

SPONSORED BY: MAYOR NOVAK


COUNCILMAN'S RESOLUTION

NO. CB-1598
Series of 2006

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

A PUBLIC HEARING WILL BE HELD ON CB-1598, SERIES OF 2006, ENTITLED "A BILL FOR AN ORDINANCE AMENDING THE AMENDED AND RESTATED CITY OF NORTHGLENN GENERAL EMPLOYEES' MONEY PURCHASE PENSION PLAN, EFFECTIVE JANUARY 1, 2007" ON DECEMBER 14, 2006 AT 7:30 P.M., CITY HALL COUNCIL CHAMBERS, 11701 COMMUNITY CENTER DRIVE, NORTHGLENN.

DATED this 9th day of November, 2006.


KATHLEEN M. NOVAK
Mayor

ATTEST:


DIANA L. LENTZ, CMC
City Clerk

AFFIDAVIT OF POSTING:

I, _____, certify that CB-1598 was posted at the authorized posting places in the City of Northglenn this _____ day of _____, 2006.

Deputy City Clerk

EXPLANATORY COVER SHEET

COUNCILMAN'S BILL NO. CB-1598

SPONSOR: MAYOR NOVAK

TITLE: A BILL FOR AN ORDINANCE AMENDING THE AMENDED AND
RESTATED CITY OF NORTHGLENN GENERAL EMPLOYEES' MONEY
PURCHASE PENSION PLAN, EFFECTIVE JANUARY 1, 2007

PURPOSE: TO UPDATE THE GENERAL EMPLOYEES' PENSION PLAN

ADDITIONAL EXPLANATORY REMARKS:

AN ADDITIONAL EXPLANATORY MEMORANDUM WITH A SUMMARY
OF CHANGES PROVIDED BY THE CITY'S PENSION ATTORNEYS,
BERENBAUM, WEINSHIENK, & EASON, P.C. IS INCLUDED WITH
THESE MATERIALS

SPONSORED BY: MAYOR NOVAK

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1598

Series of 2006

Series of 2006

A BILL FOR AN ORDINANCE AMENDING THE AMENDED AND RESTATED CITY OF NORTHGLENN GENERAL EMPLOYEES' MONEY PURCHASE PENSION PLAN, EFFECTIVE JANUARY 1, 2007

WHEREAS, the City Council of the City of Northglenn originally adopted the City of Northglenn General Employees' Money Purchase Pension Plan and Trust Agreement (the "Plan") by the passage of Ordinance No. 707, Series of 1983, and has amended and restated the Plan as necessary from time to time to incorporate necessary changes; and

WHEREAS, changes in federal laws and regulations and other minor changes necessitate the changes set forth herein.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Plan is hereby amended, effective January 1, 2007, as more particularly set forth in the Plan, attached hereto as **Exhibit A**, and incorporated herein by this reference.

INTRODUCED, READ AND ORDERED POSTED this 9th day of November, 2006.


KATHLEEN M. NOVAK
Mayor

ATTEST:


DIANA L. LENTZ, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this ____ day of _____,
2006.

KATHLEEN M. NOVAK
Mayor

ATTEST:

DIANA L. LENTZ, CMC
City Clerk

APPROVED AS TO FORM:



COREY Y. HOFFMANN
City Attorney

AMENDED AND RESTATED

CITY OF NORTHGLENN

GENERAL EMPLOYEES' PENSION PLAN

AND

TRUST AGREEMENT

As adopted ~~July 22, 2004,~~ _____, 2006, pursuant to Ord. ~~1379,~~ _____, Series of
20042006
and effective January 1, 20042007

AMENDED AS FOLLOWS:

~~Ord. 1390 — Series of 2004 —~~

EXHIBIT A TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. PURPOSE.....	1
ARTICLE II. DEFINITIONS AND CONSTRUCTION.....	2
2.1 Definitions.....	2
2.2 Construction.....	5
ARTICLE III. PARTICIPATION AND SERVICE	5
3.1 Participation	5
3.2 Service.....	56
3.3 Inactive Status	6
3.4 Participation and Service Upon Re-employment.....	6
ARTICLE IV. CONTRIBUTIONS AND FORFEITURES	67
4.1 Employer Contributions.....	67
4.2 Mandatory Participant Contributions.....	7
4.3 Disposition of Forfeitures	78
4.4 Rollover Contributions.....	78
ARTICLE V. ALLOCATIONS TO PARTICIPANTS' ACCOUNTS	78
5.1 Individual Accounts	78
5.2 Account Adjustments.....	78
5.3 Maximum Additions	89
5.4 Qualified Military Service	810
ARTICLE VI. BENEFITS.....	910
6.1 Retirement or Disability.....	910
6.2 Death	910
6.3 Termination for Other Reasons.....	910
6.4 Vesting of Participant's Interests.....	910
6.5 Payment of Benefits.....	1011
6.6 Required Minimum Distribution Rules.	1113
6.7 Designation of Beneficiary	1416

6.8	Distributions Under Domestic Relations Orders	1517
6.9	Direct Rollover Distributions.....	1517
ARTICLE VII. THE TRUST AND TRUST FUND		1517
7.1	Contributions to Trust.....	1517
7.2	Retirement Board's Powers and Duties.....	1518
7.3	Further Powers of the Retirement Board	1619
7.4	Payment of Expenses and Fees	1720
7.5	Protection of the Retirement Board	1720
7.6	Accounts of the Retirement Board.....	1720
7.7	Accounting by the Retirement Board	1821
7.8	Educational Advancement	1821
ARTICLE VIII. ADMINISTRATION		1821
8.1	Retirement Board.....	1821
8.2	Use of Corporate Trustee	1922
8.3	Participant Direction of Investment.....	1923
8.4	Claims Procedure	2023
8.5	Records and Reports	2024
8.6	Investment Manager.....	2024
8.7	Other Administrative Powers and Duties	2024
8.8	Rules and Decisions.....	2125
8.9	Benefit Payments	2125
8.10	Application and Forms for Benefits.....	2125
8.11	Indemnification	2125
ARTICLE IX. FIDUCIARIES.....		2125
9.1	Fiduciaries.....	2125
9.2	General Fiduciary Duties	2226
9.3	Bonding and Insurance	2226
ARTICLE X. MISCELLANEOUS		2226
10.1	Nonguarantee of Employment.....	2226
10.2	Rights to Trust Assets	2226

10.3	Nonalienation of Benefits	2227
10.4	Payments to Minors or Persons of Unsound Mind	2327
10.5	Disposition of Unclaimed Payments.....	2327
10.6	Severability of Provisions	2327
10.7	Trust and Plan to be Tax Exempt.....	2327
ARTICLE XI. AMENDMENT OR TERMINATION OF THE PLAN		2328
11.1	Right and Restrictions.....	2328
11.2	Merger or Consolidation of the Plan.....	2428
ARTICLE XII. GOVERNING LAW		2428

AMENDED AND RESTATED

CITY OF NORTHGLENN

GENERAL EMPLOYEES'

PENSION PLAN AND TRUST AGREEMENT

WHEREAS, the City of Northglenn was a contributory employer to the City of Northglenn General Employees' Retirement Plan, a defined benefit plan originally effective January 1, 1974; and

WHEREAS, the City of Northglenn adopted the City of Northglenn General Employees' Pension Plan and Trust Agreement, a defined contribution plan, on October 20, 1983 pursuant to Ordinance 707, Series of 1983, which became effective November 1, 1983 and to which the assets of the City of Northglenn General Employees' Retirement Plan were transferred; and

WHEREAS, the City of Northglenn subsequently adopted amendments to the Plan in Ordinances 773, 1985; 820, 1986; 830, 1986; 850, 1986; 881, 1987; 897, 1987; 1008, 1990; 1028, 1991; 1053, 1992; and

WHEREAS, the City of Northglenn amended and restated the City of Northglenn General Employees' Pension Plan and Trust Agreement to be effective June 1, 1999, in order to conform the Plan to all of the "GUST" tax law changes; and

WHEREAS, the City of Northglenn ~~desires to make further amendments to the Plan~~ ~~and~~ AMENDED AND RESTATED THE CITY OF NORTHGLENN GENERAL EMPLOYEES' PENSION PLAN AND TRUST AGREEMENT TO BE EFFECTIVE JANUARY 1, 2004, IN ORDER to conform the Plan to ~~changes in tax law applicable to the~~ PLANTAX LAW CHANGES, including the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"); AND

WHEREAS, THE CITY OF NORTHGLENN DESIRES TO AMEND AND RESTATE THE RESTATED CITY OF NORTHGLENN GENERAL EMPLOYEES' PENSION PLAN AND TRUST AGREEMENT TO BE EFFECTIVE JANUARY 1, 2007, IN ORDER TO CONFORM THE PLAN TO APPLICABLE TAX LAW CHANGES AND REFLECT CERTAIN ADMINISTRATIVE AND PARTICIPATION CHANGES TO THE PLAN.

