enacted. Particular amendments to particular plans are shown in the plans but because of the bulk of the plans the Council has determined that the plans may be published in a book or pamphlet form.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

1. The amended plans bearing the following titles for certain City retirement programs, which plans are incorporated by this reference as if fully set forth, are hereby adopted in accordance with Article XI, Section 88 of the Charter of the City of Grand Junction.
  - a. *City of Grand Junction, Colorado Employees Retirement Plan*; and,
  - b. *City of Grand Junction New Hire Fire Money Purchase Defined Contribution Plan*; and,
  - c. *City of Grand Junction New Hire Police Money Purchase Defined Contribution Plan*.
2. All lawful acts heretofore taken by the City and its officers, agents and employees and the employees benefiting from the plans, in funding, managing and administering the plans, in whatever capacity, are hereby ratified.
3. All amendments are necessary or required by law and the amendments are in accordance with law.
4. Because of the bulk of the plans, publication by book or pamphlet is authorized in accordance with Charter Article VI, paragraph 51.

5. The hearing prior to final passage shall be held on January 2, 2002. The purpose of such hearing being the consideration of the amendment of the City employee retirement plans stated in this ordinance.
6. The book or pamphlet containing the plans shall be available for inspection in the City Human Resources Department, 250 N. 5<sup>th</sup> Street, Grand Junction CO. Hours for inspections shall be 8:00 a.m. to 5:00 p.m., Monday through Friday except legal holidays.
7. All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

INTRODUCED ON FIRST READING this 19<sup>th</sup> day of December 2001.

PASSED, ADOPTED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2002.

ATTEST:

\_\_\_\_\_  
President of the Council

\_\_\_\_\_  
City Clerk

**CITY OF GRAND JUNCTION, COLORADO**  
**EMPLOYEES RETIREMENT PLAN**

**Restated to Include Amendments  
Through December 31, 2001**

**Original Effective Date: January 1, 1985**

**CITY OF GRAND JUNCTION, COLORADO  
EMPLOYEES RETIREMENT PLAN**

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**CITY OF GRAND JUNCTION, COLORADO  
EMPLOYEES RETIREMENT PLAN**

The City of Grand Junction, Colorado in the following form, hereby amends and restates in its entirety its Employees Retirement Plan for the exclusive benefit of certain employees and their beneficiaries under the following terms and conditions:

## **ARTICLE I DEFINITIONS**

1.1 General. The rights of a Participant who terminates Employment on or after the Restatement Date shall be covered by the Plan as in effect at the time of such termination of Employment. Unless specifically provided herein to the contrary, the rights of an employee who terminated covered Employment before the Restatement Date shall be determined by the terms of the Plan in effect at the time such employment terminated.

1.2 Beneficiary. The individual designated by the Participant, according to Section 6.3(c), to receive distribution of the Participant's Account upon death.

1.3 Board of Retirement ("Board"). The Board of Retirement appointed, in accordance with all applicable statutes or ordinances, to oversee the Plan's operations. The Board consists of five individuals, the City Manager or designee, Personnel Manager, Finance Director and two employees elected by the Participants.

1.4 Break in Service. A Plan Year during which an Employee fails to complete more than 500 Hours of Service.

1.5 Code. The Internal Revenue Code as amended from time to time and the regulations and rulings in effect thereunder.

1.6 Compensation. The total wages or salary, and any other taxable remuneration earned while a Participant from the Employer during the Plan Year, as reported on Form W-2, plus employer contributions made through a salary reduction agreement described in sections 125, 401, 403, 414(h) or 457 of the Internal Revenue Code of 1986, but excluding overtime bonuses, commissions, special allowances or compensation and accumulated leave paid upon separation from employment. Compensation for any Plan Year will be limited to the first \$200,000 of Compensation (or such other amount determined in accordance with Code section 415(d)). Effective prior to January 1, 1997 in determining the Compensation of a Participant who is a Highly Compensated Employee for purposes of this limitation, the rules of Code section 414(q)(6) shall apply, except the term "family" shall include only the spouse of the Participant and any lineal descendants of the Participant who have not attained age 19 before the close of the year. Effective for Plan Years beginning on or after January 1, 1996, the \$200,000 limit is reduced to \$150,000, subject to adjustment as provided in Code section 401(a)(17).

1.7 Defined Benefit Plan. A Plan under which a Participant's benefit is determined by a formula contained in the Plan under which no individual accounts are maintained for Participants.

1.8 Defined Contribution Plan. A Plan under which individual accounts are maintained for each Participant to which all contributions, forfeitures, investment income and gains or losses, and expenses are credited or deducted. A Participant's benefit under such Plan is based solely on the fair market value of his or her account balance.

1.9 Disability. An illness or injury of a potentially permanent nature certified by a physician selected by or satisfactory to the Plan Administrator which prevents the Employee from engaging in his or her occupation for wage or profit for which the Employee is reasonably fitted by training, education or experience.

1.10 Employee. Employee shall mean any individual who occupies a Council approved full-time position of the Employer excluding the City Manager, City Attorney, elected officials, nonclassified positions appointed by the City Manager who participate in other Employer sponsored Code section 401 or 457 plans as an alternative to this Plan and sworn Police and Fire personnel who participate in other Employer-sponsored Code section 401 plans.

1.11 Employer. City of Grand Junction, Colorado.

1.12 Entry Date. The date on which an Employee begins employment as an Employee.

1.13 Forfeiture. The portion of a Participant's Account which, according to Article VIII, the Participant is not entitled to receive.

1.14 Fund. All contributions received by the Trustee under this Plan and Trust, investments thereof and earnings and appreciation thereon.

1.15 Hour of Service.

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. These hours shall be credited to the Employee for the computation period in which the duties are performed; and

(b) Each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including Disability), jury duty, military duty or leave of absence, but excluding leave hours accrued by the Employee which are paid to the Employee upon separation from employment. No more than 501 Hours of Service shall be credited under this paragraph for any single continuous period (whether or not such period occurs in a single computation period); and

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under paragraph (a) or paragraph (b), as the case may be, and under this paragraph (c). These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

(d) Hours of Service shall be credited for employment with the Employer and with other members of an affiliated service group (as defined in section 414(m) of the Code), a controlled group of corporations (as defined in section 414(b) of the Code), or a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which the adopting Employer is a member, and any other entity required to be aggregated with the Employer pursuant to section 414(o) and the regulations thereunder. Hours of Service shall also be credited for any individual considered an Employee for purposes of this Plan under section 414(n) or section 414(o) and the regulations thereunder.

(e) Solely for purposes of determining whether a Break in Service, as defined in paragraph 1.4, for participation and vesting purposes has occurred in a computation period, an individual who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, eight Hours of Service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence by reason of the pregnancy of the individual, by reason of a birth of a child of the individual, by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this paragraph shall be credited in the computation period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or in all other cases, in the following computation period. No more than 501 hours will be credited under this paragraph.

(f) Hours of Service shall be on the basis of actual hours for which an Employee is paid or entitled to payment.

1.16 Life Expectancy. Life Expectancy and Joint and Last Survivor Expectancy are computed by use of the expected return multiples in Tables V and VI of section 1.72-9 of the Income Tax Regulations, using the attained age of the Participant (or designated beneficiary) as of the Participant's (or designated beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was

first calculated. The applicable calendar year shall be the first distribution calendar year, and if life expectancy is being recalculated such succeeding calendar year. If distribution is in the form of an immediate annuity, purchased after the Participant's death with the Participant's remaining interest, the applicable calendar year is the year of purchase. If life expectancy is being recalculated, the applicable life expectancy shall be the life expectancy as so recalculated. Unless otherwise elected by the Participant by the time distributions are required to begin, Life Expectancies shall be recalculated annually. Such election shall be irrevocable as to the Participant and shall apply to all subsequent years. The Life Expectancy of a nonspouse beneficiary may not be recalculated.

1.17 Limitation Year. The calendar year or such other 12 consecutive month period designated by the Employer for purposes of determining the maximum annual addition to a Participant's account.

1.18 Mandatory Employee Pre-Tax Contributions. Employer Contributions made to the Plan after December 31, 1991 on behalf of the Participant, which are designated as Employer contributions pursuant to section 414(h)(2) of the Code in lieu of cash compensation, and contributions made pursuant to a salary reduction agreement or other deferral mechanism.

1.19 Normal Retirement Age. Shall mean the date in which a Participant has reached his 55th birthday.

1.20 Participant. Any Employee who has met the eligibility requirements and is participating in the Plan.

1.21 Plan. The City of Grand Junction Employees Retirement Plan described by the provisions in this document.

1.22 Plan Administrator. The Board of Retirement.

1.23 Plan Year. The period July 1, 1969 throughout December 31, 1969 and each 12 consecutive month period commencing on January 1, and ending on December 31.

1.24 Qualified Deferred Compensation Plan. Any pension, profit sharing or other plan which meets the requirements of section 401 of the Code which includes a trust exempt from tax under section 501(a) of the Code and any annuity plan described in section 403(a) of the Code.

1.25 Restatement Date. December 31, 2001. The Plan was originally effective July 1, 1969 and was amended in its entirety on January 1, 1985 and January 1, 1992.

1.26 Rollover Contribution. A contribution made by a Participant of an amount distributed to such Participant from another Qualified Deferred Compensation Plan in accordance with sections 402(a)(5), (6) and (7) of the Code.

1.27 Spouse (Surviving Spouse). The spouse or surviving spouse of the Participant, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.

1.28 Trustee. Wells Fargo West, N.A.

1.29 Valuation Date. The last day of the Plan Year and the following date(s) on which Participant accounts are revalued in accordance with Article V: March 31, June 30 and September 30.

1.30 Voluntary After-Tax Contribution. An Employee contribution which is not tax-deductible and which is not required as a condition for participation in the Plan.

1.31 Year of Service. A Plan Year during which an Employee has not less than 1,000 Hours of Service.

## **ARTICLE II ELIGIBILITY REQUIREMENTS**

2.1 Participation. An Employee shall become a Participant in the Plan on the first day of employment as an Employee. Participants in the Plan that was in effect on December 31, 1991 shall remain a Participant in this restated Plan. An Employee who satisfied the eligibility requirements and subsequently terminated employment shall become a Participant immediately upon returning to the employ of the Employer.

2.2 Employment Rights. Participation in the Plan shall not confer upon a Participant any employment rights, nor shall it interfere with the Employer's right to terminate the employment of any Employee at any time.

2.3 Change in Classification of Employment. In the event a Participant becomes ineligible to participate because he or she is no longer a member of an eligible class of Employees, such Employee shall participate immediately upon his or her return to an eligible class of Employees.

## **ARTICLE III EMPLOYER CONTRIBUTIONS**

3.1 Matching Employer Contributions. The Employer shall contribute to the Plan for each payroll period an amount equal to 100% of each Participant's contribution to the Plan for that payroll period, reduced by any Forfeitures used to replace such Matching Employer Contributions according to Section 8.6. However, the Employer's Contribution for any Plan Year shall be subject to the limitations on allocations contained in Article IX.

3.2 Transfer Contributions. Subject to the direction of the Employer, the Trustee is authorized to receive and add to the Trust Fund as a direct transfer assets attributable to the vested interest of any Participant in a retirement plan qualified under Code section 401(a) if such individual is a Participant in this Plan. Transfers shall be credited to the particular Participant's Transfer Account, shall always be fully vested and nonforfeitable, and shall be distributed pursuant to Section 7.1 hereof.

3.3 Expenses and Fees. The Employer shall also be authorized to reimburse the Fund for all expenses and fees incurred in the administration of the Plan or Trust that were paid out of the assets of the Fund. Such expenses shall include, but shall not be limited to, fees for professional services, printing, postage and brokerage or other commissions, subject to the limits of Code section 415.

3.4 Responsibility for Contribution. The Trustee shall not be required to determine if the Employer has made a contribution or if the amount contributed is in accordance with the Plan or the Code. The Employer shall have sole responsibility in this regard.

3.5 Return of Contributions. Contributions made to the Fund by the Employer shall be irrevocable, except as follows:

(a) Any contribution made to the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

(b) In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made incident to that initial qualification by the Employer must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.



3.6 Military Service. Effective on and after December 12, 1994, notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code section 414(u).

## **ARTICLE IV EMPLOYEE CONTRIBUTIONS**

4.1 Mandatory Employee Pre-Tax Contributions. A Participant shall be required to contribute toward the cost of the Plan, from amounts the Participant would otherwise receive as Compensation, an amount equal to 4% of the Participant's Compensation for the period January 1, 1992 through December 31, 1992, 4-1/2% of the Participant's Compensation for the period January 1, 1993 through December 31, 1993, 5% of the Participant's Compensation for the period January 1, 1994 through December 31, 1994, 5-1/2% of the Participant's Compensation for the period January 1, 1995 through December 31, 1995 and 6% of the Participant's compensation for periods after December 31, 1995. They shall be designated as Employee Contributions pursuant to section 414(h)(2) of the Internal Revenue Code of 1986, contingent upon the contributions being excluded from the Participant's gross income for federal income tax purposes.

4.2 Voluntary Employee Contributions. A Participant may make Voluntary After-Tax Contributions to the Plan. Such Voluntary After-Tax Contributions will be limited to 10% of annual Compensation.

4.3 Rollover Contribution. A Participant may make a Rollover Contribution to the Plan of all or any part of an amount distributed or distributable to him or her from a Qualified Deferred Compensation Plan provided the Rollover Contribution constitutes a direct transfer of eligible rollover distributions described in section 401(a)(31) of the Code or a rollover described in section 402(c) of the Code.

Such Rollover Contribution may also be made through an Individual Retirement Account (IRA) qualified under section 408 of where the Code where the IRA was used as a conduit from the Qualified Deferred Compensation Plan, the Rollover Contribution is made in accordance with the rules of Code section 402(c) and the Rollover Contribution does not include any regular IRA contributions, or earnings thereon, that the Participant may have made to the IRA. The Trustee shall not be held responsible for determining whether Rollover Contributions made hereunder meet the requirements of this Section 4.3.

## **ARTICLE V PARTICIPANT ACCOUNTS**

5.1 Separate Accounts. The Plan Administrator shall establish a separate bookkeeping account for each Participant showing the total value of his or her interest in the Fund. Each Participant's Account shall be separated for bookkeeping purposes into the following subaccounts:

- (a) Matching Employer Contributions.
- (b) Transfer Contributions, which shall include subaccounts as necessary for Employer Contributions, after-tax employee contributions and before-tax employee contributions.
- (c) Mandatory Employee Before-Tax Contributions.
- (d) Voluntary Employee Contributions.
- (e) Rollover Contributions.

5.2 Adjustments To Participant Accounts. As of each Valuation Date of the Plan, the Plan Administrator shall credit to or deduct from each Account:

- (a) the Participant's share of the Employer's Contribution and forfeitures,
- (b) any Employee Contributions made by the Participant since the last Valuation Date,
- (c) withdrawals, and
- (d) the Participant's proportionate share of any investment earnings and increases or decreases in the fair market value of the Fund since the last Valuation Date as determined according to the Adoption Agreement.

All allocations made hereunder will be made in a nondiscriminatory manner. Accounts with segregated investments shall receive only the income or loss on such segregated investments. Terminated Participants' vested account balances shall be credited with any investment earnings and increase or decrease in the fair market value of the Fund until the Valuation Date preceding distribution. Terminated Participants' nonvested account balances shall be credited with any investment earnings and increase or decrease in the fair market value of the Fund until forfeited pursuant to Section 8.5.

5.3 Participant Statements. The Plan Administrator shall at least annually prepare a statement for each Participant showing the additions to and subtractions from his or her account since the last Valuation Date and the fair market value of his or her account as of the current Valuation Date.

## **ARTICLE VI ELIGIBILITY FOR BENEFITS**

6.1 Retirement. If a Participant's Employment terminates for any reason on or after his Normal Retirement Age, he shall be eligible to receive the entire amount then credited to his account, which shall be fully vested and nonforfeitable.

6.2 Disability. If a Participant's Employment terminates because of his Disability at any time, he shall be eligible to receive the entire amount then credited to his account, shall be fully vested and nonforfeitable.

6.3 Death.

(a) Before Termination of Employment. If a Participant's Employment terminates because of his death, the entire amount then credited to his account shall become vested and nonforfeitable and payable pursuant to subsection 6.3(c).

(b) After Termination of Employment. If a Participant (including a former Participant) dies after terminating Employment, the Plan shall pay the then undistributed vested balance, if any, of the Participant's account pursuant to subsection (c) below.

(c) Recipient of Payment After Death and Timing Payment. Each Employee, upon becoming a Participant and on a form provided by the Plan and filed with the Plan Administrator, may designate a Beneficiary and may, in addition, name a contingent Beneficiary. Any Participant may at any time revoke or change his designation of Beneficiary by filing a written notice of the revocation or change with the Plan Administrator. The Plan shall distribute benefits payable pursuant to subsection (a) or (b) above to the deceased Participant's Beneficiary identified pursuant to a Beneficiary designation in effect at the time of his death or, if no such designation exists, to the Participant's surviving spouse or, if none, to his estate. The method and duration of payment shall be consistent with the limits imposed in Article VII. If distribution had commenced to the Participant prior to his death, it shall continue being paid after the Participant's death at least as rapidly as under the method of distribution being made as of the Participant's death. If distribution had not begun before the Participant's death, full distribution shall occur over period described in (i), (ii) or (iii) below:

(i) Non-Spouse Beneficiary. If the distribution is payable to a designated Beneficiary who is not the Participant's spouse, the distribution shall occur over a period no longer than the Beneficiary's Life

Expectancy, commencing on or before December 31 of the calendar year immediately following calendar year of the Participant's death.

(ii) Spouse Beneficiary. If the distribution is payable to a designated Beneficiary who is the Participant's spouse, the distribution shall occur over a period no longer than the spouse's Life Expectancy, commencing no later than of [a] December 31 of the calendar year immediately following the calendar year in which the Participant died, or [b] December 31 of the calendar year in which the Participant would have attained age 70-1/2. The surviving spouse may elect to have the distribution of the Account commence within 90 days after Participant's death.

(iii) No Designated Beneficiary. In all other cases, i.e., in the absence of a designated Beneficiary, the distribution shall occur over a period ending no later December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) Proof of Death. The Plan Administrator may require such proper proof of death and such evidence as to a person's right to receive payment from a deceased Participant's account as the Plan Administrator reasonably deems appropriate.

6.4 Termination of Employment Before Retirement, Disability or Death. If a Participant's employment with the Employer terminates prior to his Normal Retirement Date for any reason other than his death or Disability, the Participant shall be eligible to receive the vested portion of his account, determined according to Article VIII.

