

AMENDED

ORDINANCE NO. 2607

ORDINANCE ADOPTING A RESTATED AND AMENDED GRAND JUNCTION NEW HIRE
FIRE DEFINED CONTRIBUTION PLAN

Recitals.

In April of 1992, the City Council adopted, by Ordinance 2566E, a Defined Contribution Money Purchase Plan applicable to members of the Grand Junction Fire Department. Pursuant to the City Charter, section 51, notice of the adoption is to be published within three days. The validity of that Ordinance and Plan has been contested in the case of Benoit v. City of Grand Junction.

On September 9, 1992, a settlement agreement was signed which provided that: on the part of the participants, a vote to approve such settlement agreement would be had; and, on the part of the City, City Council would incorporate the changes specified in the settlement agreement into the Plan by adoption of an Ordinance.

The fire participants duly voted and approved the terms of the settlement agreement during the week ending October 16, 1992.

The City Council finds: that the settlement agreement is in the best interests of the City, the City's citizens, and in the City's Fire Department and the affected participants; that the adoption of this Ordinance is necessary to preserve the public health, welfare, and safety; and, in order to complete the process proposed in the settlement agreement.

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

1. The attached "Restated and Amended City of Grand Junction, Colorado New Hire Fire Money Purchase Defined Contribution Plan" ("Restated New Hire Fire Plan"), to be effective, nunc pro tunc, January 1, 1987 is hereby adopted as the defined contribution plan for those members of the City's Fire Department, as set forth therein. Such Restated New Hire Fire Plan is the "money purchase plan" as that phrase is defined in C.R.S. 31-30-1001, et seq., for the affected members of the Grand Junction Fire Department.

2. Due to the length of the Restated New Hire Fire Plan, in accordance with the provisions of the City Charter, especially section 51 thereof, the provisions of the Restated New Hire Fire Plan may be published in pamphlet form. The pamphlet is available for public inspection in the office of the City Clerk.

3. The City Council specifically approves and ratifies the settlement agreement. The City Council by the adoption hereof appropriates the necessary funds to pay in accordance with the Settlement Agreement and authorizes and directs that related and

necessary actions to effectuate the Settlement Agreement are approved.

Introduced for publication this 21st day of October, 1992.

Passed and adopted as amended this 4th day of November, 1992.

Attest:

NAME

President of the Council

Neva B. Lockhart, CMC

City Clerk

I HEREBY CERTIFY that the foregoing ordinance, being Ordinance No. 2607, was introduced, read, and ordered published by the City Council of the City of Grand Junction, Colorado, at a regular meeting of said body held on the 21st day of October, 1992, and that the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, at least ten days before its final passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 12th day of November, 1992.

Neva B. Lockhart

Neva B. Lockhart, CMC
City Clerk

Published: October 23, 1992
Published: November 18, 1992
Effective: December 18, 1992

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

(October, 1992)

Effective 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 for the exclusive benefit of certain employees and their beneficiaries, to read as follows:

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 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 an I.R.C. 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)).

In determining the Compensation of a Participant 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. For purposes of applying the ACP test of Code section 401(m), Compensation shall be defined by Code section 414(s) and shall be limited, for Plan years beginning before the later of January 1, 1990 or such later date permitted by law, to Compensation received by an Employee while the Employee is a Plan Participant.

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 of not less than twelve (12) months.

1.10 Effective Date. 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 Highly Compensated Employee. Highly Compensated active Employees and Highly Compensation former Employees.

A Highly Compensated active Employee includes any Employee who performs services for the Employer during the Determination Year and who, during the look-back year: (i) received Compensation from the Employer in excess of \$75,000 (as adjusted pursuant to section 415(d) of the Code); (ii) received Compensation from the Employer in excess of \$50,000 (as adjusted pursuant to section 415(d) of the Code) and was a member of the top-paid group for such year; or (iii) was an officer of the Employer and received Compensation during such year that is greater than 50 percent of the dollar limitation in effect under section 415(b)(1)(A) of the Code. The term Highly Compensated Employee also includes Employees who are both described in the preceding sentence if the term "Determination Year" is substituted for the term "look-back year" and the Employee is one of the 100 Employees who received the most Compensation from the Employer during the Determination Year.

If no officer has satisfied the Compensation requirement of (iii) above during either a Determination Year or look-back year, the

highest paid officer for such year shall be treated as a Highly Compensated Employee.

For this purpose, the Determination Year shall be the Plan Year. The look-back year shall be the twelve-month period immediately preceding the Determination Year.

A Highly Compensated former Employee includes any Employee who separated from service with the Employer (or was deemed to have separated) prior to the Determination Year, performs no service for the Employer during the Determination Year, and was a Highly Compensated active Employee for either the separation year or any, Determination Year ending on or after the Employee's 55th birthday.