NOW, THEREFORE, in consideration of the premises, the City of Northglenn hereby amends and restates the RESTATED City of Northglenn General Employees' Pension Plan and Trust Agreement to be effective January 1, ~~2004,2007~~, except in sections where an alternate effective date is stated. The terms of this ~~restated~~ AMENDED AND RESTATED Pension Plan and Trust Agreement shall supersede the provisions of any plan in effect prior to January 1, ~~2004,2007~~.

ARTICLE I. PURPOSE

Effective as of January 1, 2004,2007, the City of Northglenn, as the Employer, and the Retirement Board as the Trustee, hereby adopt and establish this ~~amended~~AMENDED and ~~restated~~RESTATED City of Northglenn General Employees' Pension Plan and Trust Agreement.

The purpose of the Plan is to reward Employees of the Employer for their loyal and faithful service, to help the Employees accumulate funds for their later years and to provide funds for their beneficiaries in the event of death or disability. The benefits provided by this Plan will be paid from a Trust Fund established by the Employer and will be in addition to the benefits Employees are entitled to receive under any other programs of the Employer.

The Plan is a governmental retirement plan exempt from the provisions of the Employee Retirement Income Security Act (ERISA). The Plan and Trust are intended to meet the requirements of Sections 401(a) and 501(a) of the Internal Revenue Code of 1986 to the extent applicable to governmental plans. It is the specific intent of the Employer and the Retirement Board that the Plan not be subject to any requirement of ERISA or the Internal Revenue Code except to the extent required for governmental plans and the provisions of this Plan shall be construed in accord with this intent.

ARTICLE II. DEFINITIONS AND CONSTRUCTION

2.1 Definitions: The following words and phrases, when used herein, unless their context clearly indicates otherwise, shall have the following respective meanings:

(a) Authorized Leave of Absence: Any absence authorized by the Employer under the Employer's standard personnel practices provided that all persons under similar circumstances must be treated alike in the granting of such Authorized Leaves of Absence and provided further that such leave shall end as of the date to which it was extended.

(b) Aggregate Account: The value of all accounts maintained on behalf of a Participant, whether attributable to Employer or Employee contributions.

(c) Beneficiary: A person or persons (natural or otherwise) designated by a Participant in accordance with the provisions of Section 6.6 to receive any death benefit which shall be payable under this Plan.

(d) Break in Service: Any Year after the Effective Date during which an Employee completes less than 500 Hours of Service.

(e) City: The City of Northglenn, Colorado, a home rule City in the State of Colorado.

(f) Compensation: A Participant's base salary, cash awards, and longevity pay received from the Employer for personal services during the Year; but excluding overtime, uniform cleaning and travel allowances, and excluding any benefits paid under this Plan or any other retirement or life insurance program or under any other health or welfare plan. For purposes of allocating the Employer's contribution and tracking Forfeiture amounts for the Year in which a Participant begins or resumes Participation, Compensation shall be determined as of the first day of the year in which the Employee became a Participant and Compensation before his Participation began or resumed shall be disregarded. "Compensation" shall not be reduced by the Participant's Mandatory Contributions which are picked up by the Employer pursuant to Article IV; nor shall Compensation be reduced by any amounts contributed by the Employer to

any profit-sharing plan, simplified employee pension plan, cafeteria plan, qualified transportation fringe benefit plan, tax sheltered annuity or deferred compensation plan pursuant to a salary reduction election which is not includible in the gross income of the Employee under Code Section 125, 132(f)(4) (for Plan Years beginning after December 31, 2000), 402(h), 403(b), 402(e)(3) or 457 and any other elective deferrals as referred to in Code Section 402(g)(3).

Effective January 1, 2002, Compensation in excess of \$200,000 (as adjusted by the Secretary of the Treasury for cost of living increases in accordance with Code Section 401(a)(17)) shall not be taken into account under the Plan.

(g) Disability: A disability which permanently renders a Participant unable to perform satisfactorily the usual duties of his employment with the Employer as determined by a physician selected by the Board, and which results in his termination of service with the Employer.

(h) Effective Date: The original effective date is November 1, 1983. The Effective Date of this amended and restated Plan shall be January 1, 20042007, except as otherwise noted.

(i) Early Retirement Age: For purposes of eligibility to receive benefits under this Plan, the date a Participant's or Former Participant's age in years, when added to the Participant's or Former Participant's Years of Service, total at least 65. On such a date, a Participant or Former Participant shall be entitled to retire voluntarily.

(j) Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account as defined in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a qualified defined contribution plan or qualified defined benefit plan, an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), or an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state, or political subdivision of a state, and which agrees to separately account for amounts transferred into such plan from this planPLAN. 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 domestic relations order, as defined in C.R.S. Section 14-10-113.113(6).

(k) Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of a distributee (whether an employee, former employee, or spouse who is an alternate payee of an employee or former employee), 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 or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; any hardship distribution as described in Code §401(k)(2)(b)(i)(IV) and made after December 31, 1999; 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).

(l) Employee: Any person now or hereafter in the employ of the Employer, including those on an authorized Leave of Absence, but excluding all elected officials and independent contractors. In addition, any sworn Employee of the City of Northglenn Police

Department shall not be eligible to participate in the Plan. Full-time means an individual is employed by the Employer for 32 hours per week and at least nine (9) months per year.

(m) Employee Contribution Account: The account maintained for a Participant to record his Mandatory Contributions to the Plan and adjustments relating thereto.

(n) Employee Rollover Account: The account established to hold and account for the contributions rolled over by a Participant from Prior Plans or any other qualified rollover.

(o) Employer: The City of Northglenn, a home rule municipality, incorporated in the State of Colorado, AND THE CITY OF NORTHGLENN CITY COUNCIL.

(p) Employer Contribution Account: The account maintained for a Participant to record his share of the contributions of the Employer and adjustments relating thereto.

(q) Fiduciaries: The Employer and the Retirement Board, but only with respect to the specific responsibilities of each for Plan and Trust administration, all as described in Article IX.

(r) Forfeitures: The portion of a Participant's Employer Contribution Account which is forfeited because of termination of employment before full vesting.

(s) Former Participant: A Participant whose employment with the Employer has terminated but who has a vested account balance under the Plan which has not been paid in full.

(t) Hours of Service: Each hour for which an Employee is:

(1) Directly or indirectly paid, or entitled to payment by the Employer for the performance of duties;

(2) Directly or indirectly paid, or entitled to payment, by the Employer on account of a period during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military service or Authorized Leave of Absence; provided, however, that no more than 1,000 Hours of Service shall be credited with respect to any single continuous period during which no duties are performed; and

(3) Entitled to back pay (irrespective of mitigation of damages) which is awarded, or agreed to, by the Employer on behalf of an Employee.

Hours of Service under (1) shall be credited to a Participant for the period in which the duties are performed, and Hours of Service under (2) and (3) shall be credited for the period to which they relate, but there shall be no duplication of Hours of Service credited. In the case of an uncompensated Authorized Leave of Absence, an Employee shall be credited with Hours of Service for any period which is in accordance with the uniform policy of the Employer.

(u) Income: The net gain or loss of the Trust Fund from investments, as reflected by interest payments, dividends, realized and unrealized gains and losses on securities, other investment transactions and expenses paid from the Trust Fund. In determining the Income of the Trust Fund for any period, assets shall be valued on the basis of their fair market value.

(v) Normal Retirement Age: For purposes of eligibility to receive benefits under this Plan, the date a Participant attains age 65. A Participant shall be entitled to retire voluntarily on his sixty-fifth (65th) birthday. Until actual retirement, a Participant shall continue to participate in the Plan.

(w) Participant: An Employee participating in the Plan in accordance with the provisions of Section 3.1.

(x) Participation: The period commencing as of the date the Employee became a Participant and ending upon the occurrence of a Break in Service caused by termination of employment.

(y) Plan: The City of Northglenn General Employees' Pension Plan and Trust, the Plan set forth herein, as amended from time to time.

(z) Prior Plan: The City of Northglenn General Employees' Retirement Plan.