6.5 Claims Procedures. Upon retirement, death, or other severance of employment, the Participant or representative of such Participant may request of the Plan Administrator payment of benefits due and the manner of payment. If a request for benefits is made, the Plan Administrator shall accept, reject, or modify such request and, in the case of a denial or modification, the Plan Administrator shall:

- (a) state the specific reason or reasons for the denial,
- (b) provide specific reference to pertinent Plan provisions on which the denial is based,
- (c) provide a description of any additional material or information necessary for the Participant or his or her representative to perfect the claim and an explanation of why such material or information is necessary, and

(d) explain the Plan's claim review procedure as contained herein.

In the event the request is rejected or modified, the Participant or his or her representative may within 60 days following receipt by the Participant or representative of such rejection or modification, submit a written request for review by the Plan Administrator of its initial decision. Within 60 days following such request for review, the Plan Administrator shall render its final decision in writing to the Participant or representative stating specific reasons for such decision. If the Participant or representative is not satisfied with the Plan Administrator's final decision, the Participant or representative can institute an action in a federal court of competent jurisdiction; for this purpose, process would be served on the Plan Administrator.

6.6 Disposition of Unclaimed Payments. If the Trustee is unable to make any payment due under the Plan to any person because it does not know the identity or post office address of such person, the Trustee shall suspend all further payment until it has received written direction from the Plan Administrator.

## ARTICLE VII PAYMENTS

7.1 Commencement of Payments. The distribution of all or any portion of a Participant's account shall commence in accordance with the Participant's election, not earlier than termination of the Participant's employment (unless specifically authorized elsewhere herein). Distribution of a Participant's account shall commence no later than the April 1 of the calendar year following the later of (a) the calendar year in which the Participant attains age 70-1/2 or (b) the calendar year in which the Participant's employment with the Employer terminates. Distributions shall be made in accordance with Treasury Regulations under Internal Revenue Code section 401(a)(9). Distribution may commence less than 30 days after the notice required under section 402(f) of the Code is given, provided that:

(a) the Board clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and

(b) the Participant, after receiving the notice, affirmatively elects a distribution.

7.2 Method of Payment. Distribution in relation to a Participant shall occur in cash, in one of the following methods as chosen by the Participant:

(a) Lump Sum. A single, lump sum distribution of the entire amount in the Participant's account. Payment shall be in a lump sum if the Participant's account is less than 100% vested or if the value of the Participant's vested account (excluding Voluntary Deductible Employer Contributions and before payments begin) is not greater than \$5,000.

(b) Partial Lump Sum. A lump sum distribution of a portion of a Participant's account, which the Participant may choose to receive separately from other Plan distributions.

(c) Installment Payments. In substantially equal monthly, quarterly, semiannual or annual payments. Such installments, whether paid from the Plan assets or an annuity contract, shall be of such amount and on such a schedule that the distribution is consistent with section 401(a)(9) of the Code and applicable regulation, which the Plan hereby incorporates by reference. Subject to such requirements, installment payments may be accelerated, delayed or paid in a lump sum at the direction of the Participant. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001,



the Plan will apply the minimum distribution requirements under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date specified in guidance published by the Internal Revenue Service.

7.3 Direct Rollover. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(b) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code 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 section 414(p) of the Code.

(c) Distributee: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who

is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(d) Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

#### 7.4 In-Service Withdrawals.

(a) Voluntary Contributions and Rollover Contributions.  
A Participant who is employed by the Employer may withdraw all or any part of his or her account attributable to Voluntary Contributions or Rollover Contributions upon written request to the Plan Administrator.

(b) Other Requirements. Such request shall include the Participant's address, social security number, birth date, and amount of the withdrawal.

7.5 Transfer to Another City Plan Upon Termination of Participation. If a Participant ceases to be eligible to participate in this Plan, continues employment with the Employer and becomes a participant in another retirement Plan ("Plan II") of the Employer that is qualified under section 401(a) of the Code, the Participant may direct the Trustee to transfer the Participant's Account in this Plan to Plan II, provided the Participant has no outstanding loan from this Plan, the Participant is 100% vested in his account in this Plan and Plan II contains language restricting distribution of the Participant's transferred account as required by Rev. Rul. 94-76.

**ARTICLE VIII  
VESTING**

8.1 Employee Contributions. A Participant shall always have a 100% vested and nonforfeitable interest in his or her Mandatory Employee Pre-Tax Contributions, Transfer Contributions, Voluntary After-Tax Contributions, and Rollover Contributions plus the earnings thereon. No forfeiture of Employer related contributions will occur solely as a result of an Employee's withdrawal of any Employee Contributions.

8.2 Employer Contributions. Effective January 1, 1992, a Participant shall vest in his or her account attributable to Employer Contributions in accordance with the table stated below, provided that if a Participant is not already fully vested, he or she shall become so upon attaining Normal Retirement Age, upon death prior to Normal Retirement Age, or upon termination due to Disability, or upon termination of the Plan.

<u>Years of Service</u>	<u>Percentage Vested and Nonforfeitable</u>
Less than 2 years	0%
2 years	25%
3 years	50%
4 years	75%
5 years	100%

8.3 Years of Service Upon Rehire. In the event a former Employee is rehired, such Employee shall be credited for vesting with all Years of Service, except that Years of Service before a Break in Service shall be canceled if the Participant's Break in Service lasts at least one year and the Participant has experienced a Forfeiture.

8.4 Calculating Vested Interest. A Participant's vested and nonforfeitable interest shall be calculated by multiplying the fair market value of his or her account attributable to Employer Contributions on the Valuation Date preceding payment by the vested percentage as of his or her termination date. A Participant's vested percentage shall be determined according to the Participant's Years of Service and the vesting schedule stated in Section 8.2.

8.5 When Forfeiture Occurs. A Participant's forfeiture if any, of his or her nonvested account balance derived from Employer Contributions shall occur as of the last day of the Plan Year in which the Participant incurs five consecutive one-year Breaks in Service.

8.6 Reallocation of Forfeiture. Forfeitures shall be applied, first, to offset administrative expenses of the Plan and, second, to reduce Matching Employer Contributions.

8.7. Amendment of Vesting Schedule. No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's account balance, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of a Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his Employer-derived accrued benefit will not be less than his percentage computed under the Plan without regard to such amendment.

**ARTICLE IX  
LIMITATIONS ON ALLOCATIONS**

9.1 Maximum Limits on Allocations.

(a) Maximum Annual Additions. The maximum contributions and other additions for a Participant under this Plan for any Limitation Year shall not exceed, when expressed as an annual addition to the Participant's account, and when added to the annual additions to the Participant's account for the Limitation Year under all other defined contribution plans and all welfare benefit funds, as defined in Internal Revenue Code section 419(e), and any individual medical account, as defined in Internal Revenue Code section 415(1), maintained by the Employer, the lesser of:

(i) \$30,000 (\$40,000 effective January 1, 2002), as adjusted under Internal Revenue Code section 415(d), or

(ii) 25% (100% effective January 1, 2002) of the Compensation paid to the Participant by the Employer in such year.

The Compensation limitation referred to in (ii) shall not apply to any contribution for medical benefits (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition under section 415(1)(1) or 419A(d)(2) of the Code.

(b) Definition of Compensation. For purposes of this Article IX, Compensation shall mean wages within the meaning of Internal Revenue Code section 3401(a) (for purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed. Effective with the first Plan Year beginning after 1997, Compensation for purposes of this Article IX shall include any elective deferral as defined in Code section 402(g)(3) and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code section 125 or 457.

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or includable in gross income during such year.

(c) Definition of Annual Addition. For the purposes of this Article IX, "annual, addition" shall mean the sum allocated to a Participant's account for any Limitation Year of:

- (i) Employer Contributions;
- (ii) Employee Contributions;
- (iii) Forfeitures;
- (iv) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a Key Employee, as defined in Internal Revenue Code section 419A(d)(3), under a welfare benefit fund, as defined in Code section 419(e) maintained by the Employer; and
- (v) Amounts allocated after March 31, 1984 to an individual medical account (as defined in Internal Revenue Code section 415(1)(1)) which is part of a pension or annuity plan maintained by the Employer.

The term "annual addition" shall not include the allocation to a Participant's account of income, transfers according to Section 3.2, or rollovers according to Section 4.3.

(d) For purposes of this Article IX, "Employer" means the Employer that adopts this Plan.

9.2 Disposition of Excess Annual Additions. If, due to a reasonable error in estimating a Participant's Compensation or other reasons acceptable to the Commissioner of Internal Revenue, or as a result of the allocation of forfeitures, an amount in excess of the limit, described in Section 9.1 is allocated to a Participant's account, the excess will be disposed of as follows (attributing all excess amounts to this Plan first, if multiple plans are involved):

(a) One-half of the excess amount will be returned to the Participant as a return of employee contributions, to the extent that the return would reduce the excess amounts in the Participant's account.

(b) If after the application of paragraph (a) an excess amount still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the excess amount in the Participant's account will be used to reduce Employer Contributions (including any allocation of forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary.

(c) If after the application of paragraph (a) an excess amount still exists, and the Participant is not covered by the Plan at the end of

the Limitation Year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions (including allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary. If a suspense account is in existence at any time during a Limitation Year pursuant to this Section, it will not participate in the allocation of the Trust's investment gains and losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants accounts before any Employer or any Employee contributions may be made to the Plan for that Limitation Year. Excess amounts may not be distributed to Participants or former Participants, except as provided in Section 9.2(a) above.

(d) If a suspense account is in existence at any time during the Limitation Year pursuant to this paragraph, it will not participate in the allocation of investment gains and losses.

9.3 Participation in This Plan and a Defined Benefit Plan (Not Effective for Plan Years Beginning on or After January 1, 2000). If the Employer maintains, or at any time maintained, a qualified Defined Benefit Plan covering any Participant in this Plan, the sum of the defined benefit plan fraction and the defined contribution plan fraction for each Limitation Year may not exceed 1.0, as described in section 415(e) of the Code, except to the extent not applicable to government plans.

## **ARTICLE X ADMINISTRATION**

10.1 Employer. The Employer shall be a named fiduciary. The Employer's duties shall include but are not limited to appointing the Plan's attorney, accountant, actuary, and any other party needed to administer the Plan, and reviewing and approving any financial reports, investment review, or other reports prepared by any party appointed by the Employer. The Employer shall provide indemnification or insurance for breach of fiduciary duty or errors and omissions insurance for all Board members on the same terms and conditions as the Employer does for other City boards and commissions.

### 10.2 Plan Administrator.

(a) Powers and Duties of Plan Administrator. The Plan Administrator shall be a named fiduciary. The Plan Administrator shall administer the Plan and shall have all powers necessary for that purpose, including, but not by way of limitation, power to interpret the Plan, to communicate with Employees regarding their participation and benefits under the Plan, including the administration of claims procedures, to determine the eligibility, status and rights of all persons under the Plan and in general to decide any dispute. The Plan Administrator shall have full authority to determine eligibility for benefits and to construe the terms of the Plan. The Plan Administrator shall direct the Trustee concerning all distributions from the Fund, in accordance with the provisions of the Plan, and shall have such other powers in the administration of the Fund as may be conferred upon it by the Trust Agreement. The Plan Administrator shall file any returns and reports with the Internal Revenue Service, Department of Labor, or any other governmental agency, establish a funding policy and investment objective consistent with the purposes of the Plan and shall maintain all Plan records. The Plan Administrator shall be agent of the Plan for service of all process.

(b) Meetings. The Board shall meet whenever required for the orderly and timely administration of the business of the Plan at such location as may be acceptable to the Board.

(c) Quorum. A quorum for the transaction of business at a duly called meeting shall consist of three (3) members, with the further limitation that any such quorum shall consist of not less than two (2) City members and one (1) Employee member.

(d) Voting. All actions by and decisions of the Board shall be by the vote of at least three (3) members. Each Board member shall have one vote.



(e) Organization and Operation of the Board. At the commencement of each year, the Board members shall select from among them a Chair and a Secretary who shall each serve for a period of one (1) year. One office shall be filled by a City Board member and one office shall be filled by an Employee Board member. The offices of Chair and Secretary shall be rotated annually between City Board member and Employee Board member. The Secretary shall be responsible for maintaining an accurate record of all actions of the Board, including minutes from all Board meetings. A copy of such minutes shall be retained as a record of the Plan and one copy thereof shall be distributed to each Board member. Documents requiring execution by the Board shall be signed by the Chair and attested by the Secretary. The Board may adopt rules and regulations necessary for the orderly election of Employee members of the Board and for the proper and efficient administration of the Plan, provided such rules and regulations are not inconsistent with the terms of the Plan or the provisions of applicable law.

(f) Election of Employee Board Members. The two (2) Employees who are to be elected to the Board by Participants shall be elected in accordance with this Section 10.2 (f). At the first election, one Employee member shall be elected to serve a term of two (2) years and one (1) Employee member shall be elected to serve a term of three (3) years. Thereafter, Employee members of the Board shall be elected to serve terms of three (3) years. Each term shall commence on the first day of the Plan Year. If otherwise qualified, Employee members of the Board may be re-elected to the Board without limitation on the number of terms they may serve.

10.3 Trustee. The Trustee shall be responsible for the administration of investments held in the Fund. These duties shall include:

- (a) implementing an investment program based on the Employer's investment objectives,
- (b) receiving contributions under the terms of the Plan,
- (c) making distributions from the Fund in accordance with written instructions received from an authorized representative of the Plan Administrator, and
- (d) keeping accurate records reflecting its administration of the Fund and making such records available to the Employer for review and audit. Within 90 days after each Plan Year, and within 90 days after its removal or resignation, the Trustee shall provide to the Employer an accounting of its administration of the Fund during such year or from the end of the preceding Plan Year to the date of removal or resignation. Such accounting shall include a statement of cash receipts and disbursements since the date of its last accounting and shall contain an asset list showing the fair market value of

investments held in the Fund as of the end of the Plan Year. The value of marketable investments shall be determined using the most recent price quoted on a national securities exchange or over-the-counter market. The value of non-marketable investments shall be determined in the sole judgment of the Trustee. The value of investments in securities or obligations of the Employer in which there is no market shall be determined by an independent qualified party selected by the Employer using a method acceptable to the Trustee. The Employer shall review the Trustee's accounting and notify the Trustee in the event of its disapproval of the report within 90 days, providing the Trustee with a written description of the items in question. The Trustee's duties shall be limited to those described above. The Employer shall be responsible for any other administrative duties required under the Plan or by applicable law.

10.4 Administrative Fees and Expenses. All reasonable costs, charges and expenses incurred by the Trustee in connection with the administration of the Fund and all reasonable costs, charges and expenses incurred by the Plan Administrator in connection with the administration of the Plan (including fees for legal services rendered to the Trustee or Plan Administrator) may be paid by the Employer, but if not paid by the Employer when due, shall be paid from the Fund. Such reasonable compensation to the Trustee as may be agreed upon from time to time between the Employer and the Trustee and such reasonable compensation to the Plan Administrator as may be agreed upon from time to time between the Employer and Plan Administrator may be paid by the Employer, but if not paid by the Employer when due shall be paid by the Fund. Notwithstanding the foregoing, no compensation other than reimbursement for expenses shall be paid to a Plan Administrator who is the Employer or a full-time Employee of the Employer.

10.5 Governing Law. Construction, validity and administration of the Plan and Trust shall be governed by Federal law to the extent applicable and to the extent not applicable by the laws of the State of Colorado.

10.6 Election of Employee Board Members. The two (2) Employees who are to be elected to the Board by Participants shall be elected in accordance with this Section 10.6. At the first election, one Participant member shall be elected to serve a term of two (2) years and one (1) Participant shall be elected to serve a term of three (3) years. Thereafter, Employee members of the Board shall be elected to serve terms of three (3) years. Each term shall commence on the first day of the Plan Year. If otherwise qualified, Employee members of the Board may be reelected to the Board without limitation on the number of terms they may serve.

10.7 Written Communication. To the extent permitted by applicable Treasury Regulations and accepted by the Plan Administrator, all provisions of the Plan and Trust Agreement that require written notices and

elections shall be interpreted to mean authorized electronic or telephonic notices and elections.

## **ARTICLE XI TRUST FUND**

11.1 The Fund. The Fund shall consist of all contributions made under Article III and Article IV of the Plan and the investment thereof and earnings thereon. All contributions and the earnings thereon less payments made under the terms of the Plan, shall constitute the Fund. The Fund shall be administered as provided herein.

11.2 Control of Plan Assets. The assets of the Fund or evidence of ownership shall be held by the Trustee under the terms of the Plan and Trust.

11.3 Exclusive Benefit Rules. No part of the Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants, former Participants with a vested interest, and the beneficiary or beneficiaries of deceased Participants having a vested interest in the Fund at death.

11.4 Assignment and Alienation of Benefits. No right or claim to, or interest in, any part of the Fund, or any payment therefrom, shall be assignable, transferable, or subject to sale, mortgage, pledge, hypothecation, communication, anticipation, garnishment, attachment, execution, or levy of any kind, and the Trustee shall not recognize any attempt to assign, transfer, sell, mortgage, pledge, hypothecate, or anticipate the same, except to the extent required by law. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, except to the extent that Colorado statutes provide for enforcement of such order. The Plan Administrator may adopt rules regarding payments pursuant to a domestic relations order.

11.5 Trust Agreement. The Employer has entered into a Trust Agreement with the Trustee United Asset Management Services, to provide for the holding, investment and administration of the funds of the Plan. The Trust Agreement shall be part of the Plan, and the right and duties of any person under the Plan shall be subject to all terms and provisions of the Trust Agreement.

**ARTICLE XII**  
**PARTICIPANT LOANS**  
**(Effective September 20, 1998)**

12.1 Application. A Plan Participant may make application to the Board requesting a loan from the Fund. The Board shall have the sole right to approve or disapprove a Participant's application provided that loans shall be subject to the rules described in this Article XII and shall be made available only according to subsection 12.1(a), in the case of a Participant who has completed at least two years as of Service as a Participant.

(a) A Participant who has completed a Period of Service of 24 months may borrow up to the lesser of \$25,000 or 25% of the fair market value of the Participant's vested account balance derived from Employer Contributions, Mandatory Employee Pre-Tax Contributions, Transfer Contributions and Rollover Contributions.