If an Employee is, during a Determination Year or look-back year, a family member of a Highly Compensated Employee who is one of the 10 most Highly Compensated Employees ranked on the basis of Compensation paid by the Employer during such year, then the family member and the top-ten Highly Compensated Employee shall be aggregated. In such case, the family member and top-ten Highly Compensated Employee shall be treated as a single Employee receiving Compensation and Plan contributions or benefits equal to the sum of such Compensation and contributions or benefits of the family member and top-ten Highly Compensated Employee. For purposes of this section, family member includes the spouse, lineal ascendants and descendants of the Employee or former Employee and the spouses of such lineal ascendants and descendants.

The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of Employees in the top-paid group, the top 100 Employees, the number of Employees treated as officers and the Compensation that is considered, will be made in accordance with section 414(q) of the Code and the regulations thereunder.

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;

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

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 of 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 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.

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 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:

(a) the amount distributed to the Participant is transferred to the Plan no later than the 60th day after such distribution was received by the Participant; and

(b) the distribution from the Qualified Deferred Compensation Plan constituted the Participant's entire interest in such Plan and was distributed within one taxable year of the Participant:

(i) on account of a Plan termination, or in the case of a profit sharing or stock bonus plan, a complete discontinuance of contributions under such plan within the meaning of section 402(a)(6)(A) of the Code, or

(ii) in one or more distributions which constitute a qualified lump sum distribution within the meaning of section 402(e)(4)(A), determined without reference to subparagraphs (B) and (H) of the Code; and

(c) the amount rolled over does not include any amounts contributed by the Participant to the Qualified Deferred Compensation Plan.

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 provided under paragraphs (a) through (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) Voluntary Employee Contributions.
- (e) 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 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).

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 which he is entitled to receive paid to the Participant or, if appropriate according to other provisions hereof, to his Beneficiary or Beneficiaries or to any other retirement plan or trust covering such Participant provided such plan and trust qualify according to sections 401(a) and 501(a) of the Code and provided that the Participant's rights to the amount transferred from this Plan shall always remain fully vested and nonforfeitable. Payment shall be in a lump sum if the value of the Participant's vested account (before payments begin) is less than \$5,000.

(b) Installment Payments. In substantially equal monthly, quarterly, semiannual or annual payments. Such installments, whether paid from the Plan assets or an annuity the following minimum distribution requirements are satisfied:

(i) If a Participant's benefit is to be distributed over [a] a period not extending beyond the Life Expectancy of the Participant or the joint life and last survivor expectancy of the Participant and the Participant's designated Beneficiary or [b] a period not extending beyond the Life Expectancy of designated Beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first distribution calendar year, must at least equal the quotient obtained by dividing the Participant's benefit by the applicable Life Expectancy.

(ii) For calendar years beginning before January 1, 1989, if the Participant's spouse is not the designated Beneficiary, the method of distribution selected must assure that at least 50% of the present value of the amount available for distribution is paid within the Life Expectancy of the Participant.

(iii) For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distribution for the first distribution calendar year, shall be the Participant's benefit by the lesser of [a] the applicable Life Expectancy or [b] if the Participant's spouse is not the designated Beneficiary, the applicable divisor determined from the table set forth in Q&A-4 of

section 1.401(a)(9)-2 of the Income Tax Regulations. Distributions after the death of the Participant shall be distributed using the applicable Life Expectancy in section 7.2(b)(i) as the relevant divisor without regard to regulations section 1.401(a)(9)-2.

(iv) The minimum distribution required for the Participant's first distribution calendar year must be made on or before the Participant's required beginning date described in section 7.1. The minimum distribution for other calendar years, including the minimum distribution for the distribution calendar year in which the Employee's required beginning date occurs, must be made on or before December 31 of that distribution calendar,

(v) For purposes of this section 7.2(b), the following definitions shall apply:

[a] Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 6.3.

[b] Participant's benefit.

(1) The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date.

(2) Exception for second distribution calendar year. For purposes of paragraph (1) above, if any portion of the minimum distribution for the first distribution calendar year is made in the second distribution calendar year on or before the required beginning date, the amount of the minimum distribution in the second distribution calendar year shall be treated as if it had been made in the immediately preceding distribution calendar year.

7.3 Changes in Payments. A Participant may not change the form of payment after he has begun to receive payment of his benefits from the Plan.

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 Board.

(b) Other Requirements. Such request shall include the Participant's address, social security number, birth date, and amount of the withdrawal. A Participant who elects an in-service withdrawal of his or Voluntary Contributions shall not be permitted to make a further Voluntary Contribution for a period of one year from the date of the withdrawal.

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 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.

Years of Service	Percentage Vested and Nonforfeitable
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 or 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. 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 or 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 or such other limit specified by the Secretary of the Treasury or his delegates then applying to annual additions, or

(ii) 25% of the Compensation paid, made available or properly accrued 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) or 419A(d)(2) of the Code.

(b) Definition of Compensation. For purposes of this Article IX, Compensation shall mean wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the Plan (including, but not limited to, commissions paid salesmen, Compensation for services on the basis of a percentage of profits, commissions or insurance premiums, tips and bonuses),

and excluding the following:

(i) Employer Contributions to a plan for deferred compensation which are not includable in the Employee's gross income for the taxable year in which contributed, or Employer Contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;

(ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(iv) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee).