(aa) Retirement Board: The Board, appointed pursuant to Article VIII, to act as the Retirement Board, Plan Administrator, Trustee and Fiduciary to the Plan.

(bb) Service: A Participant's period of employment with the Employer determined in accordance with Section 3.2.

(cc) Trust (or Trust Fund): The Trust maintained in accordance with the terms of this Trust Agreement, as from time to time amended, which constitutes a part of this Plan, and the funds now or hereafter placed with the Retirement Board to be held, invested and paid out pursuant to the provisions of this Plan and Trust Agreement.

(dd) Valuation Date: The Valuation Date is the last day of each Year or such other date or dates deemed necessary by the Retirement Board. The Valuation Date may include any day during the Plan Year that the Trustee, any transfer agent appointed by the Trustee or the Employer and any stock exchange used by such agent are open for business.

(ee) Year: The plan year consisting of the 12-month period commencing on January 1 and ending on the following December 31.

(ff) Year of Service: A 12-month period commencing on January 1 and ending on December 31 in which an Employee completes 1,000 Hours of Service.

2.2 Construction: The masculine gender, where appearing in this Plan and Trust, shall be deemed to include the feminine gender, unless the context clearly indicates to the contrary.

ARTICLE III. PARTICIPATION AND SERVICE

3.1 Participation: Each Employee becomes a Participant in the Plan on the later of his date of hire or the date he attains age 18. Each Employee who was a Participant in the Plan on the day before the Effective Date of this AMENDED AND restated Plan continues as a Participant in the Plan.

3.2 Service: A Participant's eligibility for benefits under the Plan shall be based on his period of Service, determined in accordance with the following:

(a) Service Prior to the Effective Date for Continuing Participants: For a Participant, as of the Effective Date, who had been covered under the provisions of the Plan, the Participant's last period of continuous employment with the Employer prior to the Effective Date shall be counted as Service, including such periods of Authorized Leave of Absence credited as Service under the provisions of the Prior Plan in effect prior to the Effective Date. Service after the Effective Date shall be determined under subparagraph (b).

(b) Service for Employees Participating from and after the Effective Date: Subject to subparagraph (a) and the re-employment provisions of Section 3.4, a Participant shall accrue a Year of Service for each Year in which he completes 1,000 or more Hours of Service, except that for Employees who become Participants on or after the Effective Date, Years of Service before attainment of age 18 shall be disregarded.

3.3 Inactive Status: In the event any Participant shall fail, in any Year of his employment after the Effective Date, to accumulate 1,000 Hours of Service, without incurring a Break in Service, his Employer Contribution Account shall be placed on inactive status. In such case, such Year shall not be considered as a period of Service for the purpose of determining the Participant's vested interest in accordance with Section 6.4 and he shall continue to receive Income allocations in accordance with Section 5.2(b). In the event such Participant accumulates 1,000 Hours of Service in a subsequent Year, his Employer Contribution Account shall revert to active status with full rights and privileges under this Plan restored. Notwithstanding the foregoing, a re-employed Plan Participant who recommences participation on the date re-employed must receive an allocable share of the Employer's contribution, based on his number of hours worked until the end of the Year.

3.4 Participation and Service Upon Re-employment: Participation in the Plan shall cease upon the occurrence of a Break in Service caused by death, voluntary or involuntary termination of employment, unauthorized absence, or by failure to return to active employment with the Employer by the date on which an Authorized Leave of Absence expired.

Upon the re-employment of any person after the Effective Date who had previously been employed by the Employer on or after the Effective Date, the following rules shall apply in determining his Participation in the Plan and his Service under Section 3.2:

(a) Participation: In the case of a re-employed Employee who was not a Participant during his prior period of employment, the re-employed Employee must complete the Participation requirements of Section 3.1 and shall not receive any credit for vesting purposes for any periods of employment with the Employer.

If the re-employed Employee was a Participant in the Plan during his prior period of employment, he shall be entitled to reparticipate in the Plan immediately upon his re-employment with the Employer.

(b) Service: In the case of a Participant whose prior employment terminated with or without entitlement to a distribution from his Employer Contribution Account (i.e., whether vested or not), Years of Service before such termination shall be considered for determining his vested interest in his Employer Contributions Account attributable to contributions made after the Employee returns to the service of the Employer.

ARTICLE IV. CONTRIBUTIONS AND FORFEITURES

4.1 Employer Contributions: The Employer shall contribute the following percentage of a Participant's eligible compensation for each pay period such Participant is eligible to receive a contribution:

Pay periods beginning prior to the date on which the Employee completes five years of continuous employment	8%
Pay periods beginning after the date on which the Employee completes five years of continuous employment but before completing the tenth year of continuous employment	9%
Pay periods beginning after the date on which the Employee completes ten years of continuous employment	10%

NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION, WITH RESPECT TO THE EMPLOYER'S CONTRIBUTION ON BEHALF OF THE CITY MANAGER, THE EMPLOYER SHALL CONTRIBUTE 3% OF THE CITY MANAGER'S COMPENSATION FOR EACH PAY PERIOD THE CITY MANAGER IS ELIGIBLE TO RECEIVE A CONTRIBUTION.

Continuous employment, for the purposes of this Section, shall mean a period of employment for which a contribution is required to be made under the terms of this Plan. The amount of continuous employment shall be rounded to the nearest full calendar month. Separate periods of continuous service shall be aggregated to determine the amounts of service for the purpose of establishing the contribution rate.

4.2 Mandatory Participant Contributions: In order to share in Employer Contributions, commencing with the first pay period of July, 2000, each Participant's Mandatory Contribution shall be twelve percent (12%) of Compensation each year. NOTWITHSTANDING THE FOREGOING SENTENCE, NO MANDATORY CONTRIBUTION SHALL BE MADE BY THE CITY MANAGER. The Employer shall pick up Mandatory Participant Contributions for all Compensation paid on or after January 1, 1987, and the contributions so picked up shall be treated as Employer contributions pursuant to Code Section 414(h)(2). The Employer shall pay these Employee contributions directly to the Trust Fund in lieu of paying such amounts to Employees, and such contributions shall be paid from the same funds which are used in paying salaries to the Employees. Employee contributions so picked up shall be treated for all purposes of this Plan, other than federal tax, in the same manner as Employee contributions which are not picked up by the Employer.

4.3 Disposition of Forfeitures: Upon termination of employment, a Participant's Employer Contribution Account shall be maintained and the Account shall continue to receive Income allocations pursuant to Section 5.2(bA) until the assets of the account are distributed. At that time, the Participant shall receive his "vested percentage" of the Employer Contribution Account according to Section 6.4 and 6.5. The funds forfeited by employees who are less than 100% vested, shall constitute Plan Forfeiture funds and shall be reserved to pay the administrative expenses of the Plan, and if not exhausted, shall then be used to reduce the Employer's Contribution.

4.4 Rollover Contributions: As permitted by law, a Participant who has an entitlement to a distribution of his entire interest in an Eligible Retirement Plan may, in accordance with the procedures of the Retirement Board, transfer the rollover amount to the Plan. The plan-to-Plan rollover must be executed on or before the 60th day after the day on which he is entitled to receive such distribution, to the extent that the fair market value of the rollover amount exceeds the amounts considered contributed by the Employee, reduced by any amounts previously

distributed to him which were not includible in gross income. Such rollover amount shall be non-forfeitable, shall be held in a separate account and shall receive income allocations. The acceptance of the rollover amounts and the provisions established by the Retirement Board shall be governed by the provisions of the Code.

ARTICLE V. ALLOCATIONS TO PARTICIPANTS' ACCOUNTS

5.1 Individual Accounts: The Retirement Board shall create and maintain adequate records to disclose the interest in the Trust of each Participant, Former Participant and Beneficiary. Such records shall be in the form of individual accounts, and credits and charges shall be made to such accounts in the manner herein described. A Participant shall have up to three separate accounts, an Employer Contribution Account, a Mandatory Participant Contribution Account, and an Employee Rollover Account. The maintenance of individual accounts is only for accounting purposes, and a segregation of the assets of the Trust Fund to each account shall not be required. Distribution and withdrawals made from an account shall be charged to the accounts as of the date paid.

5.2 Account Adjustments: The accounts of Participants, Former Participants and Beneficiaries shall be adjusted in accordance with the following:

(a) Income: On each business day of the Year, a daily determination of unrealized and realized gains and losses, interest, dividends and capital gain distributions will be calculated and allocated based on the actual activity in each Participant's account. Activity includes, but is not limited to, allocation of contributions, forfeitures and distributions. Earnings or losses with respect to a Participant's directed account shall be allocated in accordance with Section 8.3.