(b) A Participant who demonstrates an "unforeseeable emergency" may borrow an amount reasonably needed to satisfy such "unforeseeable emergency." An "unforeseeable emergency" is a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the participant or of the Participant's dependent (as defined in Code section 152(a)), loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the Participant's control. An "unforeseeable emergency" does not exist to the extent that such hardship is or may be relieved:

(i) through reimbursement or compensation by insurance or otherwise, or

(ii) by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship.

Examples of what are not considered to be unforeseeable emergencies include the need to send a Participant's child to college or the desire to purchase a home.

12.2 Maximum Amount. No loan granted hereunder shall exceed the lesser of (a) \$25,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (b) an amount which, when added to the outstanding balance of any other Plan loans to the Participant, equals twenty-five percent (25%) of the fair market value of the Participant's vested account

balance derived from Employer Contributions, Mandatory Employee Pre-Tax Contributions, Transfer Contributions and Rollover Contributions. An assignment or pledge of any portion of the Participant's interest in the Plan will be treated as a loan under this Article XII.

12.3 Application Forms. All applications must be made on forms provided by the Board and must be signed by the Participant.

12.4 Spousal Consent. A Participant must obtain the consent of his or her spouse, if any, within the 90-day period before the time the account balance is used as security for the loan. Spousal consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall be binding on the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the account balance is used for renegotiation, extension, renewal, or other revision of the loan. If a valid spousal consent has been obtained in accordance with this Section 12.4, then, notwithstanding any other provision of this Plan, the portion of the Participant's vested account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100% of the Participant's vested account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the account balance shall be adjusted by first reducing the vested account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

12.5 Interest on Loans. Any loan granted hereunder shall bear interest at a rate determined by the Board to be reasonable at the time of application.

12.6 Security. All loans made hereunder shall be secured by the Participant's vested account balance and by such additional collateral as may be required by the Board.

12.7 Terms of Repayment. Any loan shall by its terms require that repayment (principal and interest) be bi-weekly, by payroll deduction or by check if the Participant is not on payroll, over a period not extending beyond five years from the date of the loan.

12.8 Principal and Interest Allocation. The principal and interest paid by a Participant on his or her loan shall be credited as a segregated investment of the Participant's account.

12.9 Default. The Board shall treat a Participant's loan as in default upon any of the following events:

- (a) If a scheduled payment remains unpaid more than 30 days;
- (b) The death of the Participant;
- (c) The termination of the Participant's employment for any reason;
- (d) If the Participant revokes authorization for repayment of the loan by payroll deduction.

The Board shall grant the Participant reasonable rights to cure any default, by repaying the loan, by bringing the loan current by payment of any missed payment(s) with interest, or, if distribution is available under the terms of the Plan, by requesting distribution of the note to the Participant. If the default is not cured within a reasonable time, the Board shall take one of the following actions:

- (a) If a distribution is permissible under the Plan, offset the Participant's vested account balance by the outstanding balance of the loan;
- (b) If a distribution is not permissible under the Plan, report the entire unpaid principal amount of the loan as a taxable distribution to the Internal Revenue Service.

The Board will treat a loan as repaid to the extent of any permissible offset, but until the note is finally and fully disposed of, the Participant remains obligated for repayment of principal and interest.

The Board may adopt policies and procedures that will apply uniformly to all Participants with regard to the procedures that the Board will follow upon default.

12.10 Approval of Application. If a Participant's loan application is approved by the Board, such Participant shall be required to sign a note, loan agreement and assignment of his or her vested interest in the Fund as collateral for the loan.

## **ARTICLE XIII INSURANCE POLICIES**

13.1 Limitations. If agreed upon by the Plan Administrator and the Employer, Employees may elect the purchase of life insurance policies under the Plan. If elected, the aggregate premiums for all ordinary life policies (contracts with decreasing death benefits and non-decreasing premiums) exceed 50% of the aggregate Employer Contributions allocated to the account of a Participant. The aggregate premium contracts or universal life contract shall not exceed 25% of aggregate Employer Contributions allocated to the account of a Participant. The aggregate premiums for a Participant a whole life and a term contract shall not exceed 25% of the aggregate Employer Contributions allocated to the account of a Participant. Premium payments shall be deducted from the Participant's Employer Contributions account, or if so directed by the Participant, from the Participant's nondeductible Voluntary Contributions account.

13.2 Administrative Requirements. Any policies purchased hereunder shall be held subject to the following rules:

(a) The Trustee shall be applicant, owner and beneficiary of any policies issued hereunder. The insurance contract (s) must provide that proceeds will be payable to the Trustee, however the Trustee shall be required to pay over all proceeds of the contract(s) to the Participant's designated Beneficiary in accordance with the distribution provisions of this Plan. Under no circumstances shall the Trust retain any part of the proceeds.

(b) Except as provided in subsection (g), all policies or contracts purchased hereunder shall be endorsed as nontransferable.

(c) A Participant who is uninsurable or insurable at substandard rates, may elect to receive a reduced amount of insurance, if available, or may waive the purchase of any insurance.

(d) All dividends or other returns received on any policy purchased hereunder, shall be applied as directed by the Trustee to reduce the next premium due on such policy, to purchase paid-up additions, to accumulate under the contract, or if no further premium is due, such amount shall be credited to the Fund as part of the account of the Participant for whom the policy is held.

(e) If Employer Contributions are inadequate to pay all premiums on all insurance policies, the Trustee may, at the option of the Plan Administrator, utilize other amounts remaining in each Participant's account to pay the premiums on his respective policy or policies, allow the policies to lapse, reduce the policies to a level at which they may be maintained, or borrow against the policies on a prorated basis, provided that the borrowing does not



discriminate in favor of the policies on the lives of officers, shareholders, and highly compensated employees.

(f) On retirement or termination of employment of a Participant, the Plan Administrator shall direct the Trustee to cash surrender the Participant's policy and credit the proceeds to his or her account for distribution under the terms of the Plan. However, before so doing, the Plan Administrator shall first offer to transfer ownership of the policy to the Participant in exchange for payment by the Participant of the cash value of the policy at the time of transfer. Such payment shall be credited to the Participant's account for distribution under the terms of the Plan (including the applicable vesting schedule).

(g) The Plan Administrator shall be solely responsible to see that these insurance provisions are administered properly and that if there is any conflict between the provisions of this Plan and any insurance contracts issued hereunder that the terms of this Plan will control.

(h) The Employer shall direct the Trustee as to the insurance company and insurance agent through which the Trustee is to purchase the insurance contracts, and the amount of the coverage.

**ARTICLE XIV  
AMENDMENT AND TERMINATION**

14.1 Amendments. The Employer shall have the right at any time, and from time to time, to:

(a) Amend this Plan in such manner as it may deem necessary or advisable in order to qualify this Plan and the Trust created in relation hereto pursuant to sections 402(a) and 501(a) of the Internal Revenue Code of 1986 and any such amendment may, by its terms, be retroactive; and

(b) Amend this Plan in any other manner.

No amendment shall authorize any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries or estates or to defray the reasonable expenses of administering the Plan; no such amendment shall cause any reduction in the vested portion of any Participant's interest in the Trust Fund or cause or permit any portion of the Trust Fund to revert to, or become property of, the Employer and no such amendment which affects the rights, duties or responsibilities of the Trustee shall be effective without the Trustee's written consent. Any such amendment shall become effective as of the effective date stated therein upon delivery of a written instrument, executed on behalf of the Employer by its proper officers duly authorized, to the Trustee and the written consent of the Trustee thereto, if such consent is required. The Board of Trustees may amend this Plan by adopting the amendment or amendments or may authorize, by standing resolution or otherwise, a certain individual or individuals to adopt an amendment or amendments hereto, which amendments shall bear the same effect as if adopted by the Board of Trustees.

14.2 Termination. The Employer shall have the right to terminate its Plan upon 60 days notice in writing to the Trustee. If the Plan is terminated, partially terminated, or if there is a complete discontinuance of contributions under the Plan by the Employer, all amounts credited to the accounts of Participants shall vest and become nonforfeitable. In the event of termination, the Plan Administrator shall direct the Trustees with respect to the distribution of accounts to or for the exclusive benefit of Participants or their beneficiaries.

14.3 Qualification of Employer's Plan. If the Employer fails to attain or retain Internal Revenue Service qualification, such Plan shall no longer be considered a Plan.

14.4 Mergers and Consolidations. In the case of any merger or consolidation of the Employer's Plan with, or transfer of assets or liabilities of the Employer's Plan to, any other plan, immediately after the merger, consolidation,

or transfer Participants in the Employer's Plan shall be credited with benefits which are equal to or greater than the benefits they would have been credited with immediately before the merger, consolidation, or transfer if the Plan had then terminated.

**(Deleted Effective January 1, 1985)**

— END —

IN WITNESS WHEREOF, the parties hereto have executed this Plan this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

**CITY OF GRAND JUNCTION**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

**BOARD OF RETIREMENT**

\_\_\_\_\_

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Signature Date

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Signature Date

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Signature Date

**AMENDED AND RESTATED  
CITY OF GRAND JUNCTION, COLORADO  
NEW HIRE FIRE  
MONEY PURCHASE DEFINED CONTRIBUTION PLAN**

**Restated to Include Amendments  
through December 31, 2001**

**Original Effective Date: January 1, 1987**

**AMENDED AND RESTATED  
CITY OF GRAND JUNCTION, COLORADO  
NEW HIRE FIRE  
MONEY PURCHASE DEFINED CONTRIBUTION PLAN**

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**AMENDED AND RESTATED  
CITY OF GRAND JUNCTION, COLORADO  
NEW HIRE FIRE  
MONEY PURCHASE DEFINED CONTRIBUTION PLAN**

Effective January 1, 1987, the City of Grand Junction, Colorado establishes the City of Grand Junction, Colorado New Hire Fire Money Purchase Defined Contribution Plan (the "Plan") for the exclusive benefit of certain employees and their beneficiaries, to read as follows. The Plan has been amended effective January 1, 1997, January 1, 1998, October 3, 1998, January 1, 2000 and January 1, 2001 to accommodate certain changes, including changes in tax laws.

## **ARTICLE I DEFINITIONS**

1.1 General. The rights of a Participant who terminates Employment on or after the Effective Date shall be governed by the Plan as in effect at the time of such termination of Employment.

1.2 Beneficiary. The individual designated by the Participant, according to Section 6.3(c), to receive distribution of the Participant's Account upon death.

1.3 Board of Retirement ("Board"). The Board of Retirement appointed, in accordance with all applicable statutes or ordinances, to oversee the Plan's operations. The Board consists of seven members: the City Manager, the Finance Director, and the Personnel Manager and one person designated by the City Manager (these four members may be referred to as "City Board members"; each such person may be represented by a designee), and three Participant members who are elected for three year terms by vote of the Participants in accordance with the provisions of Section 10.6 of this Plan (these three Board members may be referred to as "Employee Board members").

1.4 Break in Service. A twelve (12) consecutive month Period of severance.

1.5 Code. The Internal Revenue Code as amended from time to time and the regulations and rulings in effect thereunder.

1.6 Compensation. The total wages or salary, and any other taxable remuneration earned while a Participant from the Employer during the Plan Year, as reported on Form W-2, plus employer contributions made through a salary reduction agreement described in sections 125, 401, 403, 414(h) or 457 of the Internal Revenue Code of 1986, but excluding overtime bonuses, commissions, special allowances or compensation and accumulated leave paid upon separation from employment. Compensation for any Plan Year will be limited to the first \$200,000 of Compensation (or such other amount determined in accordance with Code section 415(d)). Effective for Plan Years beginning on or after January 1, 1996, the \$200,000 limit is reduced to \$150,000, subject to adjustment as provided in Code section 401(a)(17).

Effective prior to January 1, 1997, in determining the Compensation of a Participant who is a Highly Compensated Employee for purposes of this limitation, the rules of Code section 414(q)(6) shall apply, except the term "family" shall include only the spouse of the Participant and any lineal

descendants of the Participant who have not attained age 19 before the close of the year.

1.7 Defined Benefit Plan. A Plan under which a Participant's benefit is determined by a formula contained in the Plan under which no individual accounts are maintained for Participants.

1.8 Defined Contribution Plan. A Plan under which individual accounts are maintained for each Participant to which all contributions, forfeitures, investment income and gains or losses, and expenses are credited or deducted. A Participant's benefit under such Plan is based solely on the fair market value of his or her account balance.

1.9 Disability. Either an Occupational Disability or a Total Disability. Occupational Disability means a disability resulting in an incapacity to perform assigned duties and expected, with reasonable medical probability, to exist for at least one year. Total Disability means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a period not less than twelve (12) months.

1.10 Effective Date. The original effective date of the Plan was January 1, 1987.

1.11 Employee. Employee shall mean any individual employed as a full-time, paid, sworn fire officer of the City of Grand Junction Fire Department.

1.12 Employer. The City of Grand Junction, Colorado.

1.13 Forfeiture. The portion of a Participant's Account which, according to Article VIII, the Participant is not entitled to receive.

1.14 Fund. All contributions received by the Trustee under this Plan and Trust, investments thereof and earnings and appreciation thereon.

1.15 Life Expectancy. Life Expectancy and Joint and Last Survivor Expectancy are computed by use of the expected return multiples in Tables V and VI of section 1.72-9 of the Income Tax Regulations, using the attained age of the Participant (or designated beneficiary) as of the Participant's (or designated beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. The applicable calendar year shall be the first distribution calendar year, and if life expectancy is being recalculated such succeeding calendar year.

If distribution is in the form of an immediate annuity, purchased after the Participant's death with the Participant's remaining interest, the applicable calendar year is the year of purchase. If life expectancy is being recalculated, the applicable life expectancy shall be the life expectancy as so recalculated. Unless otherwise elected by the Participant by the time distributions are required to begin, Life Expectancies shall be recalculated annually. Such election shall be irrevocable as to the Participant and shall apply to all subsequent years. The Life Expectancy of a nonspouse beneficiary may not be recalculated.

1.16 Limitation Year. The calendar year or such other 12-consecutive month period designated by the Employer for purposes of determining the maximum annual addition to a Participant's account .

1.17 Mandatory Employee Pre-Tax Contributions. Employer Contributions made to the Plan on behalf of the Participant, which are designated as Employee contributions pursuant to section 414(h)(2) of the Code in lieu of cash compensation, and contributions made pursuant to a salary reduction agreement or other deferral mechanism.

1.18 Normal Retirement Age. Age 50.

1.19 Participant. Any Employee who has met the eligibility requirements and is participating in the Plan.

1.20 Period of Separation. A period of time commencing with the date a Participant separates from service as an Employee and ending with the date such Employee resumes employment with Employer as an Employee.

1.21 Period of Service. For purposes of determining a Participant's initial or continued eligibility to participate in the Plan or a Participant's vested interest in the Participant's Employer Contribution Account, a Participant shall be credited for the time period commencing with the Participant's first day of employment as an Employee and ending on the date a Period of Severance begins. A Period of Service for these purposes includes any Period of Separation of less than twelve (12) consecutive months. In the case of a Participant who separates from service as an Employee and later resumes employment as an Employee, the Period of Service prior to the Participant's resumption of employment shall be aggregated only if such Participant is a Re-employed Individual as described in Section 8.4.

1.22 Period of Severance. A period of time commencing with the earlier of:

(a) the date a Participant separates from service as an Employee by reason of quitting, retirement, death, or discharge; or

(b) the date twelve (12) months after the date a Participant separates from service as an Employee and ending, in the case of a Participant who separates from service as an Employee by reason other than death, with the date such Participant resumes employment as an Employee.

1.23 Plan. The City of Grand Junction, Colorado New Hire Fire Money Purchase Defined Contribution Plan as established by the provisions in this document.

1.24 Plan Administrator. The Board of Retirement.

1.25 Plan Year. The calendar year.

1.26 Qualified Deferred Compensation Plan. Any pension, profit sharing, or other plan which meets the requirements of section 401 of the Code which includes a trust exempt from tax under section 501(a) of the Code and any annuity plan described in section 403(a) of the Code.

1.27 Restatement Date. December 31, 2001. The Plan was originally effective January 1, 1987, was amended October 3, 1998 and was restated in its entirety in the form of this document to include amendments through December 31, 2001.

1.28 Rollover Contribution. A contribution made by a Participant of an amount distributed to such Participant from another Qualified Deferred Compensation Plan in accordance with sections 402(a)(5), (6) and (7) of the Code.

1.29 Spouse (Surviving Spouse). The spouse or surviving spouse of the Participant, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.

1.30 Trustee. The Board of Retirement.

1.31 Valuation Date. The last day of the Plan Year and the following date(s) on which Participant accounts are revalued in accordance with Article V: March 31, June 30 and September 30.



1.32 Custodian. An entity selected by the Board of Retirement in accordance with the procedures of Section 10.2 that has custody of all Plan assets, performs participant record keeping functions, executes the instructions of the Board or Investment Manager with respect to transactions with Plan assets, and performs such other duties, subject to the direction and control of the Board, as may be set forth in a written agreement between the Custodian and the Board.

1.33 Investment Manager. An entity selected by the Board of Retirement in accordance with the procedures of Section 10.3 that (a) has the power to manage, acquire, or dispose of Plan assets and (b) acknowledges fiduciary responsibility to the Plan in writing. Such entity must be a person, firm, or corporation registered as an investment adviser under the Investment Advisers Act of 1940, a bank, or an insurance company.

1.34 Custodian. An entity selected by the Board of Retirement in accordance with the procedures of Section 10.2 that has custody of all Plan assets, performs participant record keeping functions, executes the instructions of the Board or Investment Manager with respect to transactions with Plan assets, and performs such other duties, subject to the direction and control of the Board, as may be set forth in a written agreement between the Custodian and the Board.

1.35 Investment Manager. An entity selected by the Board of Retirement in accordance with the procedures of Section 10.3 that (a) has the power to manage, acquire, or dispose of Plan assets and (b) acknowledges fiduciary responsibility to the Plan in writing. Such entity must be a person, firm, or corporation registered as an investment adviser under the Investment Advisers Act of 1940, a bank or an insurance company.

## **ARTICLE II ELIGIBILITY REQUIREMENTS**

2.1 Participation. An Employee shall be eligible to participate in the Plan on the date he has attained age 18. An Employee who satisfied this eligibility requirement and subsequently terminated employment shall become a Participant immediately upon returning to the employ of the Employer as an Employee.

2.2 Employment Rights. Participation in the Plan shall not confer upon a Participant any employment rights, nor shall it interfere with the Employer's right to terminate the employment of any Employee at any time.

2.3 Change in Classification of Employment. In the event a Participant becomes ineligible to participate because he or she is no longer a member of an eligible class of Employees, such Employee shall participate immediately upon his or her return to an eligible class of Employees.