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 or rollovers according to section 4.3.

(d) For purposes of this Article IX, "Employer" means the Employer

that adopts this Plan, and all members of a controlled group of corporations (as defined in section 414(b) of the Internal Revenue Code as modified by section 415(h)), all commonly controlled trades or businesses (as defined in Internal Revenue Code section 414(c) as modified by section 415(h)) or affiliated service groups (as defined in Internal Revenue Code section 414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer according to regulations under Code section 414(o).

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 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.

(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. 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.

(a) Defined Benefit Fraction. For the purposes of this section, the Defined Benefit Plan fraction for each Limitation Year shall include a numerator equaling the projected annual benefit of the Employee under all Defined Benefit Plans maintained by the Employer (whether or not terminated), determined as of the close of the year, and a denominator equaling the lesser of (i) 125% of the dollar limitation imposed upon such benefits by the Internal Revenue Code for such year or (ii) 140% of his average annual Compensation for the three consecutive Limitation Years (determined according to section 415 of the Internal Revenue Code) during which he both participated in the Defined Benefit Plan and received, his highest Compensation from the Employer. An Employee's "projected annual benefit" for this calculation is the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity or qualified joint and survivor annuity) to which the Participant would be entitled under the terms of the Plan assuming:

(i) the Participant will continue employment until normal retirement age under the Plan (or current age, if later), and

(ii) the Participant's Compensation for the current Limitation Year and all other relevant factors used to determine benefits under the Plan will remain constant for all future Limitation Years.

If the Participant was a Participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more Defined Benefit Plans maintained by the Employer which were in existence on May 6, 1986, the denominator of this fraction will not be less than 125% of the sum of the annual benefits under such plans which the Participant had accrued as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the Plan after May 5, 1986. The preceding sentence applies only if the Defined Benefit Plans individually and in the aggregate satisfied the requirements of section 415 of the Code for all Limitation Years beginning before January 1, 1987.

(b) Defined Contribution Fraction. For purposes of this section, the Defined Contribution Plan fraction for each Limitation Year is a fraction, the numerator of which is the sum of the annual additions to the Participant's account under all the Defined Contribution Plans (whether or not terminated) maintained by the Employer for the current and all prior Limitation Years (including the annual additions attributable to the Participant's nondeductible Employee Contributions to all Defined Benefit Plans, whether or not terminated, maintained by the Employer and the annual additions attributable to all welfare benefit funds and individual medical accounts, as defined in section 415(1)(2) of the Code, maintained by the Employer), and the denominator of

which is the sum of the maximum aggregate amounts for the current and all prior Limitation Years of Service with the Employer (regardless of whether a Defined Contribution Plan was maintained by the Employer). The maximum aggregate amount in any Limitation Year is the lesser of 125% of the dollar limitation in effect under section 415(c)(1)(A) of the Code or 35% of the Participant's Compensation for such year. If the Employee was a Participant as of the end of the first day of the first Limitation Year beginning after December 31, 1986, in one or more Defined Contribution Plans maintained by the Employer which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the Defined Benefit Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (i) the excess of the sum of the fractions over 1.0 times (ii) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the Plan made after May 6, 1986, but using the section 415 limitation applicable to the first Limitation Year beginning before January 1, 1987, shall not be recomputed to treat all Employee Contributions as annual additions.

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. 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 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) 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 yea, 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 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 Section 31-30-1012(5), as amended, of 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.

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 that the Plan shall honor a writ of garnishment which is the result of a judgment taken for arrearages for child support or for child support debt if the writ identifies the Plan, the Participant, the amount of payment to be made from the Participant's account, the timing of payment from the Participant's account, and the name of the recipient of the payment. The Board may adopt rules regarding the sequence in which payments for child support shall be made from a Participant's various Plan sub-accounts.

11.5 Custodian 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.

(a) A Participant who has completed a Period of Service of 24 months may borrow up to 20% of the fair market value of the Participant's vested account balance derived from Employer Contributions, Mandatory Employee Pre-Tax 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) \$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 twenty percent (20%) of the fair market value of the Participant's vested account balance derived from Employer Contributions, Mandatory Employee Pre-Tax Contributions, Voluntary Contributions, Transfer Contributions and Rollover Contributions. In the case of a loan pursuant to subsection 12.1 (b) to satisfy an unforeseen emergency, the limitations set forth in the preceding sentence shall apply, but "fifty percent (50%)" shall be substituted for "twenty percent (20%)" in clause (b). 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 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.

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 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.

The amendments may not take effect unless approved at the time of adoption by at least sixty-five percent of all Participants employed at the time of amendment.

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 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 Participant's 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.

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.

AGREED TO THIS 4th DAY OF November, 1992.

NAME

Reford C. Theobold, Mayor
City of Grand Junction

Neva B. Lockhart, CMC

Neva Lockhart, City Clerk