Participants' rollover contributions from other qualified plans, including any of their voluntary contributions from such plan that are deposited in the general Trust Fund, shall share in any earnings and losses (net appreciation or net depreciation) of the Trust Fund in the same manner provided above. Each segregated account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

(b) Employer Contributions: Employer contributions shall be allocated to the Employer Contribution Account of each eligible Participant not less than monthly, according to the amount that is actually contributed on behalf of each Participant in accordance with Section 4.1.

(c) Expenses: To the extent the Employer does not pay the administrative, legal, investment and consulting fees of the Trust in accordance with Section 7.4, such expenses shall be first paid from forfeitures pursuant to Section 4.3 and then shall be allocated to and deducted from the accounts of Participants. Expenses which are incurred as a direct result of the investments held in the Trust, shall be deducted from the interest, dividends and net income of the appropriate investment prior to allocating each month's Income to Participants. General administrative, legal and consulting fees and expenses shall be deducted from the accounts of all Participants in the proportion that each Participant's account balance bears to the total account balances of all Participants in the Plan on the date such expenses are deducted.

5.3 Maximum Additions: Notwithstanding anything contained herein to the contrary, the total Additions made to the Employer and Employee Contribution Accounts of a Participant for any Year shall not exceed the "Maximum Permissible Amount," reduced by the sum of any

Additions allocated to the Participant's accounts for the same Year under any other defined contribution plan or welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer. The Maximum Permissible Amount shall be equal to the lesser of \$40,000, as adjusted for increases in the cost-of-living under Code Section 415(c)(3), or 100% of the Participant's Compensation for such Year. Such Maximum Permissible Amount shall be effective for limitation years beginning after December 31, 2001.

(a) The term "Additions" means the total of the Employer contributions and unvested forfeiture amounts allocated to a Participant's Employer Contribution Account, plus the amount of any Employee Contributions to the Plan. Amounts allocated to an individual medical account (as defined in Code Section 415(1)(2)) included as part of a defined benefit plan maintained by the Employer are Additions.

(b) "Addition" does not include Rollover Contributions.

(c) If as a result of the allocation of forfeitures, reasonable error in determining compensation or elected deferrals or any other facts or circumstances as permitted by the Code, an addition would otherwise exceed the limitations of the Section, the contributions made by the Participant for the year which causes the excess shall be returned to the Participant.

(d) For purposes of this section, the limitation year shall mean the Plan Year. The term "Compensation" means, for purposes of ~~Sections~~ THIS SECTION 5.3 ~~and 5.4~~ only, a Participant's Compensation as defined in Section 2.1(f), but shall not include Participant Mandatory Contributions which are picked up by the Employer. Compensation shall include only amounts includible in the gross income of the Participant for income tax purposes in Plan Years beginning before January 1, 1998.

5.4 Qualified Military Service: 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)(4). The provisions of this section shall be effective as of December 12, 1994.

ARTICLE VI. BENEFITS

6.1 Retirement or Disability: If a Participant's employment with the Employer is terminated at or after he attains his Normal Retirement Age or Early Retirement Age, or if his employment is terminated at an earlier age because of Disability, the Participant shall be entitled to receive the entire amount then in the Participant's Aggregate ~~Accounts~~ ACCOUNT in accordance with Section 6.5.

6.2 Death: In the event that the termination of employment of a Participant is caused by his death, the entire amount then in the Participant's Aggregate ~~Accounts~~ ACCOUNT shall be paid to his Beneficiary in accordance with Section 6.5 after receipt by the Retirement Board of acceptable proof of death.

6.3 Termination for Other Reasons: If a Participant's employment with the Employer is terminated before his Retirement Date for any reason other than Disability or death, the Participant shall be entitled to the sum of the following:

(a) The entire amounts credited to his Mandatory Participant Contribution and Employee Rollover Accounts, plus

(b) An amount equal to the "vested percentage" of his Employer Contribution Account balance as determined in accord with Section 6.4.

6.4 Vesting of Participant's Interests:

(a) Participant Contributions Accounts and Prior Plan Account: A Participant's interest in his Participant Contributions Account and in his Prior Plan Account shall be fully vested and nonforfeitable at all times.

(b) Employer Contributions Account: A Participant's interest in his Employer Contributions Account, and the earnings, losses and changes in fair market value thereof, shall become vested to the extent of the following percentages based upon the number of Years of Service with the Employer by such Participant, pursuant to all Plan provisions regarding Leaves of Absence and Qualified Military Service. A Year of Service for vesting purposes means a computation period during which the Employee completes 1,000 Hours of Service. The vesting computation period shall be the Plan Year.

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 2 years	0%
2 years but less than 3	20%
3 years but less than 4	40%
4 years but less than 5	60%
5 years but less than 6	80 %
6 years or more	100%

Notwithstanding the foregoing, a Participant's right to his Employer Contribution Account balance shall be 100% vested and nonforfeitable if the Participant dies or sustains a Disability while in the service of the Employer.

Upon termination of employment, the Employer shall notify the Retirement Board in writing of the name and address of the Participant who has terminated employment. The Retirement Board shall determine the amount of the Participant's Aggregate ~~Accounts~~ACCOUNT as calculated above and shall distribute the Aggregate Account to the Participant in the optional form of benefit selected by the Participant in accordance with Section 6.5 as soon as administratively practicable after the Participant's termination of employment.

If a Participant has received a distribution of his Aggregate Account in accordance with the above paragraph representing less than 100% of such Aggregate Account and if he is subsequently reemployed prior to incurring a Break in Service, he may repay the amount of such distribution to the Plan any time before the end of the one-year period following the date the Participant is reemployed, in which event such amount shall be restored to his Aggregate Account. Upon such repayment, a Participant's account shall consist of the amount repaid plus the portion of such Aggregate Account which was not vested upon termination of employment. If a Participant eligible to make such repayment fails to do so, the amount previously forfeited shall not be restored to his Aggregate Account. Upon distribution to a Participant above, any

part of the final balances in a Participant's Aggregate Account which is not part of his distribution is a Forfeiture.

6.5 Payment of Benefits: Within a reasonable time prior to or following termination of a Participant's employment for any reason, the Retirement Board shall provide to the Participant a retirement application form, which shall describe in plain language the terms and conditions of the optional forms of benefits described below and which shall be provided for the Participant to indicate his benefit commencement date, his election of an optional form of benefit, and his Beneficiary or contingent annuitant. The completed retirement application form should be returned to the Retirement Board prior to the Participant's benefit commencement date. If the Participant files another retirement application form after the first form and prior to his benefit commencement date, the earlier form shall be deemed annulled.

The Retirement Board shall follow a Participant's Beneficiary designation and may follow the method of payment, if any, selected by the Participant in the case of a distribution on account of the Participant's death.

Participants with less than ten (10) years of vesting service must commence distribution of benefits as soon as administratively practicable after termination of employment.

Payment of a Participant's benefits must commence within a reasonable time after the Participant's termination of employment, his election to retire after attainment of Early Retirement Age, his election to retire after attainment of Normal Retirement Age, or his death, as the case may be.

In any event, payment of a terminated Participant's benefits shall, unless the Participant otherwise elects a later date in writing, begin not later than the 60th day after the latest of the close of the Year in which (1) the Participant attains Normal Retirement Age, (2) the occurrence of the 10th anniversary of the year in which the Participant commenced participation in the Plan, or (3) the Participant terminates employment with the Employer.

Notwithstanding any provision above to the contrary, distribution of a Participant's benefits shall commence no later than April 1 of the calendar year following the later of (i) the calendar year in which the participant attains the age of 70 ½ or (ii) the calendar year in which the participant retires. A participant attaining the age of 70 ½ after 1995 shall have the option of commencing distribution by April 1 following the calendar year containing the date the participant attains the age of 70 ½ even if such participant is still employed. Alternatively, distribution to a Participant must begin no later than such taxable year and must be made over the life of the Participant (or lives of the Participant and the Participant's spouse) or over a period not exceeding the life expectancy of the Participant (or the life expectancies of the Participant and the Participant's spouse). All distributions shall be made in accordance with Section 6.6.

The methods of payment available to a Participant are as follows:

(a) Lump sum;

(b) By the purchase of a single-premium nontransferable annuity contract from a legal reserve life insurance company, with a term and in a form as the Participant, with the approval of the Retirement Board, shall determine;

(c) A joint and 50% survivor annuity; or

(d) Periodic payments over a period not exceeding the life expectancy of the Participant (or the joint life expectancies of the Participant and the Participant's designated beneficiary), with any amounts remaining in the Plan to receive income and expense allocations pursuant to Section 5.2 (bA) and (c).