**ARTICLE III  
EMPLOYER CONTRIBUTIONS**

3.1 Employer Contributions.

(a) On behalf of each Participant, the Employer will contribute to each Participant's Account not less than the amount required by State law, presently 8% of the Participant's Compensation. Effective January 1, 1992, on behalf of each Participant, the Employer will contribute to the Participant's Account 10.65% of the Participant's Compensation. The Employer, by duly enacted ordinance, may prospectively reduce the percentage contribution to not less than eight percent (8%) so long as the Employer makes an equal reduction in the Employer contribution for classified City of Grand Junction employees. A reduction in the percentage contribution made in accordance with the preceding sentence shall not be subject to subsection (d) of this Section 3.1 or to Section 13.1 of this Plan.

(b) Notwithstanding the foregoing, the Employer's contribution for any Plan Year shall not exceed the maximum amount allowable under the provisions of Code section 415 and Article IX of this Plan.

(c) The Employer shall make a contribution to the Trust each pay period, based upon the Compensation paid to all Participants for each such pay period. Each contribution shall be delivered or mailed to the Trustee or Custodian on the same day that paychecks are released to Participants.

(d) Any change in the rate of the Employer's contribution rate is a Plan amendment subject to the requirements of Section 13.1 of this Plan, except as otherwise provided herein (see Section 3.1 (a)).

3.2 Transfer Contributions. Subject to the direction of the Employer, the Trustee is authorized to receive and add to the Trust Fund as a direct transfer assets attributable to the vested interest of any Participant in a retirement plan qualified under Code section 401(a) if such individual is a Participant in this Plan. Transfers shall be credited to the particular Participant's Transfer Account, shall always be fully vested and nonforfeitable, and shall be distributed pursuant to Article VII hereof.

3.3 Expenses and Fees. The Employer shall also be authorized to reimburse the Fund for all expenses and fees incurred in the administration of the Plan or Trust and paid out of the assets of the Fund. Such expenses shall

include, but shall not be limited to, fees for professional services, printing, postage, and brokerage or other commissions.

3.4 Responsibility for Contribution. The Trustee shall not be required to determine if the Employer has made a contribution or if the amount contributed is in accordance with the Plan or the Code. The Employer shall have sole responsibility in this regard.

3.5 Return of Contributions. Contributions made to the Fund by the Employer shall be irrevocable, except as follows:

(a) Any contribution made to the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

(b) In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made incident to that initial qualification by the Employer must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

3.6 Military Service. Effective on and after December 12, 1994, notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code section 414(u).

## **ARTICLE IV EMPLOYEE CONTRIBUTIONS**

4.1 Mandatory Employee Pre-Tax Contributions. A Participant shall be required to contribute toward the cost of the Plan, from amounts the Participant would otherwise receive as Compensation, an amount equal to the same percent of the Employee's Compensation that the Employer contributes according to Section 3.1. The contributions shall be made by each Employee on each payroll date to the Plan. They shall be designated as Employee Contributions pursuant to section 414(h)(2) of the Code, contingent upon the contributions being excluded from the Participant's gross income for federal income tax purposes. Mandatory Employee Pre-Tax Contributions shall be made by payroll deduction. The Employer shall deliver, wire or mail Mandatory Employee Pre-Tax Contributions to the Trustee or Custodian on the same day that paychecks are released to Participants.

4.2 [INTENTIONALLY LEFT BLANK]

4.3 Rollover Contribution. A Participant may make a Rollover Contribution to the Plan of all or any part of an amount distributed or distributable to him or her from a Qualified Deferred Compensation Plan provided the Rollover Contribution constitutes a direct transfer of eligible rollover distributions described in section 401(a)(31) of the Code or a rollover described in section 402(c) of the Code. Such Rollover Contribution may also be made through an Individual Retirement Account (IRA) qualified under section 408 of the Code where the IRA was used as a conduit from the Qualified Deferred Compensation Plan, the Rollover Contribution is made in accordance with the rules of Code section 402(c) and the Rollover Contribution does not include any regular IRA contributions, or earnings thereon, that the Participant may have made to the IRA. The Trustee shall not be held responsible for determining whether Rollover Contributions made hereunder meet the requirements of this Section 4.3.

## **ARTICLE V PARTICIPANT ACCOUNTS**

5.1 Separate Accounts. The Board shall establish a separate bookkeeping account for each Participant showing the total value of his or her interest in the Fund. Each Participant's Account shall be separated for bookkeeping purposes into the following sub-accounts:

- (a) Employer Contributions.
- (b) Transfer Contributions, which shall include sub-accounts as necessary for employer contributions, after-tax employee contributions and before-tax employee contributions.
- (c) Mandatory Employee Contributions.
- (d) Rollover Contributions.

5.2 Adjustments To Participant Accounts. As of each Valuation Date of the Plan, the Board shall credit to or deduct from each Account:

- (a) the Participant's share of the Employer's Contribution and forfeitures,
- (b) any Employee Contributions made by the Participant since the last Valuation Date,
- (c) withdrawals, and
- (d) the Participant's proportionate share of any investment earnings and increases or decreases in the fair market value of the Fund since the last Valuation Date.

All allocations made hereunder will be made in a nondiscriminatory manner. Accounts with segregated investments shall receive only the income or loss on such segregated investments.

Terminated Participants' vested account balances shall be credited with any investment earnings and increase or decrease in the fair market value of the Fund until the Valuation Date preceding distribution. Terminated Participants' nonvested account balances shall be credited with any investment

earnings and increase or decrease in the fair market value of the Fund until forfeited pursuant to Section 8.6.

5.3 Participant Statements. The Board shall at least annually prepare a statement for each Participant showing the additions to and subtractions from his or her account since the last Valuation Date and the fair market value of his or her account as of the current Valuation Date.

## ARTICLE VI ELIGIBILITY FOR BENEFITS

6.1 Retirement. If a Participant's Employment terminates for any reason on or after his Normal Retirement Age, he shall be eligible to receive the entire amount then credited to his account, which shall be fully vested and nonforfeitable.

6.2 Disability. If a Participant's Employment terminates because of his Disability at any time, he shall be eligible to receive the entire amount then credited to his account, which shall be fully vested and nonforfeitable.

6.3 Death.

(a) Before Termination of Employment. If a Participant's Employment terminates because of his death, the entire amount then credited to his account shall become fully vested and nonforfeitable and payable pursuant to subsection 6.3(c).

(b) After Termination of Employment. If a Participant (including a former Participant) dies after terminating Employment, the Plan shall pay the then undistributed vested balance, if any, of the Participant's account pursuant to subsection (c) below.

(c) Recipient of Payment After Death and Timing of Payment. Each Employee, upon becoming a Participant and on a form provided by the Plan and filed with the Board, may designate a Beneficiary and may, in addition, name a contingent Beneficiary. Any Participant may at any time revoke or change his designation of Beneficiary by filing a written notice of the revocation or change with the Board. The Plan shall distribute benefits payable pursuant to subsection (a) or (b) above to the deceased Participant's Beneficiary identified pursuant to a Beneficiary designation in effect at the time of his death or, if no such designation exists, to the Participant's surviving spouse or, if none, to his estate. The method and duration of payment shall be consistent with the limits imposed in Article VII.

If distribution had commenced to the Participant prior to his death, it shall continue being paid after the Participant's death at least as rapidly as under the method of distribution being made as of the Participant's death. If distribution had not begun before the Participant's death, full distribution shall occur over a period described in (i), (ii) or (iii) below:



(i) Non-Spouse Beneficiary. If the distribution is payable to a designated Beneficiary who is not the Participant's spouse, the distribution shall occur over a period no longer than the Beneficiary's Life Expectancy, commencing on or before December 31 of the calendar year immediately following the calendar year of the Participant's death.

(ii) Spouse Beneficiary. If the distribution is payable to a designated Beneficiary who is the Participant's spouse, the distribution shall occur over a period no longer than the spouse's Life Expectancy, commencing no later than the later of [a] December 31 of the calendar year immediately following the calendar year in which the Participant died, or [b] December 31 of the calendar year in which the Participant would have attained age 70-1/2. The surviving spouse may elect to have the distribution of the Account commence within 90 days after the Participant's death.

(iii) No Designated Beneficiary. In all other cases, i.e. in the absence of a designated Beneficiary, the distribution shall occur over a period ending no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) Proof of Death. The Board may require such proper proof of death and such evidence as to a person's right to receive payment from a deceased Participant's account as the Board reasonably deems appropriate.

6.4 Termination of Employment Before Retirement, Disability or Death. If a Participant's employment with the Employer terminates prior to his Normal Retirement Date for any reason other than his death or Disability, the Participant shall be eligible to receive the vested portion of his account, determined according to Article VIII.

6.5 Claims Procedures. Upon retirement, death, or other severance of employment, the Participant or representative of such Participant may request of the Board payment of benefits due and the manner of payment. If a request for benefits is made, the Board shall accept, reject, or modify such request and, in the case of a denial or modification, the Board shall:

- (a) state the specific reason or reasons for the denial,
- (b) provide specific reference to pertinent Plan provisions on which the denial is based,
- (c) provide a description of any additional material or information necessary for the Participant or his or her representative to perfect

the claim and an explanation of why such material or information is necessary, and

(d) explain the Plan's claim review procedure as contained herein.

In the event the request is rejected or modified, the Participant or his or her representative may within 60 days following receipt by the Participant or representative of such rejection or modification, submit a written request for review by the Board of its initial decision. Within 60 days following such request for review, the Board shall render its final decision in writing to the Participant or representative stating specific reasons for such decision. If the Participant or representative is not satisfied with the Board's final decision, the Participant or representative can institute an action in a federal court of competent jurisdiction; for this purpose, process would be served on the Board.

6.6 Disposition of Unclaimed Payments. If the Trustee is unable to make any payment due under the Plan to any person because it does not know the identity or post office address of such person, the Trustee shall suspend all further payments until it has received written direction from the Board.

## ARTICLE VII PAYMENTS

7.1 Commencement of Payments. The distribution of all or any portion of a Participant's account shall commence in accordance with the Participant's election, not earlier than termination of the Participant's employment with the Employer (unless specifically authorized elsewhere herein). Distribution of a Participant's account shall commence no later than the April 1st of the calendar year following the later of (a) the calendar year in which the Participant attains age 70-1/2 or (b) the calendar year in which the Participant's employment with the Employer terminates. Distributions shall be made in accordance with Treasury Regulations under Internal Revenue Code section 401(a)(9). Distribution may commence less than 30 days after the notice required under section 402(f) of the Code is given, provided that:

(a) the Board clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and

(b) the Participant, after receiving the notice, affirmatively elects a distribution.

7.2 Method of Payment. Distribution in relation to a Participant shall occur in cash, in one of the following methods as chosen by the Participant:

(a) Lump Sum. A single, lump sum distribution of the entire amount in the Participant's account. Payment shall be in a lump sum if the value of the Participant's vested account (before payments begin) is not greater than \$5,000.

(b) Partial Lump Sum. A lump sum distribution of a portion of a Participant's account, which the Participant may choose to receive separately from other Plan distributions.

(c) Installment Payments. In substantially equal monthly, quarterly, semiannual or annual payments. Such installments, whether paid from the Plan assets or an annuity contract, shall be of such amount and on such a schedule that the distribution is consistent with section 401(a)(9) of the Code and applicable regulation, which the Plan hereby incorporates by reference. Subject to such requirements, installment payments may be accelerated, delayed or paid in a lump sum at the direction of the Participant. With respect to distributions

under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date specified in guidance published by the Internal Revenue Service.

7.3 Direct Rollover. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(b) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code 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 section 414(p) of the Code.

(c) **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(d) **Direct rollover:** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

#### 7.4 In-Service Withdrawals.

(a) Rollover Contributions. A Participant who is employed by the Employer may withdraw all or any part of his or her account attributable to Rollover Contributions upon written request to the Board.

(b) Other Requirements. Such request shall include the Participant's address, social security number, birth date, and amount of the withdrawal.

7.5 Transfer to Another City Plan Upon Termination of Participation. If a Participant ceases to be eligible to participate in this Plan, continues employment with the Employer and becomes a participant in another retirement Plan ("Plan II") of the Employer that is qualified under section 401(a) of the Code, the Participant may direct the Trustee to transfer the Participant's Account in this Plan to Plan II, provided the Participant has no outstanding loan from this Plan, the Participant is 100% vested in his account in this Plan and Plan II contains language restricting distribution of the Participant's transferred account as required by Rev. Rul. 94-76.

**ARTICLE VIII  
VESTING**

8.1 Employee Contributions. A Participant shall always have a 100% vested and nonforfeitable interest in his or her Mandatory Employee Pre-Tax Contributions, Transfer Contributions and Rollover Contributions plus the earnings thereon. No forfeiture of Employer related contributions will occur solely as a result of an Employee's withdrawal of any Employee Contributions.

8.2 Employer Contributions. A Participant shall vest in his or her account attributable to Employer Contributions in accordance with the table stated below, provided that if a Participant is not already fully vested, he or she shall become so upon attaining Normal Retirement Age, upon death prior to Normal Retirement Age, upon retirement due to Disability, or upon termination of the Plan. Years referred to in this table are 12 consecutive months (365 days) during a Period of Service as a Participant.

<u>Years of Service</u>	<u>Percentage Vested and Nonforfeitable</u>
Less than 3 years	20%
4 years	40%
5 years	60%
6 years	80%
7 years or more	100%

8.3 Service After Break in Service. If a Participant (whether or not the Participant is a "Re-Employed Individual" as defined in Section 8.4) resumes employment as an Employee after a Break in Service, any subsequent Period of Service shall be disregarded in determining the vested interest in the Participant's Employer Contribution Account accrued prior to such Break in Service.

8.4 Prior Service of Re-employed Individual. If a Participant is a Re-employed Individual, the Period of Service prior to the Participant's separation from employment as an Employee shall be aggregated in determining the vested interest in the Participant's Employer Contribution Account accrued after the Participant's re-employment as an Employee. For purposes of applying this rule, a "Re-employed Individual" is a person who, after having separated from service as an Employee, resumes employment as an Employee:

(a) with a vested interest in his/her Employer Contribution Account, or

(b) with no such vested interest, and who resumes employment as an Employee i) before a Break in Service or ii) after a Break in Service but before his/her latest Period of Severance equals or exceeds his/her Period of Service, or

(c) resumes employment as an Employee prior to the Effective Date of this Plan.

8.5 Calculating Vested Interest. A Participant's vested interest shall be calculated by multiplying the fair market value of his or her account attributable to Employer Contributions on the Valuation Date preceding payment by the vested percentage as of the date his or her employment as an Employee terminates.

8.6 When Forfeiture Occurs. A Participant's forfeiture, if any, of his or her nonvested account balance derived from Employer Contributions shall occur as of the date of the Participant's separation from employment with the Employer as an Employee.

8.7 Reallocation of Forfeiture. Forfeitures shall be applied, first to defray administrative expenses of the Plan and, second, to reduce Employer Contributions, and shall be reallocated as of the last day of the Plan Year following the Plan Year in which the forfeiture occurs.

8.8 Amendment of Vesting Schedule. No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's account balance, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of a Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his Employer-derived accrued benefit will not be less than his percentage computed under the Plan without regard to such amendment.

**ARTICLE IX  
LIMITATIONS ON ALLOCATIONS**

9.1 Maximum Limits on Allocations.

(a) Maximum Annual Additions. The maximum contributions and other additions for a Participant under this Plan for any Limitation Year shall not exceed, when expressed as an annual addition to the Participant's account, and when added to the annual additions to the Participant's account for the Limitation Year under all other defined contribution plans and all welfare benefit funds, as defined in Internal Revenue Code section 419(e), and any individual medical account, as defined in Internal Revenue Code section 415(1), maintained by the Employer, the lesser of:

(i) \$30,000 (\$40,000 effective January 1, 2002), as adjusted under Internal Revenue Code section 415(d); or

(ii) 25% (100% effective January 1, 2002) of the Compensation paid to the Participant by the Employer in such year.

The Compensation limitation referred to in (ii) shall not apply to any contribution for medical benefits (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition under section 415(l)(1) or 419A(d)(2) of the Code.

(b) Definition of Compensation. For purposes of this Article IX, Compensation shall mean wages within the meaning of Internal Revenue Code section 3401(a) (for purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed. Effective with the first Plan Year beginning after 1997, Compensation for purposes of this Article IX shall include any elective deferral as defined in Code section 402(g)(3) and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code section 125 or 457.

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or includable in gross income during such year.



(c) Definition of Annual Addition. For the purposes of this Article IX, "annual addition" shall mean the sum allocated to a Participant's account for any Limitation Year of:

(i) Employer Contributions;

(ii) Employee Contributions;

(iii) Forfeitures;

(iv) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a Key Employee, as defined in Internal Revenue Code section 419A(d)(3), under a welfare benefit fund, as defined in Code section 419(e), maintained by the Employer; and

(v) Amounts allocated after March 31, 1984 to an individual medical account (as defined in Internal Revenue Code section 415(l)(1)) which is part of a pension or annuity plan maintained by the Employer.

The term "annual addition" shall not include the allocation to a Participant's account of income transfers according to Section 3.2, or rollovers according to Section 4.3.

(d) For purposes of this Article IX, "Employer" means the Employer that adopts this Plan.

9.2 Disposition of Excess Annual Additions. If, due to a reasonable error in estimating a Participant's Compensation or other reasons acceptable to the Commissioner of Internal Revenue, or as a result of the allocation of forfeitures, an amount in excess of the limit described in Section 9.1 is allocated to a Participant's account, the excess will be disposed of as follows (attributing all excess amounts to this Plan first, if multiple plans are involved):

(a) One-half of the excess amount will be returned to the Participant as a return of employee contributions, to the extent that the return would reduce the excess amounts in the Participant's account.

(b) If after the application of paragraph (a) an excess amount still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the excess amount in the Participant's account will be used to reduce Employer Contributions (including any allocation of forfeitures) for such

Participant in the next Limitation Year, and each succeeding Limitation Year if necessary.

(c) If after the application of paragraph (a) an excess amount still exists, and the Participant is not covered by the Plan at the end of the Limitation Year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions (including allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary. If a suspense account is in existence at any time during a Limitation Year pursuant to this Section, it will not participate in the allocation of the Trust's investment gains and losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants accounts before any Employer or any Employee contributions may be made to the Plan for that Limitation Year. Excess amounts may not be distributed to Participants or former Participants, except as provided in Section 9.2(a) above.