A Participant may elect, at the time and in the manner prescribed by the Retirement Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Participant in a direct rollover, pursuant to Section 6.9.

Notwithstanding the foregoing, a Participant may elect to defer receipt of the balance in his Mandatory Participant Contribution Accounts and Employee Rollover Account and the vested percentage of his Employer Contribution Account balance (a Participant's "Accrued Benefit"). Such Former Participant shall receive Income allocations pursuant to Section 5.2(bA) and shall have trust expenses deducted pursuant to Section 5.2(dC) until the balance of the Former Participant's ~~Accrued-Benefit~~ AGGREGATE ACCOUNT has been distributed. A Former Participant may make application for distribution of his ~~Accrued-Benefit~~ AGGREGATE ACCOUNT in accordance with the procedures contained in this section.

Notwithstanding any provision herein to the contrary, if the ~~present~~-value of a Former Participant's ~~accrued-benefit~~ AGGREGATE ACCOUNT, EXCLUDING THE VALUE OF THE FORMER PARTICIPANT'S EMPLOYEE ROLLOVER ACCOUNT, is less than \$5,0001,000, the Plan may distribute the ~~accrued-benefit~~ FORMER PARTICIPANT'S AGGREGATE ACCOUNT without the Former Participant's consent. Such \$5,0001,000 amount shall be adjusted as provided in Code Section 411(a)(11)(A).

6.6 Required Minimum Distribution Rules.

(a) General Rules.

(1) Effective Date. The provisions of this Section 6.6 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year.

(2) Precedence. The requirements of this Section 6.6 will take precedence over any inconsistent provisions of the plan.

(3) Requirements of Treasury Regulations Incorporated. All distributions required under this Section 6.6 will be determined and made in accordance with the Treasury Regulations under Code § 401(a)(9).

(4) TEFRA § 242(b)(2) Elections. Notwithstanding the other provisions of this Section 6.6, distributions may be made under a designation made before January 1, 1984, in accordance with § 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to § 242(b)(2) of TEFRA.

(b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the

calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(2) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 6.6(b), other than Section 6.6(b)(1), will apply as if the surviving spouse were the Participant.

(5) For purposes of this Section 6.6(b) and Section 6.6(d), unless Section 6.6(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 6.6(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 6.6(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 6.6(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

(c) Required Minimum Distributions During Participant's Lifetime.

(1) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(A) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in § 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(B) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in § 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this Section 6.6(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(d) Required Minimum Distributions After Participant's Death.

(1) Death On or After Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the

minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

2) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

3) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

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

(2) Death Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 6.6(d)(1).

(B) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 6.6(b)(1), this Section 6.6(d)(2) will apply as if the surviving spouse were the Participant.

(e) Definitions. The following definitions apply to this Section 6.6.

(1) Designated Beneficiary. A Beneficiary designated by a Participant or by the Plan, as provided in Section 6.7, who is a "designated beneficiary" under Code § 401(a)(9) and § 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

(2) 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 under Section 6.6(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) Life Expectancy. Life expectancy as computed by use of the Single Life Table in § 1.401(a)(9)-9 of the Treasury Regulations.

(4) Participant's Account Balance. The balance of the Participant's Aggregate Account 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 made and allocated or forfeitures allocated to the Aggregate Account 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. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) Required Beginning Date. The latest date for commencement of distributions for a Participant, as determined under Section 6.5 of the Plan.

6.7 Designation of Beneficiary: Each Participant from time to time may designate any person or persons (who may be designated contingently or successively and who may be an entity other than a natural person) as his Beneficiary or Beneficiaries to whom his Plan benefits are paid if he dies before receipt of all such benefits. Each Beneficiary designation shall be in the form prescribed by the Retirement Board and will be effective only when filed with the Retirement Board during the Participant's lifetime. Each Beneficiary designation filed with the Retirement Board will cancel all Beneficiary designations previously filed with the Retirement Board.

If a Participant shall fail to designate a beneficiary before his death, or if no designated beneficiary survives the Participant, the Board shall direct the Corporate Trustee to pay his ~~interest in the Trust Fund~~ AGGREGATE ACCOUNT to his surviving spouse, if any, or if none, then to his issue by representation, if any, or if none, then to the personal representative of his estate. However, if no personal representative shall have been appointed, and the actual notice thereof given to the Board within sixty (60) days after his death, and if ~~his interest~~ THE VALUE OF HIS AGGREGATE ACCOUNT, EXCLUDING THE VALUE OF THE FORMER PARTICIPANT'S EMPLOYEE ROLLOVER ACCOUNT, does not exceed \$5,000,1,000, the Board may direct the Corporate Trustee to pay his interest to such person or persons as may be

entitled thereto under the laws of the state wherever such Participant resides at the date of his death, and in such case the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

6.8 Distributions Under Domestic Relations Orders: Nothing contained in this Plan prevents the Retirement Board from complying with the provisions of a domestic relations order pursuant to C.R.S. Section 14-10-~~113~~-113(6). A distribution to an alternate payee shall be made as soon as administratively practicable after the Retirement Board determines that an order submitted to the Plan complies with the terms of C.R.S. Section 14-10-~~113~~,113(6), and shall be in the form of a lump sum.

The Board of the Plan may promulgate rules or procedures governing the implementation of this subsection. Such rules or procedures may include the requirement that a standardized form be used by the parties and the court for an order approving the parties' agreement in order for it to be effective as well as other provisions consistent for purposes of this section.

6.9 Direct Rollover Distributions: 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. For the purposes of this Section, a "distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse OR NONSPOUSE BENEFICIARY and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a domestic relations order under C.R.S. Section 14-10-~~113~~, are 113(6), MAY BE distributees with regard to the interest of the spouse or former spouse.

ARTICLE VII. THE TRUST AND TRUST FUND

7.1 Contributions to Trust: All contributions under this Plan shall be paid to the Retirement Board and deposited in the Trust Fund. All assets of the Trust Fund, including investment income, shall be retained for the exclusive benefit of Participants, Former Participants, and Beneficiaries and shall be used to pay benefits to such persons or in accordance with Plan provisions governing the utilization of forfeitures, Section 4.3, to pay administrative expenses of the Plan and Trust Fund to the extent not paid by the Employer and shall not revert to or inure to the benefit of the Employer.

Notwithstanding anything herein to the contrary, upon the Employer's request, a contribution which was made by a mistake of fact shall be returned by the Retirement Board to the Employer within one year after the payment of the contribution.

7.2 Retirement Board's Powers and Duties: It shall be the duty of the Retirement Board to hold the funds from time to time received by it from the Employer, to manage, invest and reinvest the Trust Fund and the income therefrom pursuant to the provisions hereinafter set forth, without distinction between principal and income. The Retirement Board shall be responsible only for such sums as shall be actually received by it as Retirement Board. The Retirement Board shall have no duty to collect any sums from the Employer or the Participants.

The Retirement Board shall have the power to invest and/or reinvest any and all money or property of any description at any time held by it and constituting a part of the Trust Fund, without previous application to, or subsequent ratification of, any court, tribunal or commission, or any federal or state governmental agency, in accordance with the following powers:

(a) With regard to its investments, the Retirement Board may invest and reinvest any and all money or property constituting the Trust Fund subject to the Uniform Prudent Investor Act, Article 1.1, of Title 15, C.R.S., in investments, including, but not limited to, obligations of the United States government and in obligations fully guaranteed as to principal and interest by the United States government, in state and municipal bonds, in corporate notes, bonds or debentures, convertible or otherwise, in railroad equipment trust certificates, in real property and in loans secured by first mortgages or deeds of trust on real property, in participation guarantee agreements with life insurance companies, in real estate limited partnerships, or limited liability companies, and in other types of investment agreements, and the foregoing investments may be made without limitation as to the percentage of the book value of the assets of the retirement fund so invested. Investments may also be made in either common or preferred corporate stocks.

(b) The Retirement Board, in the matter of the investment of the Trust Fund, shall be held harmless in every respect in exercising its discretion as to how much of the Trust Fund shall remain uninvested and in cash temporarily awaiting investment or for the expected cash distributions out of the Trust Fund in accordance with the provisions of this Plan.

(c) The Retirement Board may cause any part of the money or other property of the Trust to be commingled with the money or property of trusts created by others causing such assets to be invested as part of a pooled pension and profit sharing fund. In addition, any portion of the Trust assets may be invested in any other collective investment fund approved by the Retirement Board as an investment option, the terms of such collective investment trust shall be incorporated as part of this Plan and Trust upon approval of the Retirement Board.

(d) The Retirement Board from time to time shall determine the immediate and long-term financial requirements of the Plan, and on the basis of such determination, establish a policy and method of funding which will enable the Retirement Board or the investment manager or managers, if any, to coordinate the investment policies of the Plan's funds with the objectives and financial needs of the Plan.

(e) The Retirement Board may delegate its investment responsibilities to an Investment Manager pursuant to Section 8.6 or permit Participants to direct the investment of their Aggregate Accounts pursuant to Section 8.3.

7.3 Further Powers of the Retirement Board: The Retirement Board shall have all powers necessary or advisable to carry out the provisions of this Plan and Trust Agreement and all inherent, implied and statutory powers now or hereafter provided by law, including specifically the power to do any of the following:

(a) To sell, grant options to sell, exchange, pledge, encumber, mortgage, deed in trust, or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best and it may retain, hold, maintain or continue any securities or investments which it may hold as part of the Trust Fund for such length of time as it may deem advisable, and generally, in all respects, the Retirement Board may do all things and exercise each and every right, power and privilege in connection with and in relation to the Trust Fund as could be done, exercised or executed by an individual holding and owning said property in absolute and unconditional ownership;

(b) To abandon, compromise, contest and arbitrate claims and demands; to institute, compromise and defend actions at law (but without obligation to do so), as the Retirement Board shall deem advisable, all at the risk and expense of the Trust Fund;

(c) To borrow money for this Trust upon such terms and conditions as the Retirement Board shall deem advisable, and to secure the repayment thereof by the mortgage or pledge of any assets of the Trust Fund;

(d) To vote in person or by proxy any shares of stock or rights held in the Trust Fund; to participate in reorganization, liquidation or dissolution of any corporation, the securities of which are held in the Trust Fund and to exchange securities or other property in connection therewith;

(e) To pay any amount due on any loan or advance made to the Trust Fund, all taxes of any nature levied, assessed or imposed upon the Trust Fund, and all reasonable expenses and attorney fees necessarily incurred by the Retirement Board with respect to any of the foregoing matters;

(f) To defend any suit or legal proceedings against the Trust, the Retirement Board may sue or bring legal proceedings against any party or parties, compromise, submit to arbitration, or settle any suit or legal proceeding, claim, debt, damage or undertaking due or owing from or to the Trust Fund. In the administration of the Fund, the Retirement Board shall not be obligated to take any action which would subject them to any expense or liability unless they be first indemnified in an amount and in a manner satisfactory to the Retirement Board or to be furnished with funds sufficient, in the sole judgment of the Retirement Board, to cover such expenses.

7.4 Payment of Expenses and Fees: The expenses of administration of the Trust incurred by the Retirement Board, including legal counsel and consulting fees and other charges, shall be paid from the Trust Fund out of forfeitures pursuant to Sections 4.3 and ~~5.25.4(dC)~~. The Retirement Board shall receive in addition to all its expenses, such compensation that may be agreed upon from time to time by the Employer and the Retirement Board. However, if any Retirement Board member is already receiving compensation from the Employer, as a full time Employee he shall not also receive compensation as a member of the Retirement Board. If and to the extent that the Employer does not pay such compensation or expense, it shall be paid from the Trust Fund.

7.5 Protection of the Retirement Board: The Retirement Board shall not incur any liability by reason of taking any action indicated by this instrument to be within the scope of the authority of an Investment Manager appointed by the Retirement Board in accordance with any written instrument purporting to be signed by such person or persons authorized to sign for the Investment Manager, or in reliance upon a certified copy of a resolution of the Retirement Board, any of which the Retirement Board, in good faith, believes to be genuine. The Retirement Board may consult with counsel, who may be counsel for the Employer, in respect to any of its duties or obligations hereunder and shall be fully protected in acting or refraining from acting in accordance with the advice of such counsel.

The Retirement Board shall incur no liability for any loss to or depreciation in value of the Trust Fund or for any act done or omitted to be done in the administration of the Trust, except for breach of its fiduciary duty as set forth in this instrument. The Retirement Board and individual members thereof, or any employee of the Board performing duties therefor, shall be

indemnified and saved harmless by the Employer from and against any and all liability arising by any act, or failure to act, made in good faith pursuant to the provisions of the Plan, including expenses reasonably incurred in the defense of any claim relating thereto.

7.6 Accounts of the Retirement Board: The Retirement Board shall maintain accurate records and accounts of all transactions hereunder, which shall be available at all reasonable times for inspection or audit by any person or persons designated by the Employer. The Retirement Board at the direction of the Employer shall submit to the auditors for the Employer such valuations, reports or other information as they may reasonably require. As of December 31st of each fiscal Year (i.e., the Valuation Date) the Retirement Board shall value the Trust Fund at its fair market value. The Retirement Board shall furnish a copy of such valuation to the City Manager as soon as possible.

Any valuation by the Retirement Board shall be conclusive and binding on any persons having an interest hereunder.

7.7 Accounting by the Retirement Board: Within ninety days following (a) the closing of each Year, or (b) the effective date of the resignation or removal of a Corporate Trustee, the Retirement Board shall file with the City Manager or his designee a written account setting forth all transactions effected by it subsequent to the end of the period covered by its last previous annual account, and listing the assets of the Trust Fund at the close of the period covered by such account. Upon the expiration of sixty days after delivery of any such account to the Employer, such account (as originally stated if no objection has been theretofore filed by the Employer, or as theretofore adjusted pursuant to agreement between the Employer and the Retirement Board) shall be deemed to be approved by the Employer except as to matters, if any, covered by written objections theretofore delivered to the Retirement Board by the Employer regarding which the Retirement Board has not given an explanation, or made adjustments, satisfactory to the Employer. The Retirement Board shall be released and discharged as to all items, matters and things set forth in such account which are not covered by such written objections as if such account had been settled and allowed by a decree of a court having jurisdiction regarding such account and the Retirement Board, the Employer and all persons having or claiming to have any interest in the Fund. The Retirement Board, nevertheless, shall have the right to have its accounts settled by judicial proceedings if it so elects, in which event the Employer and the Retirement Board shall be the only necessary parties.

7.8 Educational Advancement: It is deemed reasonable and prudent for Retirement Board to obtain educational advancement and expertise in all areas of trust fund administration in order to provide and maintain the best possible benefits to the Trust Fund Participants and their Beneficiaries. In order to achieve such educational advancement and expertise, Retirement Board members may attend annual and/or regional meetings and/or seminars sponsored by the International Foundation of Employee Benefit Plans and/or sponsored by other institutions of higher learning. The Retirement Board member attending such meeting or meetings may be reimbursed from the Trust Fund for all reasonable and necessary expenses actually incurred by them, including but not limited to registration fees, meals, lodging and travel expense; provided, however, that reimbursement of the Retirement Board member for such expense shall first have been authorized by resolution of the Retirement Board adopted at any regular or special meeting of the Retirement Board prior to the incurrence of any such expense.

ARTICLE VIII. ADMINISTRATION

8.1 Retirement Board: The Plan shall be administered by a Retirement Board of five members composed of three Participants who are Employees of the Employer, ~~elected by vote of all such Participants~~; the City Finance Director; and the Person holding the position of ~~highest authority with regard to the human resources function~~ PENSION ADMINISTRATOR of the Employer. The PARTICIPANT/Employee members of the Retirement Board shall be elected at large by a majority vote of all active Participants and shall serve staggered three-year terms.

A member of the Retirement Board may resign at any time upon giving written notice thereof by registered or certified mail, hand delivery, ~~or by EMAIL~~, telegram or fax to the Retirement Board. Upon termination of employment of a member of the Retirement Board, such person's membership on the Retirement Board shall terminate and a successor shall be appointed in accordance with this Section 8.1 to fill the remaining unexpired term of such Retirement Board member. Such resignation shall become effective immediately upon receipt of such written notice by the Retirement Board, and in no event shall a member of the Board who has announced his intent to resign or who has been terminated by the Employer continue to participate as a member of the Board nor shall he vote on any matter having to do with his own status with regard to the Plan or his benefits thereunder.