9.3 Participation in This Plan and a Defined Benefit Plan (Not Effective for Plan Years Beginning on or After January 1, 2000). If the Employer maintains, or at any time maintained, a qualified Defined Benefit Plan covering any Participant in this Plan, the sum of the defined benefit plan fraction and the defined contribution plan fraction for each Limitation Year may not exceed 1.0, as described in section 415(e) of the Code, except to the extent not applicable to government plans.

## **ARTICLE X ADMINISTRATION**

10.1 Employer. The Employer's duties with respect to the Plan shall include but are not limited to appointing the Plan's attorney, accountant, actuary, and any other party needed to administer the Plan, and reviewing and approving any financial reports, investment review, or other reports prepared by any party appointed by the Employer. To the extent that the Employer provides indemnification or insurance for fiduciary breach and errors or omissions of Board members, it will do so at the same level for all Board members. The Employer shall provide indemnification or insurance for breach of fiduciary duty or errors and omissions insurance for all Board members on the same terms and conditions as Employer does for other City boards and commissions.

### 10.2 Board.

(a) Powers and Duties of Board. The Board shall administer the Plan and shall have all powers necessary for that purpose, including, but not by way of limitation, power to interpret the Plan, to communicate with Employees regarding their participation and benefits under the Plan, to administer claims procedures, to determine the eligibility, status and rights of all persons under the Plan, to determine eligibility for and terms of Plan loans to Participants, and in general to decide any dispute over benefit amounts. The Board shall have full discretionary authority to determine eligibility for benefits and to construe the terms of the Plan. The Board shall select the Custodian and shall direct the Custodian concerning all distributions from the Fund, all in accordance with the provisions of the Plan. The Board shall file any returns and reports with the Internal Revenue Service, Department of Labor, or any other governmental agency, establish a statement of investment policies consistent with the purposes of the Plan and shall maintain all Plan records. The Board shall be agent of the Plan for service of all process.

(b) Meetings. The Board shall meet whenever required for the orderly and timely administration of the business of the Plan at such location as may be acceptable to the Board. The Chairman, Secretary or any two Board members may call meetings of the Board. Any meeting shall be called upon at least 10 days' written notice, which notice shall specify the date, time and place of such meeting, and may specify the purpose and any action proposed to be taken. If a quorum is not present at any duly called meeting, those Board members present may adjourn such meeting until a date, time and place not sooner than five days later. A written notice stating the date, time and place of any meeting or adjourned meeting shall be sent to all Board members.

Whenever any notice is required to be given to any Board member, a waiver of notice in writing signed at any time, whether before or after the time of meeting by the Board members entitled to such notice, shall be deemed equivalent to the giving of such notice. The attendance of a Board member at a meeting shall constitute a waiver of notice of such meeting, except where a Board member attending a meeting objects to the transaction or any business because the meeting is not lawfully called or convened.

(c) Quorum. A quorum for the transaction of business at a duly called meeting shall consist of five members, with the further limitation that any such quorum shall consist of not less than three City members and two Employee Board members.

(d) Voting. All actions by and decision of the Board shall be by the vote of at least five (5) members attending a duly called meeting of the Board. Each Board member shall have one vote.

(e) Organization and Operation of Board. At the commencement of each year, the Board members shall select from among them a Chair and a Secretary who shall each serve for a period of one year. One office shall be filled by a City Board member and one office shall be filled by an Employee Board member. The offices of Chair and Secretary shall be rotated annually between City Board member and Employee Board member. The Secretary shall be responsible for maintaining an accurate record of all actions of the Board, including minutes from all Board meetings. A copy of such minutes shall be retained as a record of the Plan and one copy thereof shall be distributed to each Board member. Documents requiring execution by the board shall be signed by the Chair and attested by the Secretary. The Board may adopt rules and regulations necessary for the orderly election of employee members of the Board and for the proper and efficient administration of the Plan, provided such rules and regulations are not inconsistent with the terms of the Plan or the provisions of applicable law.

10.3 Fund Administration. The Board's duties and powers in relation to the administration of the Fund shall include:

(a) selecting one or more Investment Managers as provided in Section 11.2; and

(b) selecting a Custodian to receive contributions to the Fund, hold income and assets of the Fund, make payments from the Fund as directed by the Board, keep accurate records reflecting the administration of the fund and making such records available to the Employer and the Board for review and

audit. Within ninety (90) days after each Plan Year the Custodian shall provide to the Employer and the Board an accounting of its administration of the Fund during such year or from the end of the preceding Plan Year to the date of removal or resignation. Such accounting shall include a statement of cash receipts and disbursements since the date of its last accounting and shall contain an asset list showing the fair market value of investments held in the Fund as of the end of the Plan Year. The value of marketable investments shall be determined using the most recent price quoted on a national securities exchange or over-the-counter market. The value of the nonmarketable investments shall be determined in the sole judgment of the Custodian. The Employer and the Board shall review the Custodian's accounting and notify the Custodian in the event of its disapproval of the report within ninety (90) days, providing the Custodian with a written description of the items in question.

10.4 Administrative Fees and Expenses. All reasonable costs, charges and expenses incurred by the Board in connection with the administration of the Fund and the Plan (including fees for legal services rendered to the Board) shall be paid from the Fund. Such reasonable compensation to the Custodian as may be agreed upon from time to time between the Board and any Investment Manager, shall be paid by the Fund. No person who receives full-time pay from the Employer shall receive compensation from the Trust Fund, other than reimbursement for expenses properly and actually incurred.

10.5 Governing Law. Construction, validity and administration of this Plan shall be governed by Federal law to the extent applicable and to the extent not applicable by the laws of the State of Colorado.

10.6 Election of Employee Board Members. The three Participants who are to be elected to the Board by the Participants shall be elected in accordance with this Section 10.6. The members of the Board elected by the Participants shall be elected at a meeting of the Participants called for that purpose. At the first election, one (1) Participant shall be elected to serve a term of one (1) year; one (1) Participant shall be elected to serve a term of two (2) years; and one (1) Participant shall be elected to serve a term of three (3) years. Thereafter employee members of the Board shall be elected to serve terms of three (3) years. Each term shall commence on the first day of a Plan Year and shall end on the last day of a Plan Year. If otherwise qualified, employee members of the Board may be reelected to the Board without limitation on the number of terms they may serve.

10.7 Restrictions on Investments. Notwithstanding any other provision of this Plan, all Plan assets shall be invested in compliance with the Colorado

Revised Statutes. The Plan shall not engage in any transaction which involved the direct or indirect:

(1) sale or exchange or leasing of any property between the Plan and the Employer;

(2) lending of money or other extension of credit between the Plan and the Employer;

(3) transfer to, or use by or for the benefit of the Employer, of any assets or income of the Plan.

10.8 Written Communication. To the extent permitted by applicable Treasury Regulations and accepted by the Plan Administrator, all provisions of the Plan and Trust Agreement that require written notices and elections shall be interpreted to mean authorized electronic or telephonic notices and elections.

## **ARTICLE XI TRUST FUND**

11.1 The Fund. The Fund shall consist of all contributions made under Article III and Article IV of the Plan and the investment thereof and earnings thereon. All contributions and the earnings thereon less payments made under the terms of the Plan, shall constitute the Fund. The Fund shall be administered as provided herein.

11.2 Management of Fund. The management of the Fund, including the acquisition and disposition of property comprising the Fund, shall be as follows:

(a) The Board shall have exclusive responsibility, discretion and authority with respect to management of the Fund except as to those portions of the Fund regarding which the Board has appointed an Investment Manager according to 11.2 (b).

(b) The Board may appoint one or more Investment Managers to direct the investment of all or a portion of the Fund. As a condition to its appointment, an Investment Manager shall acknowledge in writing that it is a fiduciary with respect to the Plan. An Investment Manager shall not have authority to take custody of any property which is a part of the Fund. The Board shall furnish an Investment Manager with written investment guidelines for investment of the Investment Manager's Account and these guidelines may include directions with respect to diversification of the investments. An Investment Manager shall have the authority, by written direction to the Custodian, to direct the investment of that portion of the Fund with respect to which it has been appointed an Investment Manager. The Investment Manager must direct investments in a manner consistent with this Plan and applicable law.

11.3 Exclusive Benefit Rules. No part of the Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants, former Participants with a vested interest, and the beneficiary or beneficiaries of deceased Participants having a vested interest in the Fund at death.

11.4 Assignment and Alienation of Benefits. No right or claim to, or interest in, any part of the Fund, or any payment therefrom, shall be assignable, transferable, or subject to sale, mortgage, pledge, hypothecation, communication, anticipation, garnishment, attachment, execution, or levy of any kind, and the Trustee shall not recognize any attempt to assign, transfer, sell, mortgage, pledge, hypothecate, commute, or anticipate the same, except to the extent required by law. The preceding sentence shall also apply to the creation,

assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, except to the extent that Colorado statutes provide for enforcement of such order. The Board may adopt rules regarding payments pursuant to a domestic relations order.

11.5 Custodial Agreement. The Board shall enter into a Custodial Agreement with the Custodian, to provide for the holding and administration of the funds of the Plan.



## ARTICLE XII PARTICIPANT LOANS

12.1 Application. A Plan Participant may make application to the Board requesting a loan from the Fund. The Board shall have the sole right to approve or disapprove a Participant's application provided that loans shall be subject to the rules described in this Article XII and shall be made available only according to subsection 12.1(a), in the case of a Participant who has completed at least two years as of Service as a Participant, or according to subsection 12.1(b), due to the occurrence of an "unforeseeable emergency" of the Participant, or according to Section 12.1(c) in the case of a Participant with Rollover Contributions.

(a) A Participant who has completed a Period of Service of 24 months may borrow up to 50% of the fair market value of the Participant's vested account balance derived from Employer Contributions, Mandatory Employee Pre-Tax Contributions, Transfer Contributions and Rollover Contributions.

(b) A Participant who demonstrates an "unforeseeable emergency" may borrow an amount reasonably needed to satisfy such "unforeseeable emergency." An "unforeseeable emergency" is a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the participant or of the Participant's dependent (as defined in Code section 152(a)), loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the Participant's control. An "unforeseeable emergency" does not exist to the extent that such hardship is or may be relieved:

(i) through reimbursement or compensation by insurance or otherwise, or

(ii) by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship.

Examples of what are not considered to be unforeseeable emergencies include the need to send a Participant's child to college or the desire to purchase a home.

(c) Effective October 3, 1998, a Participant who has made a Rollover Contribution to the Plan may borrow up to 50% of the fair market value of the Participant's account balance derived from Rollover Contributions without regard to the 24 month Period of Service requirement.

12.2 Maximum Amount. No loan granted hereunder shall exceed the lesser of (a) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (b) an amount which, when added to the outstanding balance of any other Plan loans to the Participant, equals fifty percent (50%) of the fair market value of the Participant's vested account balance derived from Employer Contributions, Mandatory Employee Pre-Tax Contributions, Transfer Contributions and Rollover Contributions. An assignment or pledge of any portion of the Participant's interest in the Plan will be treated as a loan under this Article XII.

12.3 Application Forms. All applications must be made on forms provided by the Board and must be signed by the Participant.

12.4 Spousal Consent. A Participant must obtain the consent of his or her spouse, if any, within the 90-day period before the time the account balance is used as security for the loan. Spousal consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall be binding on the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the account balance is used for renegotiation, extension, renewal, or other revision of the loan. If a valid spousal consent has been obtained in accordance with this Section 12.4, then, notwithstanding any other provision of this Plan, the portion of the Participant's vested account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100% of the Participant's vested account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the account balance shall be adjusted by first reducing the vested account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

12.5 Interest on Loans. Any loan granted hereunder shall bear interest at a rate determined by the Board to be reasonable at the time of application.

12.6 Security. All loans made hereunder shall be secured by the Participant's vested account balance and by such additional collateral as may be required by the Board.

12.7 Terms of Repayment. Any loan shall by its terms require that repayment (principal and interest) be bi-weekly, by payroll deduction or by check if the Participant is not on payroll, over a period not extending beyond five years from the date of the loan.

12.8 Principal and Interest Allocation. The principal and interest paid by a Participant on his or her loan shall be credited as a segregated investment of the Participant's account. The Board may allow loans to be suspended during periods of leave of absence as permitted by tax laws.

12.9 Payment of Loan Upon Default. A Participant's loan shall immediately become due and payable if such Participant terminates employment for any reason or fails to make a principal or interest payment when due. Upon termination of employment, the Board shall reduce the Participant's vested account balance by the principal and interest outstanding on his or her loan at the time of termination. If default occurs before the Participant's employment terminates, foreclosure on the note and attachment of security will not occur until the Participant's employment terminates, but the defaulted loan shall be a deemed distribution in accordance with applicable Treasury Regulations.

12.10 Approval of Application. If a Participant's loan application is approved by the Board, such Participant shall be required to sign a note, loan agreement and assignment of his or her vested interest in the Fund as collateral for the loan.

**ARTICLE XIII  
AMENDMENT AND TERMINATION**

13.1 Amendments. The Employer, by ordinance of its City Council, shall have the right at any time, and from time to time, to:

(a) Amend this Plan in such manner as it may deem necessary or advisable in order for the Plan to be in compliance with current law and to qualify this Plan and the Trust created in relation hereto pursuant to sections 401(a) and 501(a) of the Internal Revenue Code of 1986 and any such amendment may, by its terms, be retroactive; and

(b) Amend this Plan in any other manner.

(c) With the exception of amendments made pursuant to Section 13.1(a) above, no amendment shall take effect unless approved at the time of adoption by at least 65% of all Participants employed at the time of the amendment.

(d) No amendment shall authorize any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries or estates or to defray the reasonable expenses of administering the Plan; no such amendment shall cause any reduction in the vested portion of any Participant's interest in the Trust Fund or cause or permit any portion of the Trust Fund to revert to, or become property of, the Employer and no such amendment which affects the rights, duties or responsibilities of the Trustee or Custodian shall be effective without the Trustee's or Custodian's written consent. Any such amendment shall become effective as of the effective date stated therein upon delivery of a written instrument, executed on behalf of the Employer by its proper officers duly authorized, to the Trustee or Custodian and the written consent of the Trustee or Custodian thereto, if such consent is required.

13.2 Termination.

(a) The Employer, by ordinance of its City Council, shall have the right to terminate the Plan provided that the Employer may not terminate this Plan unless another defined contribution money purchase or defined benefit pension plan qualified under the applicable provisions of the Internal Revenue Code of 1986 as amended and meeting any requirements of C.R.S. 3130-1001 et seq. is established for the benefit of the participants.

(b) This Plan may only be terminated if at least sixty-five percent (65%) of the Participants agree to terminate the Plan and at the same time approve the establishment of another defined contribution money purchase or defined benefit pension plan.

(c) Upon any full or partial termination, all amounts credited to the affected Participants' Accounts shall become 100% Vested and shall not thereafter be subject to forfeiture, and all unallocated amounts shall be allocated to the accounts of all Participants in accordance with the provisions hereof.

(d) In the event of termination, the Board shall direct the Custodian with respect to the distribution of accounts to or for the exclusive benefit of Participants or their beneficiaries.

(e) In the event the applicable state statutes regarding establishment, maintenance, amendment or termination of pension plans for firefighters are amended in such a manner as to be inconsistent with the provisions set forth in subsections (a) and (b) above, such amended state statutes shall control over subsections (a) and (b).

13.3 Qualification of the Plan. If the Employer fails to attain or retain Internal Revenue Service qualification, the Plan shall no longer be considered a Plan.

13.4 Mergers and Consolidations. In the case of any merger or consolidation of the Plan with, or transfer of assets or liabilities of the Plan to, any other plan, immediately after the merger, consolidation, or transfer Participants in the Plan shall be credited with benefits which are equal to or greater than the benefits they would have been credited with immediately before the merger, consolidation, or transfer if the Plan had then terminated. Any merger, consolidation or transfer of plan assets or liabilities must be approved by at least sixty-five percent (65%) of the Participants in the Plan.

— END —

IN WITNESS WHEREOF, the parties hereto have executed this Plan this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

**CITY OF GRAND JUNCTION**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

**BOARD OF RETIREMENT**

_____		_____	
<b>Signature</b>	<b>Date</b>	<b>Signature</b>	<b>Date</b>

_____	_____	_____	_____
Signature	Date	Signature	Date

_____	_____	_____	_____
Signature	Date	Signature	Date

_____	_____
Signature	Date

**AMENDED AND RESTATED  
CITY OF GRAND JUNCTION, COLORADO  
NEW HIRE POLICE  
MONEY PURCHASE DEFINED CONTRIBUTION PLAN**

**Restated to Include Amendments  
Through December 31, 2001**

**Original Effective Date: January 1, 1987**

**AMENDED AND RESTATED  
CITY OF GRAND JUNCTION, COLORADO  
NEW HIRE POLICE  
MONEY PURCHASE DEFINED CONTRIBUTION PLAN**

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**AMENDED AND RESTATED  
CITY OF GRAND JUNCTION, COLORADO  
NEW HIRE POLICE  
MONEY PURCHASE DEFINED CONTRIBUTION PLAN**

Effective January 1, 1987, the City of Grand Junction, Colorado established the City of Grand Junction, Colorado New Hire Police Money Purchase Defined Contribution Plan (the "Plan") for the exclusive benefit of certain employees and their beneficiaries, to read as follows. The Plan has been amended effective January 1, 1997, January 1, 1998, October 3, 1998, January 1, 2000 and January 1, 2001 to accommodate certain changes, including changes in tax laws.

## **ARTICLE I DEFINITIONS**

1.1 General. The rights of a Participant who terminates Employment on or after the Effective Date shall be governed by the Plan as in effect at the time of such termination of Employment.

1.2 Beneficiary. The individual designated by the Participant, according to Section 6.3(c), to receive distribution of the Participant's Account upon death.

1.3 Board of Retirement ("Board"). The Board of Retirement appointed, in accordance with all applicable statutes or ordinances, to oversee the Plan's operations. The Board consists of seven (7) individuals: the City Manager, the Finance Director, and the Personnel Manager and one other person designated by the City Manager (these four (4) members may be referred to as "City Board members") and three (3) Participant members who are elected for three (3) year terms by vote of the Participants in accordance with the provisions of Section 10.6 of this Plan (these three (3) Board members may be referred to as "Employee Board members"). Each Board member may designate an alternate in accordance with the provisions of Section 10.2(g) of this Plan.