Each successor Retirement Board member appointed as provided in Section 8.1, shall upon succeeding as a Retirement Board member, be vested with all of the rights, powers and discretions herein vested in and imposed upon the members of the Retirement Board. Upon the removal, resignation or expiration of the term of any Retirement Board member, he shall cause to be delivered to the Retirement Board any Trust property or records then in his possession. No successor Retirement Board member shall have any duty to examine the accounts or doings of his predecessors. Any successor Retirement Board member shall be responsible only for the money and property known to him to comprise the principal and income of the Fund and shall in no way be liable or responsible for anything done or omitted to have been done by his predecessors.

8.2 Use of Corporate Trustee: At any time and from time to time the Retirement Board may appoint, as Corporate Trustee, a bank or trust company located in the United States which has capital and surplus aggregating not less than \$50,000,000.00, as shown by its last published statement. The Retirement Board may delegate to the Corporate Trustee (i) the power to hold all or any part of the Trust Fund as sole trustee of a trust separate from the Trust created by this Agreement (and not as agent of the Retirement Board or as Co-Trustee hereunder with the Retirement Board), (ii) the power to invest and reinvest the Trust Fund in the Corporate Trustee's sole discretion, and (iii) such other duties and powers as the Retirement Board may deem advisable.

The Retirement Board may enter into and execute a trust agreement with the Corporate Trustee, which agreement shall contain such provisions as the Retirement Board may deem advisable. The Corporate Trustee shall have no obligations under this Agreement or under the Plan. Its powers and duties shall be limited to those set forth in the agreement between it and the Retirement Board. Upon execution of an agreement with the Corporate Trustee, the Retirement Board may transfer and convey to the Corporate Trustee any part or all of the assets of the Trust Fund acceptable to the Corporate Trustee, and thereupon, the Retirement Board shall be forever released and discharged from any responsibility or liability with respect to the assets so transferred as to any period subsequent to such transfer and with respect to the investment and

reinvestment thereof by the Corporate Trustee during the time the Trust Fund is in the hands of the Corporate Trustee. Notwithstanding such transfer, the Retirement Board shall continue to carry out its administrative functions under the Plan in accordance with the provisions of the Plan and Trust Agreement.

Any Corporate Trustee appointed as provided in this section may be removed at any time, with or without cause, by majority vote of the Retirement Board and upon written notice thereof being furnished to such Corporate Trustee as provided by the terms of the Corporate Trustee Agreement previously entered into by the Retirement Board with such Corporate Trustee. If and when so removed, such Corporate Trustee shall cause to be transferred to the Retirement Board any and all Trust property, assets and records then in its possession.

8.3 Participant Direction of Investment: The Retirement Board may establish rules, regulations and policies to permit each Participant to direct the investment of funds allocated to the Participant's Aggregate Accounts ACCOUNT. The Retirement Board shall select and make available, several investment vehicles in which participants may elect to invest the funds allocated to their Aggregate Accounts. The Retirement Board shall adopt and establish rules, regulations and policies concerning Participant direction of investment options available, election forms, limitations on the type or mix of investment vehicles and procedures for Participants to change their investments.

As of each Valuation Date, all Participant directed accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate.

(a) To the extent that the assets in a Participant's directed account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's directed account shall be based upon the total amount of funds so invested, in a manner proportionate to the Participant's share of such pooled investment.

(b) To the extent that the assets in the Participant's account are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis.

8.4 Claims Procedure: The Retirement Board shall make all determinations as to the right of any person to a benefit. Any denial by the Retirement Board of the claim for benefits under the Plan by a Participant or Beneficiary shall be stated in writing by the Retirement Board and delivered or mailed to the Participant or Beneficiary. Such notice shall set forth the specific reasons for the denial, reference pertinent Plan provisions, describe any additional information needed and the steps to be taken to submit the claim for review, all written to the best of the Retirement Board's ability in a manner that may be understood without legal or actuarial counsel. Should a Participant or Beneficiary receive no response to his claim for benefits within 90 days of making the claim, it shall be deemed to be denied and the Participant or Beneficiary may proceed to have the claim reviewed. The claimant may, within 60 days after receiving such denial notice, request a repeal of the denial in writing, submit issues and comments, and may review pertinent documents. The Retirement Board shall reach a decision as to the claimant's appeal not later than 60 days after receiving the request for review.

8.5 Records and Reports: The Retirement Board shall exercise such authority and responsibility as it deems appropriate relating to records of Participant's Service, account

balances and the percentage of such account balances which are non-forfeitable under the Plan; and with regard to notifications to participants.

8.6 Investment Manager: The Retirement Board may appoint one or more Investment Managers to exercise the power of the Retirement Board to direct the investment and reinvestment of the Trust Fund, pursuant to the provisions of Section 7.2 of this Plan and Trust. Such appointment shall be made in writing and accepted by the Investment Manager, a copy of which shall be delivered to the Retirement Board and may be revoked by the Retirement Board by written notice delivered to the Investment Manager. The Investment Manager shall receive such compensation and reimbursement for expenses as shall be agreed upon from time to time by the Retirement Board and the Investment Manager, which shall be paid, in whole or in part by the Retirement Board out of the forfeitures of the Plan or the principal or income of the Trust Fund in accord with Sections 4.3 and ~~5.25.4(dC)~~. The Investment Manager shall discharge his duties relating to the investment and reinvestment of the Trust Fund in conformity with Article VII of this Plan and shall be subject to the liabilities therein stated insofar as his duties are concerned. The Retirement Board shall not be liable with respect to acts or omissions of the Investment Manager, or be under an obligation to invest or otherwise manage any assets of the Plan or Trust Fund which are subject to the management of the Investment Manager, except insofar as they shall be liable for the breach as co-fiduciaries pursuant to Article IX hereof.

8.7 Other Administrative Powers and Duties: The Retirement Board shall also have such duties and powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following:

(a) To construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits hereunder;

(b) To prescribe procedures to be followed by Participants or Beneficiaries filing applications for benefits;

(c) To prepare and distribute, in such manner as it determines to be appropriate, information explaining the Plan;

(d) To receive from the Employer and from Participants such information as shall be necessary for the proper administration of the Plan;

(e) To furnish the Employer, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate;

(f) To receive, review and keep on file (as they deem convenient or proper) reports of the financial condition, and of the receipts and disbursements, of the Trust Fund;

(g) To appoint or employ individuals to assist in the administration of the Plan and any other agents they deem advisable, including legal and actuarial counsel.

The Retirement Board shall have no power to add to, subtract from or modify any of the terms of the Plan, or to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for a benefit under the Plan. No member of the Retirement Board shall act upon his own application for a benefit under the Plan.

8.8 Rules and Decisions: The Retirement Board may adopt such rules as it deems necessary, desirable, or appropriate. All rules and decisions of the Retirement Board shall be uniformly and consistently applied to all Participants in similar circumstances. When making a

determination or calculation, the Retirement Board shall be entitled to rely upon information furnished by a Participant or Beneficiary, the Employer or the legal counsel of the Employer or the City Attorney, who shall serve as legal consultant for the Board, provided that the Board may retain outside legal consultants who shall serve under the direction of the City Attorney.

8.9 Benefit Payments: The Retirement Board shall pay all benefits from the Trust Fund pursuant to the provisions of the Plan.

8.10 Application and Forms for Benefits: The Retirement Board may require a Participant to complete and file with the Retirement Board an application for a benefit and all other forms approved by the Retirement Board and to furnish all pertinent information requested by the Employer. The Retirement Board may rely upon all such information so furnished it, including the Participant's current mailing address.

8.11 Indemnification: The Employer shall indemnify and hold harmless the Retirement Board, the individual members thereof and any employee of the Employer performing duties for the Board, from any and all claims, losses, damages, expenses (including counsel fees approved by the Retirement Board), and liabilities (including any amounts paid in settlement with the Retirement Board's approval) arising from any act or omission of the Retirement Board, except when the same is judicially determined to be due to the gross negligence or willful and wanton conduct of such Retirement Board.

ARTICLE IX. FIDUCIARIES

9.1 Fiduciaries: The Fiduciaries shall have only those specific powers, duties, responsibilities and obligations as are specifically given them under this Plan or the Trust. In general, the Employer shall have the responsibility for making the contributions provided for under Section 4.1. The Retirement Board shall have the sole responsibility for the administration of this Plan, which responsibility is specifically described in this Plan and Trust. The Retirement Board shall have the sole responsibility for the administration of the Trust and the management of the assets held under the Trust. Each Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan and Trust authorizing or providing for such direction, information or action. Furthermore, each Fiduciary may rely upon any such direction, information or action of another Fiduciary as being proper under this Plan and Trust, and is not required under this Plan and Trust to inquire into the propriety of any such direction, information or action. It is intended under this Plan and Trust that each Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under this Plan and Trust and shall not be responsible for any act or failure to act of another Fiduciary. No Fiduciary guarantees the Trust Fund in any manner against investment loss or depreciation in asset value.