1.4 Break in Service. A twelve (12) consecutive month Period of Severance.

1.5 Code. The Internal Revenue Code as amended from time to time and the regulations and rulings in effect thereunder.

1.6 Compensation. The total base pay, including Participant contributions to this Plan which are "picked up" by the Employer, contributions to voluntary deferred compensation plan(s), any amounts voluntarily contributed to a Code section 125 "Cafeteria Plan," and pay for authorized leave taken in the normal course of employment. Compensation shall not include overtime pay, uniform allowances, accumulated leave pay, and other forms of extra pay. Compensation for any Plan Year will be limited to the first \$200,000 of Compensation (or such other amount determined in accordance with Code section 415(d)). Effective for Plan Years beginning on or after January 1, 1996, the \$200,000 limit is reduced to \$150,000, subject to adjustment as provided in Code section 401(a)(17).

Effective prior to January 1, 1997, in determining the Compensation of a Participant who is a Highly Compensated Employee for purposes of this limitation, the rules of Code section 414(q)(6) shall apply, except the term "family" shall include only the spouse of the Participant and any lineal descendants of the Participant who have not attained age 19 before the close of the year.

1.7 Defined Benefit Plan. A Plan under which a Participant's benefit is determined by a formula contained in the Plan under which no individual accounts are maintained for Participants.

1.8 Defined Contribution Plan. A Plan under which individual accounts are maintained for each Participant to which all contributions, forfeitures, investment income and gains or losses, and expenses are credited or deducted. A Participant's benefit under such Plan is based solely on the fair market value of his or her account balance.

1.9 Disability. Either an Occupational Disability or a Total Disability. Occupational Disability means a disability resulting in an incapacity to perform assigned duties and expected, with reasonable medical probability, to exist for at least one year. Total Disability means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a period not less than twelve (12) months.

1.10 Effective Date. The original effective date of the Plan was January 1, 1987.

1.11 Employee. Employee shall mean any individual employed as a full-time, paid, sworn police officer of the City of Grand Junction Police Department.

1.12 Employer. The City of Grand Junction, Colorado.

1.13 Forfeiture. The portion of a Participant's Account which, according to Article VIII, the Participant is not entitled to receive.

1.14 Fund. All contributions received by the Trustee under this Plan and Trust, investments thereof and earnings and appreciation thereon.

1.15 [Intentionally Left Blank]

1.16 Life Expectancy. Life Expectancy and Joint and Last Survivor Expectancy are computed by use of the expected return multiples in Tables V and VI of section 1.72-9 of the Income Tax Regulations, using the attained age of the Participant (or designated beneficiary) as of the Participant's (or designated beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. The applicable calendar year shall be the first distribution calendar year, and if life expectancy is being recalculated such succeeding calendar year. If distribution is in the form of an immediate annuity, purchased after the Participant's death with the Participant's remaining interest, the applicable calendar year is the year of purchase. If life expectancy is being recalculated, the applicable life expectancy shall be the life expectancy as so recalculated. Unless otherwise elected by the Participant by the time distributions are required to begin, Life Expectancies shall be recalculated annually. Such election shall be irrevocable as to the Participant and shall apply to all subsequent years. The Life Expectancy of a nonspouse beneficiary may not be recalculated.

1.17 Limitation Year. The calendar year or such other 12-consecutive month period designated by the Employer for purposes of determining the maximum annual addition to a Participant's account.

1.18 Mandatory Employee Pre-Tax Contributions. Employer Contributions made to the Plan on behalf of the Participant, which are designated as Employee contributions pursuant to section 414(h)(2) of the Code in lieu of cash compensation, and contributions made pursuant to a salary reduction agreement or other deferral mechanism.

1.19 Normal Retirement Age. Age 50.

1.20 Participant. Any Employee who has met the eligibility requirements and is participating in the Plan.

1.21 Period of Separation. A period of time commencing with the date a Participant separates from service as an Employee and ending with the date such Employee resumes employment with Employer as an Employee.

1.22 Period of Service. For purposes of determining a Participant's initial or continued eligibility to participate in the Plan or a Participant's vested interest in the Participant's Employer Contribution Account, a



Participant shall be credited for the time period commencing with the Participant's first day of employment as an Employee and ending on the date a Period of Severance begins. A Period of Service for these purposes includes any Period of Separation of less than twelve (12) consecutive months. In the case of a Participant who separates from service as an Employee and later resumes employment as an Employee, the Period of Service prior to the Participant's resumption of employment shall be aggregated only if such Participant is a Re-employed Individual as described in Section 8.4.

1.23 Period of Severance. A period of time commencing with the earlier of:

(a) the date a Participant separates from service as an Employee by reason of quitting, retirement death, or discharge; or

(b) the date twelve (12) months after the date a Participant separates from service as an Employee and ending, in the case of a Participant who separates from service as an Employee by reason other than death, with the date such Participant resumes employment as an Employee.

1.24 Plan. The City of Grand Junction, Colorado New Hire Police Money Purchase Defined Contribution Plan as established by the provisions in this document.

1.25 Plan Administrator. The Board of Retirement.

1.26 Plan Year. The calendar year.

1.27 Qualified Deferred Compensation Plan. Any pension, profit sharing, or other plan which meets the requirements of section 401 of the Code which includes a trust exempt from tax under section 501(a) of the Code and any annuity plan described in section 403(a) of the Code.

1.28 Restatement Date. December 31, 2001. The Plan was originally effective January 1, 1987, was amended October 3, 1998 and was restated in its entirety in the form of this document to include amendments through December 31, 2001.

1.29 Rollover Contribution. A contribution made by a Participant of an amount distributed to such Participant from another Qualified Deferred

Compensation Plan in accordance with sections 402(a)(5), (6) and (7) of the Code.

1.30 Spouse (Surviving Spouse). The spouse or surviving spouse of the Participant, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.

1.31 Trustee. The Board of Retirement.

1.32 Valuation Date. The last day of the Plan Year and the following date(s) on which Participant accounts revalued in accordance with Article V: March 31, June 30 and September 30.

1.33 Custodian. An entity selected by the Board of Retirement in accordance with the procedures of Section 10.2 that has custody of all Plan assets, performs participant record keeping functions, executes the instructions of the Board or Investment Manager with respect to transactions with Plan assets, and performs such other duties, subject to the direction and control of the Board, as may be set forth in a written agreement between the Custodian and the Board.

1.34 Investment Manager. An entity selected by the Board of Retirement in accordance with the procedures of Section 10.3 that (a) has the power to manage, acquire, or dispose of Plan assets and (b) acknowledges fiduciary responsibility to the Plan in writing. Such entity must be a person, firm, or corporation registered as an investment adviser under the Investment Advisers Act of 1940, a bank or an insurance company.

## **ARTICLE II ELIGIBILITY REQUIREMENTS**

2.1 Participation. An Employee shall be eligible to participate in the Plan on the date he has attained age 21. An Employee who satisfied this eligibility requirement and subsequently terminated employment shall become a Participant immediately upon returning to the employ of the Employer as an Employee.

2.2 Employment Rights. Participation in the Plan shall not confer upon a Participant any employment rights, nor shall it interfere with the Employer's right to terminate the employment of any Employee at any time.

2.3 Change in Classification of Employment. In the event a Participant becomes ineligible to participate because he or she is no longer a member of an eligible class of Employees, such Employee shall participate immediately upon his or her return to an eligible class of Employees.

## ARTICLE III EMPLOYER CONTRIBUTION

### 3.1 Employer Contributions.

(a) On behalf of each Participant, the Employer will contribute to the Participant's Account not less than the amount required by State law, presently 8% of the Participant's Compensation. Effective January 1, 1992, on behalf of each Participant, for each year of his participation in this Plan, the Employer will contribute to the Fund 10.65% of the Participant's Compensation. The Employer, by duly enacted ordinance, may prospectively reduce the percentage contribution to not less than eight percent (8%) so long as the Employer makes an equal reduction in the rate of Employer contribution to a retirement plan the City maintains for classified City of Grand Junction employees, such as the City of Grand Junction, Colorado Employees Retirement Plan. A reduction in the percentage contribution made in accordance with the preceding sentence shall not be subject to subsection (d) of this Section 3.1 or to Section 13.1 of this Plan. For purposes of this subsection, the term "classified City of Grand Junction employees" refers to all City of Grand Junction employees except police officers, fire fighters and those management employees who participate in the executive plan.

(b) Notwithstanding the foregoing, the Employer's contribution for any Plan Year shall not exceed the maximum amount allowable under the provisions of Code section 415 and Article IX of this Plan.

(c) The Employer shall make a contribution to the Fund each pay period, based upon the Compensation paid to all Participants for each such pay period. Each contribution shall be delivered or mailed to the Custodian on the same day that paychecks are released to Participants.

(d) Any change in the rate of the Employer's contribution rate is a plan amendment subject to the requirements of Section 13.1 of this Plan, except as otherwise provided herein (see Section 3.1(a)).

3.2 Transfer Contributions. Subject to the direction of the Employer, the Trustee is authorized to receive and add to the Trust Fund as a direct transfer assets attributable to the vested interest of any Participant in a retirement plan qualified under Code section 401(a) if such individual is a Participant in this Plan. Transfers shall be credited to the

particular Participant's Transfer Account, shall always be fully vested and nonforfeitable, and shall be distributed pursuant to Article VII hereof.

3.3 Expenses and Fees. The Employer shall also be authorized to reimburse the Fund for all expenses and fees incurred in the administration of the Plan or Trust and paid out of the assets of the Fund. Such expenses shall include, but shall not be limited to, fees for professional services, printing, postage, and brokerage or other commissions, subject to the limits of Code section 415.

3.4 Responsibility for Contribution. Neither the Trustee nor the Custodian shall be required to determine if the Employer has made a contribution or if the amount contributed is in accordance with the Plan or the Code. The Employer shall have sole responsibility in this regard.

3.5 Return of Contributions. Contributions made to the Fund by the Employer shall be irrevocable, except as follows:

(a) Any contribution made to the Fund because of a mistake of fact must be returned to the Employer within one year or the contribution.

(b) In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made incident to that initial qualification by the Employer must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

3.6 Military Service. Effective on and after December 12, 1994, notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code section 414(u).

## **ARTICLE IV EMPLOYEE CONTRIBUTIONS**

4.1 Mandatory Employee Pre-Tax Contributions. A Participant shall be required to contribute toward the cost of the Plan, from amounts the Participant would otherwise receive as Compensation, an amount equal to the same percent of the Employee's Compensation that the Employer contributes according to Section 3.1. The contributions shall be made by each Employee on each payroll date to the Plan. They shall be designated as Employee Contributions pursuant to section 414(h)(2) of the Code, contingent upon the contributions being excluded from the Participant's gross income for federal income tax purposes. Mandatory Employee Pre-Tax Contributions shall be made by payroll deduction. The Employer shall deliver, wire or mail Mandatory Employee Pre-Tax Contributions to the Trustee or Custodian on the same day that paychecks are released to Participants.

4.2 [INTENTIONALLY LEFT BLANK]

4.3 Rollover Contribution. A Participant may make a Rollover Contribution to the Plan of all or any part of an amount distributed or distributable to him or her from a Qualified Deferred Compensation Plan provided the Rollover Contribution constitutes a direct transfer of eligible rollover distributions described in section 401(a)(31) of the Code or a rollover described in section 402(c) of the Code.

Such Rollover Contribution may also be made through an Individual Retirement Account (IRA) qualified under section 408 of the Code where the IRA was used as a conduit from the Qualified Deferred Compensation Plan, the Rollover Contribution is made in accordance with the rules of Code section 402(c) and the Rollover Contribution does not include any regular IRA contributions, or earnings thereon, that the Participant may have made to the IRA. The Trustee shall not be held responsible for determining whether Rollover Contributions made hereunder meet the requirements of this Section 4.3.

## **ARTICLE V PARTICIPANT ACCOUNTS**

5.1 Separate Accounts. The Board shall establish a separate bookkeeping account for each Participant showing the total value of his or her interest in the Fund. Each Participant's Account shall be separated for bookkeeping purposes into the following sub-accounts:

- (a) Employer Contributions.
- (b) Transfer Contributions, which shall include sub-accounts as necessary for employer contributions, after-tax employee contributions and before-tax employee contributions.
- (c) Mandatory Employee Contributions.
- (d) Rollover Contributions.

5.2 Adjustments To Participant Accounts. As of each Valuation Date of the Plan, the Board shall credit to or deduct from each Account:

- (a) the Participant's share of the Employer's Contribution and forfeitures,
- (b) any Employee Contributions made by the Participant since the last Valuation Date,
- (c) withdrawals, and
- (d) the Participant's proportionate share of any investment earnings and increases or decreases in the fair market value of the Fund since the last Valuation Date.

All allocations made hereunder will be made in nondiscriminatory manner. Accounts with segregated investments shall receive only the income or loss on such segregated investments.

Terminated Participants' vested account balances shall be credited with any investment earnings and increase or decrease in the fair market value of the Fund until the Valuation Date preceding distribution. Terminated Participants' nonvested account balances shall be credited with

any investment earnings and increase or decrease in the fair market value of the Fund until forfeited pursuant to Section 8.6.

5.3 Participant Statements. The Board shall at least annually prepare a statement for each Participant showing the additions to and subtractions from his or her account since the last Valuation Date and the fair market value of his or her account as of the current Valuation Date.



## **ARTICLE VI ELIGIBILITY FOR BENEFITS**

6.1 Retirement. If a Participant's Employment terminates for any reason on or after his Normal Retirement Age, he shall be eligible to receive the entire amount then credited to his account, which shall be fully vested and nonforfeitable.

6.2 Disability. If a Participant's Employment terminates because of his Disability at any time, he shall be eligible to receive the entire amount then credited to his account, which shall be fully vested and nonforfeitable.

6.3 Death.

(a) Before Termination of Employment. If a Participant's Employment terminates because of his death, the entire amount then credited to his account shall become fully vested and nonforfeitable and payable pursuant to subsection 6.3(c).

(b) After Termination of Employment. If a Participant (including a former Participant) dies after terminating Employment, the Plan shall pay the then undistributed vested balance, if any, of the Participant's account pursuant to subsection (c) below.

(c) Recipient of Payment After Death and Timing of Payment. Each Employee, upon becoming a Participant and on a form provided by the Plan and filed with the Board, may designate a Beneficiary and may, in addition, name a contingent Beneficiary. Any Participant may at any time revoke or change his designation of Beneficiary by filing a written notice of the revocation or change with the Board. The Plan shall distribute benefits payable pursuant to subsection (a) or (b) above to the deceased Participant's Beneficiary identified pursuant to a Beneficiary designation in effect at the time of his death or, if no such designation exists, to the Participant's surviving spouse or, if none, to his estate. The method and duration of payment shall be consistent with the limits imposed in Article VII.

If distribution had commenced to the Participant prior to his death, it shall continue being paid after the Participant's death at least as rapidly as under the method of distribution being made as of the Participant's death. If distribution had not begun before the Participant's death, full distribution shall occur over a period described in (i), (ii) or (iii) below:

(i) Non-Spouse Beneficiary. If the distribution is payable to a designated Beneficiary who is not the Participant's spouse, the distribution shall occur over a period no longer than the Beneficiary's Life Expectancy, commencing on or before December 31 of the calendar year immediately following the calendar year of the Participant's death.

(ii) Spouse Beneficiary. If the distribution is payable to a designated Beneficiary who is the Participant's spouse, the distribution shall occur over a period no longer than the spouse's Life Expectancy, commencing no later than the later of [a] December 31 of the calendar year immediately following the calendar year in which the Participant died, or [b] December 31 of the calendar year in which the Participant would have attained age 70-1/2. The surviving spouse may elect to have the distribution of the Account commence within 90 days after the Participant's death.

(iii) No Designated Beneficiary. In all other cases, i.e. in the absence of a designated Beneficiary, the distribution shall occur over a period ending no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) Proof of Death. The Board may require such proper proof of death and such evidence as to a person's right to receive payment from a deceased Participant's account as the Board reasonably deems appropriate.

6.4 Termination of Employment Before Retirement, Disability or Death. If a Participant's employment with the Employer terminates prior to his Normal Retirement Date for any reason other than his death or Disability, the Participant shall be eligible to receive the vested portion of his account, determined according to Article VIII.

6.5 Claims Procedures. Upon retirement, death, or other severance of employment, the Participant or representative of such Participant may request of the Board payment of benefits due and the manner of payment. If a request for benefits is made, the Board shall accept, reject, or modify such request and, in the case of a denial or modification, the Board shall:

(a) state the specific reason or reasons for the denial,

(b) provide specific reference to pertinent Plan provisions on which the denial is based,

(c) provide a description of any additional material or information necessary for the Participant or his or her representative to perfect the claim and an explanation of why such material or information is necessary, and

(d) explain the Plan's claim review procedure as contained herein.

In the event the request is rejected or modified, the Participant or his or her representative may within 60 days following receipt by the Participant or representative of such rejection or modification, submit a written request for review by the Board of its initial decision. Within 60 days following such request for review, the Board shall render its final decision in writing to the Participant or representative stating specific reasons for such decision. If the Participant or representative is not satisfied with the Board's final decision, the Participant or representative can institute an action in a federal court of competent jurisdiction; for this purpose, process would be served on the Board.

6.6 Disposition of Unclaimed Payments. If the Trustee is unable to make any payment due under the Plan to any person because it does not know the identity or post office address of such person, the Trustee shall suspend all further payments until it has received written direction from the Board.

## **ARTICLE VII PAYMENTS**

7.1 Commencement of Payments. The distribution of all or any portion of a Participant's account shall commence in accordance with the Participant's election, not earlier than termination of the Participant's employment with the Employer (unless specifically authorized elsewhere herein). Distribution of a Participant's account shall commence no later than the April 1st of the calendar year following the later of (a) the calendar year in which the Participant attains age 70-1/2 or (b) the calendar year in which the Participant's employment with the Employer terminates. Distributions shall be made in accordance with Treasury Regulations under Internal Revenue Code section 401(a)(9). Distribution may commence less than 30 days after the notice required under section 402(f) of the Code is given, provided that:

(a) the Board clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and

(b) the Participant, after receiving the notice, affirmatively elects a distribution.

7.2 Method of Payment. Distribution in relation to a Participant shall occur in cash, in one of the following methods as chosen by the Participant:

(a) Lump Sum. A single, lump sum distribution of the entire amount in the Participant's account. Payment shall be in a lump sum if the value of the Participant's vested account (before payments begin) is not greater than \$5,000.

(b) Partial Lump Sum. A lump sum distribution of a portion of a Participant's account, which the Participant may choose to receive separately from other Plan distributions.