The following will cause a person to be classified as a "Fiduciary" for purposes of this Plan and Trust: (1) Exercise of any discretionary authority or discretionary control respecting the management or disposition of Plan or Trust assets, (2) rendering any investment advice for a fee or other compensation, or (3) exercise of any discretionary authority or responsibility for Plan or Trust administration.

9.2 General Fiduciary Duties: All Fiduciaries must discharge their duties solely in the interest of the Employees eligible to participate and Beneficiaries of the Plan. In addition, Fiduciaries must act exclusively for the purpose of providing benefits to Employees eligible to

participate and Beneficiaries and defraying reasonable expenses of the Plan. They must carry out their duties with the care, skill, prudence and diligence which a prudent man acting in a like capacity would use under conditions prevailing at the time. Investments of the Plan shall be diversified so that the risk of loss will be minimized unless this clearly is not prudent under the circumstances. However, investment in pooled funds will not violate the diversification rule if the Fund itself is sufficiently diversified.

9.3 Insurance: The Retirement Board may obtain Fiduciary Liability and/or Errors and Omissions Insurance or equivalent coverage for such amount as they deem advisable to protect the Trust Fund. Such insurance and fees may be paid as an expense of the Trust pursuant to Section 7.4.

ARTICLE X. MISCELLANEOUS

10.1 Nonguarantee of Employment: Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of any Employee to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

10.2 Rights to Trust Assets: No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust Fund upon termination of his employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee out of the assets of the Trust Fund. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust Fund and none of the Fiduciaries shall be liable therefor in any manner.

10.3 Nonalienation of Benefits: Except for assignments for child support purposes as provided for in sections 14-10-118(1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, and for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113(6), C.R.S., regarding domestic relations orders, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust Fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder. The Trust Fund shall be held and distributed for the purpose of this article and for no other purpose whatsoever.

10.4 Payments to Minors or Persons of Unsound Mind: If any person entitled to receive any payment hereunder is a minor, or a person of unsound mind, whether formally adjudicated so or not, such payment shall be made to or for the benefit of such minor or person of unsound mind in any of the following ways, as the Retirement Board, in its sole discretion, shall determine: (a) to the legal representative of such person; (b) directly to such person; (c) to some near relative of such person; (d) in such other manner as the Retirement Board may deem appropriate under the circumstances. The Retirement Board shall not be required to see to the

proper application of any such payment made to any person pursuant to the provisions of this Section.

10.5 Disposition of Unclaimed Payments: If the Retirement Board is unable to make any payment due under the Plan to any person because they cannot ascertain the identity or whereabouts of such person after making such written or telephonic inquiries as the Retirement Board, in their sole discretion, deem reasonable, the Retirement Board shall suspend all further payments to such person until he makes his identity or whereabouts known to the Retirement Board within seven (7) years after such payment was due. The Retirement Board may declare such payment, and all remaining payments due such person, to be forfeited as of the expiration of such seven-year period. However, such forfeited amounts shall be reinstated to the Participant once he makes his whereabouts known to the Retirement Board.

10.6 Severability of Provisions: If any provision of this Plan is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions, and this Plan shall be construed and enforced as if such provision had not been included.

10.7 Trust and Plan to be Tax Exempt: The Trust and the Plan are intended to qualify under Code Section 401(a) and to be tax exempt under Code Section 501(a), respectively, and is a "Governmental Plan" within the meaning of Code Section 414(d), and Section 3(32) of the Employee Retirement Income Security Act of 1974. The Plan and Trust have been established with the expectation that the Trust will be irrevocable and in the belief that the Plan and Trust will be approved by the Internal Revenue Service, as meeting the requirements of the Internal Revenue Code of 1986 and the Regulations issued thereunder with respect to qualified employee benefit plans.

ARTICLE XI. AMENDMENT OR TERMINATION OF THE PLAN

11.1 Right and Restrictions: The Employer reserves the right to amend (retroactively or otherwise) or terminate the Plan, in whole or in part, or to discontinue contributions thereunder, provided that no amendment shall have the effect of (1) diverting for the benefit of any persons, other than Participants or their Beneficiaries, amounts attributable to contributions by the Employer, (2) decreasing the nonforfeitable percentage or amount in any Participant's Aggregate Account, or (3) changing the vesting schedule set forth in Section 6.4 with respect to any Participant with seven (7) or more Years of Service. Notwithstanding the foregoing, the Employer shall have the right, by action of the Retirement Board, to amend the Plan, solely for the purpose of incorporating minor, technical amendments which are required, from time to time, by changes in state or federal laws or regulations. ~~ON~~ IN THE EVENT OF the complete or partial termination of the Plan or complete discontinuance by the Employer of contributions under the Plan, the ~~accrued benefit~~ AGGREGATE ACCOUNT of each of the affected ~~Participant's Aggregate Accounts~~ PARTICIPANTS shall ~~be~~ BECOME nonforfeitable and shall be distributed pursuant to Section 6.5.

11.2 Merger or Consolidation of the Plan: In the event of any merger or consolidation of the Plan with, or transfer of assets or liabilities of the Plan to, any other plan, each Participant shall be entitled to receive a benefit immediately after such merger, consolidation or transfer (determined as if such other plan had then terminated) which is equal to or greater than the benefit he would have been entitled to receive immediately before such merger, consolidation or transfer (if the Plan had then terminated).

ARTICLE XII. GOVERNING LAW

The Trust contained herein shall be deemed executed and governed under the laws of the State of Colorado except to the extent such laws are pre-empted by Federal laws. For the convenience of the parties hereto, this Plan and Trust Agreement may be executed in multiple identical counterparts, each of which is complete in itself, and may be introduced in evidence or used for any other purpose without the production of any other counterpart.

This Plan document is the AMENDED AND Restated City of Northglenn General Employee Pension Plan and Trust Agreement effective January 1, 20042007 by Ordinance No. ~~1390~~_____.

MEMORANDUM

To: City of Northglenn

From: Stephen Weinstein and Daniel Lacomis--Berenbaum, Weinshienk & Eason P.C.

Date: November 1, 2006

Re: Summary of Changes in the Amended and Restated City of Northglenn General Employees' Money Purchase Pension Plan (the "Employees' Plan"), Effective January 1, 2007

1. City Manager Benefits. Pursuant to the City Manager's Employment Agreement, the City Manager was given the choice of allocating his retirement plan contribution between the Employees' Plan and the ICMA 457(b) Plan. The City Manager elected a 3% contribution to the Employees' Plan, with the remainder of his retirement plan contribution to be made to the ICMA 457(b) Plan. Therefore, the Employees' Plan was amended to reflect the City Manager's 3% employer contribution, and a 0% employee contribution. There are no tax law issues presented by these provisions regarding the City Manager, because governmental plans may provide for differing contribution rates for certain employees. Further, city managers of Colorado municipalities are exempt from the contribution requirements of Colorado law.

Please note that the definition of Employer has been amended to include the City Council, in order to clarify that employees of the City Council, including the City Manager, are eligible under the Plan. This clarifying language is consistent with the interpretation of the Plan in prior years.

2. Required Tax Law Changes. The Internal Revenue Code has been amended to lower the dollar amount threshold at which a plan may "cash out" (i.e. distribute without a former employee's consent) the account of a former employee. The cash out limit was previously \$5,000, but has been lowered to \$1,000, effective as of January 1, 2007.

3. Retirement Board Composition. Section 8.1 of the Employees' Plan sets forth the composition of the Retirement Board. The provision states that, in addition to the elected participant employees and the City Finance Director, that the person holding the highest human resources position with the City shall be on the Board. The City recently created the new position, Pension Administrator, and during the transition from the prior employees tasked with plan administration it was assumed that the new Pension Administrator would be on the Board. The Plan should be amended to reflect the City's wishes as to the fifth Board member. We have amended the provision to provide that the fifth Board member shall be the employee holding the position of Pension Administrator, based upon the apparent intent of the City that this employee be on the Board.

4. Miscellaneous Corrections (Non-Substantive). Tammy Guenther, Plan Administrator, reviewed the Plan and suggested a number of corrections to internal section references and other typographic corrections to the Plan document. These changes are reflected in the blackline of the Plan, and do not in any manner substantively change any provision of the Plan. References in the

Plan to Accrued Benefit have been changed to the Plan's defined term "Aggregate Account" for consistency.