(c) Installment Payments. In substantially equal monthly, quarterly, semiannual or annual payments. Such installments, whether paid from the Plan assets or an annuity contract, shall be of such amount and on such a schedule that the distribution is consistent with Code section 401(a)(9) and applicable regulations, which the Plan hereby

incorporates by reference. Subject to such requirements, installment payments may be accelerated, delayed or paid in a lump sum at the direction of the Participant. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date specified in guidance published by the Internal Revenue Service.

7.3 Direct Rollover. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(b) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code 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 section 414(p) of the Code.

(c) Distributee: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(d) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

7.4 In-Service Withdrawals/Rollover Contributions. A Participant who is employed by the Employer may withdraw all or any part of his or her account attributable to Rollover Contributions upon written request to the Board. Such request shall include the Participant's address, social security number, birth date, and amount of the withdrawal.

7.5 Transfer to Another City Plan Upon Termination of Participation. If a Participant ceases to be eligible to participate in this Plan, continues employment with the Employer and becomes a participant in another retirement Plan ("Plan II") of the Employer that is qualified under section 401(a) of the Code, the Participant may direct the Trustee to transfer the Participant's Account in this Plan to Plan II, provided the Participant has no outstanding loan from this Plan, the Participant is 100% vested in his account in this Plan and Plan II contains language restricting distribution of the Participant's transferred account as required by Rev. Rul. 94-76.

**ARTICLE VIII  
VESTING**

8.1 Employee Contributions. A Participant shall always have a 100% vested and nonforfeitable interest in his or her Mandatory Employee Pre-Tax Contributions, Transfer Contributions and Rollover Contributions plus the earnings thereon. No forfeiture of Employer related contributions will occur solely as a result of an Employee's withdrawal of any Employee Contributions.

8.2 Employer Contributions. A Participant shall vest in his or her account attributable to Employer Contributions in accordance with the table stated below, provided that if a Participant is not already fully vested, he or she shall become so upon attaining Normal Retirement Age, upon death prior to Normal Retirement Age, upon retirement due to Disability, or upon termination of the Plan. Years referred to in this table are 12 consecutive months (365 days) during a Period of Service as a Participant.

<u>Years of Service</u>	<u>Percentage Vested and Nonforfeitable</u>
Less than 3 years	0%
3 years	20%
4 years	40%
5 years	60%
6 years	80%
7 years	100%

8.3 Service After Break in Service. If a Participant (whether or not the Participant is a "Re-Employed Individual" as defined in Section 8.4) resumes employment as an Employee after a Break in Service, any subsequent Period of Service shall be disregarded in determining the vested interest in the Participant's Employer Contribution Account accrued prior to such Break in Service.

8.4 Prior Service of Re-employed Individual. If a participant is a Re-employed Individual, the Period of Service prior to the Participant's separation from employment as an Employee shall be aggregated in determining the vested interest in the Participant's Employer Contribution Account accrued after the Participant's re-employment as an Employee. For purposes of applying this rule, a "Re-employed Individual" is a person who, after having separated from service as an Employee, resumes employment as an Employee:

(a) with a vested interest in his/her Employer Contribution Account, or

(b) with no such vested interest, and who resumes employment as an Employee i) before a Break in Service or ii) after a Break in Service but before his/her latest Period of Severance equals or exceeds his/her Period of Service, or

(c) resumes employment as an Employee prior to the Effective Date of this Plan.

8.5 Calculating Vested Interest. A Participant's vested interest shall be calculated by multiplying the fair market value of his or her account attributable to Employer Contributions on the Valuation Date preceding payment by the vested percentage as of the date his or her employment as an Employee terminates.

8.6 When Forfeiture Occurs. A Participant's forfeiture, if any, of his or her nonvested account balance derived from Employer Contributions shall occur as of the date of the Participant's separation from employment with the Employer as an Employee.

8.7 Reallocation of Forfeitures. Forfeitures arising under the terms of this Plan shall be applied, first, to defray administrative expenses of the Plan and, second, to reduce Employer Contributions, and shall be reallocated as of the last day of the Plan Year following the Plan Year in which the forfeiture occurs.

8.8 Amendment of Vesting Schedule. No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's account balance, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of a Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his Employer-derived accrued benefit will not be less than his percentage computed under the Plan without regard to such amendment.



## ARTICLE IX LIMITATIONS ON ALLOCATIONS

### 9.1 Maximum Limits on Allocations.

(a) Maximum Annual Additions. The maximum contributions and other additions for a Participant under this Plan for any Limitation Year shall not exceed, when expressed as an annual addition to the Participant's account, and when added to the annual additions to the Participant's account for the Limitation Year under all other defined contribution plans and all welfare benefit funds, as defined in Internal Revenue Code section 419(e), and any individual medical account, as defined in Internal Revenue Code section 415(1), maintained by the Employer, the lesser of:

(i) \$30,000 (\$40,000 effective January 1, 2002), as adjusted under Internal Revenue Code section 415(d); or

(ii) 25% (100% effective January 1, 2002) of the Compensation paid to the Participant by the Employer in such year.

The Compensation limitation referred to in (ii) shall not apply to any contribution for medical benefits (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition under section 415(l)(1) or 419A(d)(2) of the Code.

(b) Definition of Compensation. For purposes of this Article IX, Compensation shall mean wages within the meaning of Internal Revenue Code section 3401(a) (for purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed. Effective with the first Plan Year beginning after 1997, Compensation for purposes of this Article IX shall include any elective deferral as defined in Code section 402(g)(3) and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code section 125 or 457.

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or includable in gross income during such year.

(c) Definition of Annual Addition. For the purposes of this Article IX, "annual addition" shall mean the sum allocated to a Participant's account for any Limitation Year of:

(i) Employer Contributions;

(ii) Employee Contributions;

(iii) Forfeitures;

(iv) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a Key Employee, as defined in Internal Revenue Code section 419A(d)(3), under a welfare benefit fund, as defined in Code section 419(e), maintained by the Employer; and

(v) Amounts allocated after March 31, 1984 to an individual medical account (as defined in Internal Revenue Code section 41S(l)(1)) which is part of a pension or annuity plan maintained by the Employer.

The term "annual addition" shall not include the allocation to a Participant's account of income, transfers according to Section 3.2, allocations according to Article XIV, or rollovers according to Section 4.3.

(d) For purposes of this Article IX, "Employer" means the Employer that adopts this Plan.

9.2 Disposition of Excess Annual Additions. If, due to a reasonable error in estimating a Participant's Compensation or other reasons acceptable to the Commissioner of Internal Revenue, or as a result of the allocation of forfeitures, an amount in excess of the limit described in Section 9.1 is allocated to a Participant's account, the excess will be disposed of as follows (attributing all excess amounts to this Plan first, if multiple plans are involved):

(a) One-half of the excess amount will be returned to the Participant as a return of employee contributions, to the extent that the return would reduce the excess amounts in the Participant's account.

(b) If after the application of paragraph (a) an excess amount still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the excess amount in the Participant's account will be used to reduce Employer Contributions (including any allocation of forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary.

(c) If after the application of paragraph (a) an excess amount still exists, and the Participant is not covered by the Plan at the end of the Limitation Year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions (including allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary. If a suspense account is in existence at any time during a Limitation Year pursuant to this Section, it will not participate in the allocation of the Trust's investment gains and losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants accounts before any Employer or any Employee contributions may be made to the Plan for that Limitation Year. Excess amounts may not be distributed to Participants or former Participants, except as provided in Section 9.2(a) above.

9.3 Participation in This Plan and a Defined Benefit Plan (Not Effective for Plan Years Beginning on or After January 1, 2000). If the Employer maintains, or at any time maintained, a qualified Defined Benefit Plan covering any Participant in this Plan, the sum of the defined benefit plan fraction and the defined contribution plan fraction for each Limitation Year may not exceed 1.0, as described in section 415(e) of the Code, except to the extent not applicable to government plans.

## **ARTICLE X ADMINISTRATION**

10.1 Employer. The Employer's duties with respect to the Plan shall include but are not limited to appointing the Plan's attorney, accountant, actuary, and any other party needed to administer the Plan, and reviewing and approving any financial reports, investment review, or other reports prepared by any party appointed by the Employer. The Employer shall provide indemnification or insurance for breach of fiduciary duty or errors and omissions insurance for all Board members on the same terms and conditions as Employer does for other City boards and commissions.

### 10.2 Board.

(a) Powers and Duties of Board. The Board shall administer the Plan and shall have all powers necessary for that purpose, including, but not by way of limitation, power to interpret the Plan, to communicate with Employees regarding their participation and benefits under the Plan, to administer claims procedures, to determine the eligibility, status and rights of all persons under the Plan, to determine eligibility for and terms of Plan loans to Participants, and in general to decide any dispute over benefit amounts. The Board shall have full discretionary authority to determine eligibility for benefits and to construe the terms of the Plan. The Board shall select investment Manager(s) for the plan assets, shall select the Custodian and shall direct the Custodian concerning all distributions from the Fund, all in accordance with the provisions of the Plan. The Board shall file any returns and reports with the Internal Revenue Service, Department of Labor, or any other governmental agency, establish a statement of investment policies consistent with the purposes of the Plan and shall maintain all Plan records. The Board shall be agent of the Plan for service of all process.

(b) Meetings. The Board shall meet whenever required for the orderly and timely administration of the business of the Plan at such location as may be acceptable to the Board. The Chair, Secretary or any two Board members may call meetings of the Board. Any meeting shall be called upon at least 10 days' written notice, which notice shall specify the date, time and place of such meeting, and may specify the purpose and any action proposed to be taken. If a quorum is not present at any duly called meeting, those Board members present may adjourn such meeting until a date, time and place not sooner than five days later. A written notice

stating the date, time and place of any meeting or adjourned meeting shall be sent to all Board members. Whenever any notice is required to be given to any Board member, a waive of notice in writing signed at any time, whether before or after the time of meeting by the Board members entitled to such notice, shall be deemed equivalent to the giving of such notice. The attendance of a Board member at a meeting shall constitute a waiver of notice of such meeting, except where a Board member attending a meeting objects to the transaction or any business because the meeting is not lawfully called or convened.

(c) Informal Action by Board. Provided there are at least three (3) of the authorized City Board members and two (2) of the authorized Employee Board members then serving, any action which may be taken at a meeting of the Board may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Board members then serving and entitled to vote with respect to that subject matter.

(d) Quorum. A quorum for the transaction of business at a duly called meeting shall consist of five (5) members, with the further limitation that any such quorum shall consist of not less than three (3) City Board members and two (2) Employee Board members.

(e) Voting. All actions by and decisions of the Board shall be by the vote of at least five (5) members attending a duly called meeting of the Board. In other words, at least one Employee Board member must vote in favor of any action or decision for the action or decision to pass. Anything in this Section to the contrary notwithstanding, the unanimous written consent of the Board members shall be required for any action pursuant to subsection (c). Each Board member shall have one vote.

(f) Organization and Operation of Board. At the commencement of each year, the Board members shall select from among them a Chair and a Secretary who shall each serve for a period of one year. One office shall be filled by a City Board member and one office shall be filled by an Employee Board member. The offices of Chair and Secretary shall be rotated annually between City Board member and Employee Board member. The Secretary shall be responsible for maintaining an accurate record of all actions of the Board, including minutes of all Board meetings. A copy of such minutes shall be retained as a record of the Plan and one copy thereof shall be distributed to each Board member. Documents requiring execution by the Board shall be signed by the Chair and attested by the Secretary. The Board may adopt

rules and regulations necessary for the orderly election of employee members of the Board and for the proper and efficient administration of the Plan, provided such rules and regulations are not inconsistent with the terms of the Plan or the provisions of applicable law.

(g) Designation of Alternates. City Board members and Employee Board members shall be entitled to designate, in accordance with the provisions of this subsection (g), alternates to attend Board meetings and vote in the City or Employee Board member's absence. At no time, however, shall there be more than four (4) City Board members or alternates entitled to vote, nor shall there be more than three (3) Employee Board members or alternates entitled to vote.

(i) At the commencement of each year, each City Board member may designate one (1) individual who may attend meetings and vote in the City Board member's absence. Such designations shall be recorded in the minutes of the meeting and may only be changed with the approval of at least five (5) members of the Board.

(ii) Two (2) alternate Employee Board members shall be elected by the Participants pursuant to Section 10.6 of this Plan. One or more Employee Board members may designate one or two of the elected alternate Employee Board members to attend any Board meeting and vote in the Employee Board member's absence. Any such designation shall be in writing and shall be presented by the alternate Employee Board member to the Secretary of the Board at the commencement of the meeting, to be included in the minutes of the meeting.

10.3 Fund Administration. The Board's duties and powers in relation to the administration of the Fund shall include:

and (a) selecting one or more Investment Managers as provided in Section 11.2;

(b) establishing a written statement of investment policy consistent with the purposes of the Plan and applicable law; and

(c) selecting a Custodian to receive contributions to the Fund, hold income and assets of the Fund, make payments from the Fund as directed by the Board, keep accurate records reflecting the administration of the fund and making such records available to the Employer and the Board for review and audit. Within 90 days after each Plan Year, and within 90 days after its removal or resignation, the Custodian shall provide to the Employer and the Board an accounting of its administration of the Fund during such year or from the end of the preceding Plan Year to the date of removal or resignation. Such

accounting shall include a statement of cash receipts and disbursements since the date of its last accounting and shall contain an asset list showing the fair market value of investments held in the Fund as of the end of the Plan Year. The value of marketable investments shall be determined using the most recent price quoted on a national securities exchange or over-the-counter market. The value of the nonmarketable investments shall be determined in the sole judgment of the Custodian. The Employer and the Board shall review the Custodian's accounting and notify the Custodian in the event of its disapproval of the report within 90 days, providing the Custodian with a written description of the items in question.

10.4 Administrative Fees and Expenses. All reasonable costs, charges and expenses incurred by the Board in connection with the administration of the Fund and the Plan (including fees for legal services rendered to the Board or Custodian) shall be paid from the Fund. Such reasonable compensation to the Custodian as may be agreed upon from time to time between the Board and the Custodian, and such reasonable compensation to any Investment Manager as may be agreed upon from time to time between the Board and any Investment Manager, shall be paid by the Fund. No person who receives full-time pay from the Employer shall receive compensation from the Fund, other than reimbursement for expenses properly and actually incurred.

10.5 Governing Law. Construction, validity and administration of this Plan shall be governed by Federal law to the extent applicable and to the extent not applicable by the laws of the State of Colorado.

10.6 Election of Employee Board Members. The three (3) Employee Board members and two (2) alternate Employee Board members who are to be elected by the Participants shall be elected in accordance with this Section 10.6. The members of the Board and alternates elected by the Participants shall be elected at a meeting of the Participants called for that purpose. At the first election, one (1) Participant shall be elected to serve a term of one (1) year, one (1) Participant shall be elected to serve a term of two (2) years, one (1) Participant shall be elected to serve a term of three (3) years, and two (2) Participants shall be elected to serve as alternate Employee Board members for terms of three (3) years. Thereafter Employee Board members and alternate Employee Board members shall be elected to serve terms of three (3) years. Each term shall commence on the first day of a Plan Year and shall end on the last day of a Plan Year. If otherwise qualified, employee members of the Board may be reelected

to the Board or as alternates without limitation on the number of terms they may serve.

10.7 Restrictions on Investments. Notwithstanding any other provision of this Plan, all Plan assets shall be invested in compliance with the Colorado Revised Statutes. In addition, the Board shall not engage in any transaction which involves the direct or indirect:

(1) sale or exchange or leasing of any property between the Plan and the Employer;

(2) lending of money or other extension of credit between the Plan and the Employer;

(3) transfer to, or use by or for the benefit of the Employer, of any assets or income of the Plan.

10.8 Written Communication. To the extent permitted by applicable Treasury Regulations and accepted by the Plan Administrator, all provisions of the Plan and Trust Agreement that require written notices and elections shall be interpreted to mean authorized electronic or telephonic notices and elections.



## **ARTICLE XI TRUST FUND**

11.1 The Fund. The Fund shall consist of all contributions made under Article III and Article IV of the Plan and the investment thereof and earnings thereon. All contributions and the earnings thereon less payments made under the terms of the Plan, shall constitute the Fund. The Fund shall be administered as provided herein.

11.2 Management of Fund. The management, including the acquisition and disposition of property comprising the Fund, shall be as follows:

(a) The Board shall have exclusive responsibility, discretion and authority with respect to management of the Fund, except as to those portions of the Fund regarding which the Board has appointed an Investment Manager according to 11.2(b).

(b) The Board may appoint one or more Investment Managers to direct the investment of all or a portion of the Fund. As a condition to its appointment, an Investment Manager shall acknowledge in writing that it is a fiduciary with respect to the Plan. An Investment Manager shall not have authority to the custody of any property which is a part of the Fund. The Board shall furnish each Investment Manager with written investment guidelines for investment of the Investment Manager's Account and these guidelines may include directions with respect to diversification of the investments. An Investment Manager shall have the authority, by written direction to the Custodian, to direct the investment of that portion of the Fund with respect to which it has been appointed Investment Manager. The Investment Manager must direct investments in a manner consistent with this Plan and applicable law.

11.3 Exclusive Benefit Rules. No part of the Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants, former Participants with a vested interest, and the beneficiary or beneficiaries of deceased Participants having a vested interest in the Fund at death.

11.4 Assignment and Alienation of Benefits. No right or claim to, or interest in, any part of the Fund, or any payment therefrom, shall be assignable, transferable, or subject to sale, mortgage, pledge, hypothecation, communication, anticipation, garnishment, attachment, execution, or levy of any kind, and the Trustee shall not recognize any attempt to assign, transfer, sell, mortgage, pledge, hypothecate, commute,

or anticipate the same, except to the extent required by law. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, except to the extent that Colorado statutes provide for enforcement of such order. The Board may adopt rules regarding payments pursuant to a domestic relations order.

11.5 Custodial Agreement. The Board shall enter into a Custodial Agreement with the Custodian, to provide for the holding and administration of the funds of the Plan.

## **ARTICLE XII PARTICIPANT LOANS**

12.1 Application. A Plan Participant may make application to the Board requesting a loan from the Fund. The Board shall have the sole right to approve or disapprove a Participant's application provided that loans shall be subject to the rules described in this Article XII and shall be made available only according to subsection 12.1(a), in the case of a Participant who has completed at least two years as of Service as a Participant, or according to subsection 12.1(b), due to the occurrence of an "unforeseeable emergency" of the Participant, or according to subsection 12.1(c) in the case of a Participant with Rollover Contributions.

(a) A Participant who has completed a Period of Service of 24 months may borrow up to 50% of the fair market value of the Participant's vested account balance derived from Employer Contributions, Mandatory Employee Pre-Tax Contributions, Transfer Contributions and Rollover Contributions.

(b) A Participant who demonstrates an "unforeseeable emergency" may borrow an amount reasonably needed to satisfy such "unforeseeable emergency." An "unforeseeable emergency" is a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the participant or of the Participant's dependent (as defined in Code section 152(a)), loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the Participant's control. An "unforeseeable emergency" does not exist to the extent that such hardship is or may be relieved:

(i) through reimbursement or compensation by insurance or otherwise, or

(ii) by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship.

Examples of what are not considered to be unforeseeable emergencies include the need to send a Participant's child to college or the desire to purchase a home.

(c) Effective October 3, 1998, a Participant who has made a Rollover Contribution to the Plan may borrow up to 50% of the fair market value of the Participant's account balance derived from Rollover Contributions without regard to the 24 month Period of Service requirement.

12.2 Maximum Amount. No loan granted hereunder shall exceed the lesser of (a) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (b) an amount which, when added to the outstanding balance of any other Plan loans to the Participant, equals fifty percent (50%) of the fair market value of the Participant's vested account balance derived from Employer Contributions, Mandatory Employee Pre-Tax Contributions, Transfer Contributions and Rollover Contributions. An assignment or pledge of any portion of the Participant's interest in the Plan will be treated as a loan under this Article XII.

12.3 Application Forms. All applications must be made on forms provided by the Board and must be signed by the Participant.

12.4 Spousal Consent. A Participant must obtain the consent of his or her spouse, if any, within the 90-day period before the time the account balance is used as security for the loan. Spousal consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall be binding on the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the account balance is used for renegotiation, extension, renewal, or other revision of the loan. If a valid spousal consent has been obtained in accordance with this Section 12.4, then, notwithstanding any other provision of this Plan, the portion of the Participant's vested account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100% of the Participant's vested account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the account balance shall be adjusted by first reducing the vested account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

12.5 Interest on Loans. Any loan granted hereunder shall bear interest at a rate determined by the Board to be reasonable at the time of application.

12.6 Security. All loans made hereunder shall be secured by the Participant's vested account balance and by such additional collateral as may be required by the Board.

12.7 Terms of Repayment. Any loan shall by its terms require that repayment (principal and interest) be bi-weekly, by payroll deduction or by check if the Participant is not on payroll, over a period not extending beyond five years from the date of the loan.

12.8 Principal and Interest Allocation. The principal and interest paid by a Participant on his or her loan shall be credited as a segregated investment of the Participant's account. The Board may allow loans to be suspended during periods of leave of absence as permitted by tax laws.

12.9 Default. The Board shall treat a Participant's loan as in default upon any of the following events:

- (1) If a scheduled payment remains unpaid more than 30 days;
- (2) The death of the Participant;
- (3) The termination of the Participant's employment for any reason;
- (4) If the Participant revokes authorization for repayment of the loan by payroll deduction.

The Board shall grant the Participant reasonable rights to cure any default, by repaying the loan, by bringing the loan current by payment of any missed payment(s) with interest, or, if distribution is available under the terms of the Plan, by requesting distribution of the note to the Participant. If the default is not cured within a reasonable time, the loan shall be a deemed distribution in accordance with applicable Treasury Regulations.

The Board will treat a loan as repaid to the extent of any permissible offset, but until the note is finally and fully disposed of, the Participant remains obligated for repayment of principal and interest.

The Board may adopt policies and procedures that will apply uniformly to all Participants with regard to the procedures that the Board will follow upon default.

12.10 Approval of Application. If a Participant's loan application is approved by the Board, such Participant shall be required to sign a note, loan agreement and assignment of his or her vested interest in the Fund as collateral for the loan.

## **ARTICLE XIII AMENDMENT AND TERMINATION**

13.1 Amendments. The Employer, by ordinance of its City Council, shall have the right at any time, and from time to time, to:

(a) Amend this Plan in such manner as it may deem necessary or advisable in order for the Plan to be in compliance with current law and to qualify this Plan and the Trust created in relation hereto pursuant to sections 401(a) and 501(a) of the Internal Revenue Code of 1986 and any such amendment may, by its terms, be retroactive; and

(b) Amend this Plan in any other manner.

(c) With the exception of amendments made pursuant to Section 13.1(a) above, no amendment shall take effect unless approved at the time of adoption by at least 65% of all Participants employed at the time of the amendment.

(d) No amendment shall authorize any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries or estates or to defray the reasonable expenses of administering the Plan; no such amendment shall cause any reduction in the vested portion of any Participant's interest in the Trust Fund or cause or permit any portion of the Trust Fund to revert to, or become property of, the Employer and no such amendment which affects the rights, duties or responsibilities of the Trustee or Custodian shall be effective without the Trustee's or Custodian's written consent. Any such amendment shall become effective as of the effective date stated therein upon delivery of a written instrument, executed on behalf of the Employer by its proper officers duly authorized, to the Trustee or Custodian and the written consent of the Trustee or Custodian thereto, if such consent is required.

13.2 Termination.

(a) The Employer, by ordinance of its City Council, shall have the right to terminate the Plan, provided that the Employer may not terminate this Plan unless another defined contribution money purchase or defined benefit pension plan qualified under the applicable provisions of the Internal Revenue Code of 1986 as amended and meeting any requirements of C.R.S. § 31-30-1001 et seq. is established for the benefit of the participants.

(b) This Plan may only be terminated if at least 65% of the Participants agree to terminate the Plan and at the same time approve the establishment of another defined contribution money purchase or defined benefit pension plan.

(c) Upon any full or partial termination, all amounts credited to the affected Participants' Accounts shall become 100% Vested and shall not thereafter be subject to forfeiture, and all unallocated amounts shall be allocated to the accounts of all Participants in accordance with the provisions hereof.

(d) In the event of termination, the Board shall direct the Custodian with respect to the distribution of accounts to or for the exclusive benefit of Participants or their beneficiaries.

(e) In the event the applicable state statutes regarding establishment, maintenance, amendment or termination of pension plans for police officers are amended in such a manner as to be inconsistent with the provisions set forth in subsections (a) and (b) above, such amended state statutes shall control over subsections (a) and (b)

13.3 Qualification of the Plan. If the Employer fails to attain or retain Internal Revenue Service qualification, the Plan shall no longer be considered a Plan.

13.4 Mergers and Consolidations. In the case of any merger or consolidation of the Plan with, or transfer of assets or liabilities of the Plan to, any other plan, immediately after the merger, consolidation, or transfer Participants in the Plan shall be credited with benefits which are equal to or greater than the benefits they would have been credited with immediately before the merger, consolidation, or transfer if the Plan had then terminated.



## **ARTICLE XIV ALLOCATION OF SETTLEMENT FUNDS**

14.1 Amounts Transferred From The Fire And Police Pension Association Of The State Of Colorado. Effective January 1, 1987, as permitted by section 31-30-1003(2)(b) of the Colorado Revised Statutes, the Employer withdrew from the Fire and Police Pension Association of the State of Colorado (the "FPPA"). This Article XIV addresses the manner in which monies received from the FPPA are to be allocated. All of the allocations under this Article XIV will be made only among those individuals who were Participants on the Effective Date of this Plan. Monies received from the Fire and Police Pension Association of the State of Colorado (FPPA) as a result of withdrawing from the FPPA shall be allocated to Participants withdrawing from the FPPA plan, to enter this Plan, as set forth in this Article XIV.

14.2 Monies received by March 20, 1987. Amounts received by the Employer on or prior to March 20, 1987 shall be allocated as follows:

(a) Under each Participant's FPPA accounting, the amount in the Employee Contribution Total and the amount in the Employer Contribution Total shall be credited to the Participant's Transfer Account.

(b) Interest earnings under the FPPA accounting shall be credited to Participants on pro-rata shares based on the total of a Participant's Employee and Employer Contributions [as provided in Section 14.2(a) above] in relation to the total of such contributions for all Participants. The amounts credited to each Participant under this Section 14.2 shall be credited to the Participant's Transfer Account.

14.3 Funds received in March, 1990.

(a) Explanation. This Section 14.3 applies to monies, commonly referred to as the FPPA "forfeitures," which were refunded in March, 1990 to the Employer by the FPPA. As of January 1, 1987, the original effective date of this Plan, these monies were the subject of a dispute between the FPPA, the Employer and Plan Participants. The Employer recovered these monies from the FPPA in March, 1990. The Board of Trustees of the Plan then sought to recover these monies from the Employer. The dispute between the Board of Trustees and the Employer has been resolved. Pursuant to a Settlement Agreement dated March 23, 1994 between the Employer, the Plan and the Plan's Board of

Trustees, the Employer has agreed to deposit these funds in a separate account within the Plan, to be known as the "Settlement Account."

(b) Definitions. For purposes of this Section 14.3, the following definitions shall apply:

(1) "Litigation" refers to certain litigation between the City of Grand Junction and the Board of Trustees of the Plan, in the District Court in and for Mesa County, Colorado (the "Court"), case number 91 CV 316, entitled Benoit et al. v. City of Grand Junction, et al. The Litigation was settled pursuant to a Settlement Agreement dated March 23, 1994, following the affirmative vote of at least 65% of the plan participants and the affirmative vote of the City Council of the City of Grand Junction, Colorado.

(2) "Settlement Account" refers to a segregated and unallocated account within the Plan, to which all Settlement Funds will be allocated pending receipt of a determination letter from the Internal Revenue Service and allocation of the Settlement Funds among participants pursuant to the terms of this Article XIV.

(3) "Settlement Funds" refers to the amount of money to be paid by the Employer to the Plan pursuant to Part II of the Settlement Agreement of March 23, 1994, i.e., \$535,124.64 plus interest as calculated in Part II of the Settlement Agreement.

(4) "Settlement Participants" refers to those police officers who were employed by the Grand Junction Police Department and who withdrew from the FPPA on January 1, 1987. The term includes those Settlement Participants who are not employed by the Employer as of the date when the allocation of Settlement Funds is made pursuant to Section 14.6 below.

(c) Settlement Account.

(1) Adjustments. All amounts credited to the Settlement Account shall be invested in accordance with the provisions of the Plan as amended, and shall share proportionately in investment earnings and increases or decreases in the fair market value of the Fund.

(2) Allocation. The Settlement Funds allocated to the Settlement Account, as adjusted, shall remain in the Settlement Account until a determination letter has been received from the Internal Revenue Service indicating that the allocation of the Settlement Funds among the Settlement

Participants in the manner set forth in this Section 14.3 will not result in disqualification of the Plan. Upon receipt of such a determination letter, the amounts in the Settlement Account shall be allocated in accordance with Sections 14.3(d) and (e) below.

(d) Reimbursement of Expenses. The Board of Retirement shall determine a reasonable and equitable means of reimbursing the Plan for the expenses incurred by the Plan in connection with the Litigation, using the Settlement Funds. The goal shall be to make each plan participant or former plan participant whole. The Board of Retirement shall also determine a reasonable and equitable means of charging each Settlement Participant, including Settlement Participants who are no longer employed by the Employer, with a pro rata share of the expenses incurred in connection with the Litigation.

(e) Allocation of Settlement Funds. After reimbursement of expenses, the remaining Settlement Funds shall be allocated among Settlement Participants as follows:

(1) \$263,572.77 of the Settlement Funds represents the actual "forfeitures" paid by the FPPA to the Employer in March, 1990. This amount will first be used to restore any previous "forfeitures" from the FPPA of employer contributions made on behalf of a Settlement Participant by the City of Grand Junction.

(2) Any "forfeiture" amounts remaining shall be credited to Settlement Participants on pro rata shares based on the total number of months of employment, as of January 1, 1987, as a full time, paid sworn police officer for the City of Grand Junction, in relation to the total number of months of such employment, as of January 1, 1987, on the part of all such Settlement Participants. For the purposes of this Section 14.6(b)(3), a month is a calendar month and any employment during the month constitutes an entire month.

(3) \$271,551.87 of the Settlement Funds represents interest or earnings paid by the FPPA to the Employer in March, 1990. Such monies will be credited to Settlement Participants in pro rata shares based on the total of a Settlement Participant's Employee and Employer contributions (less any withdrawal distributions including interest) made by or on behalf of a Participant prior to January 1, 1987, in relation to all such Participant contributions.

(4) The remaining amounts credited to or allocated to the Settlement Account represent interest paid by the Employer pursuant to the Settlement Agreement of March 23, 1994 and adjustments to the Settlement Account pursuant to Section 14.3(c) above. Such amounts shall be credited to the accounts of Settlement Participants in pro rata shares based on the total

amounts allocated to such Settlement Participants pursuant to Sections 14.3(d)(1), (d)(2) and (d)(3).

(5) Notwithstanding the prior provisions of this Section 14.3, no amount shall be allocated to a Settlement Participant pursuant to Sections 14.3(d)(1), (d)(2) and (d)(3) if the allocation of such amount would result in disqualification of the Plan or violation of any of the terms of this Plan or applicable statutes or regulations.

(6) In the event the requirements of the Internal Revenue Code do not permit an allocation to a given Settlement Participant because the allocation would result in an allocation in excess of that permitted by Code § 415, the amount which cannot be allocated to that Settlement Participant shall be an Excess Annual Addition under Article IX of this Plan and notwithstanding any other provision of said Article IX, such amount shall be refunded to the Settlement Participant.

(7) All amounts allocated to Settlement Participants pursuant to this Section 14.3 shall always be fully vested and nonforfeitable.

(e) Former Participants. Each Settlement Participant who is no longer employed by the Employer shall be entitled to immediate distribution from the Fund of the amount of Settlement Funds allocated to such Settlement Participant pursuant to this Article 14, less a proportionate share of the expenses incurred by the Plan to recover such funds. The Board of Retirement shall make reasonable efforts to locate Settlement Participants who are no longer employed by the Employer. In the event the Board of Retirement is unable after reasonable efforts to locate a Settlement Participant entitled to an allocation of the Settlement Funds, the Board of Retirement may in its discretion:

(1) Allocate the amount to which the former participant would have been entitled to the Settlement Account and use such amount to defray reasonable administrative expenses of the Plan; or,

(2) Determine to hold such funds indefinitely (for ultimate payment to a Settlement Participant).





- Harley Davidson Lease  
\$15,397

**The purchase price comparison:**

- BMW Purchase (36 month warranty) \$16,649 X 4  
= \$66,596
- Harley Davidson (36 month warranty + \$2,047 ea) \$15,486 X 4 = \$61,944

The recommendation is made primarily due to the added safety of the ABS brake system on the BMW motorcycle. The small cost difference over the life cycle (\$151 per year each) is considered minimal when compared to the added safety for the officers.

**Budget:** Funds in the amount of \$66,596 are available from the City accrual account and the Police 2002 budget to make the recommended purchase.

**Action Requested/Recommendation:** City Council approve the Purchasing Manager to procure 4 new BMW Police Motorcycles from All Sports Honda/BMW, LTD, Grand Junction, Colorado for the amount of \$16,694 each; total price of purchase delivered and set up of \$66,596.

<b>Citizen Presentation:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>If Yes,</b>
<b>Name:</b>					
<b>Purpose:</b>					

<b>Report results back to Council:</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When:</b>	
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<b>Placement on Agenda:</b>	<input type="checkbox"/>	<b>Consent</b>	<input checked="" type="checkbox"/>	<b>Indiv. Consideration</b>	<input type="checkbox"/>	<b>Workshop</b>
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## ADMINISTRATIVE SERVICES DEPARTMENT PURCHASING DIVISION

The Grand Junction Police Department has requested the City Purchasing Division research the possibility of purchasing patrol motorcycles rather than leasing motorcycles as we have in the past. The City has historically leased four (4) police patrol motorcycles from Harley Davidson for \$1,100 a year for each motorcycle. Harley Davidson is increasing the lease amount to \$1,428 per year per motorcycle. Since the lease amounts have increased substantially and new safety features/technology is being offered by other manufacturers, the Police Department wanted to consider other options. The evaluation process consisted of comparing the purchase and maintenance costs of two police motorcycle manufacturers over a five (5) year or 40,000 mile life cycle. The increased leasing of Harley Davidson motorcycles at the increased rate. We attempted to capture the major costs of ownership if leased or purchased. The factors evaluated in the process include:

- Purchase price or lease of each unit.
- The resale value of units after the life cycle (5 yrs/40,000 miles) if purchased.
- Setup fees for the new units (purchased or leased).
- Manufacturers warranty.
- Manufacturers recommended routine maintenance costs for the life cycle (5 yrs/40,000 miles).
- Opportunity costs of purchase vs lease (interest income lost if purchased).

For purposes of analysis, the resale value was established by using the nationally published NADA Blue Book values. The mileage used for the analysis is based on a projection furnished by the police department and historical City mileage records. The opportunity cost calculations were based on 6% return on the investment. All maintenance cost fees were provided by the local Harley Davidson and BMW service departments.

The calculations reflect that the cost of ownership per motorcycle over the five-year life cycle is very comparable. The total difference per motorcycle over the period is only \$755 or \$151 per year.

However, one manufacturer has added the safety of ABS brakes to their police motorcycle that makes it a very attractive alternative to the Harley Davidson. The BMW police motorcycle is the only manufacturer that offers ABS brakes. Although other manufacturers offer ABS on their large luxury motorcycle, none offer that option on their Police version. Officer Steve Moore and officer John Casteel from the Grand Junction Police Department tested both manufacturer's models under consideration. The motorcycles were tested on a dry road surface and a skidpan that simulates riding conditions on wet or low traction roadways. While maneuverability and performance on both motorcycles was somewhat similar, the BMW's braking performance greatly exceeded that of the Harley Davidson.



The primary difference in the two braking systems is the anti-lock brakes on the BMW. The antilock brakes allow the rider to achieve maximum brake performance on any surface (dry or wet asphalt/concrete, gravel, or dirt) without locking either the front or rear wheels in a panic braking situation. The ABS brakes keep the motorcycle stable while slowing the vehicle quickly to a stop. The Police Department has a detailed analysis of the testing available for review.

Based on the small difference in the projected cost of ownership over the life of the motorcycles, and the added safety offered by the BMW ABS braking system, the Police Department with City Purchasing Office concurrence recommends the purchase of four (4) BMW R 1150 RT-P motorcycles. The city's replacement accrual fund and the Police Department budget have sufficient funds to make this purchase.

