

RESOLUTION 2016-001
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING THE CITY OF FORT COLLINS GENERAL
EMPLOYEES' RETIREMENT PLAN AS AMENDED
AND RESTATED, EFFECTIVE JANUARY 1, 2016

WHEREAS, the City Council adopted, effective January 1, 1971, a qualified defined benefit pension plan known as the City of Fort Collins Employees' Retirement Plan (the "Plan"), for the purpose of providing retirement benefits for certain of its employees; and

WHEREAS, the City Council has amended and restated the Plan from time to time in order to make improvements to the Plan and to maintain compliance with both state and federal law; and

WHEREAS, on May 15, 2012, the federal Internal Revenue Service issued a favorable determination letter for the Plan, as amended, subject to the adoption of technical changes associated with limitations on benefits required by final Treasury Regulations under Internal Revenue Code Section 415; and

WHEREAS, the General Employees' Retirement Committee (the "Committee"), as created by and functioning pursuant to Chapter 21, Article V. of the City Code, has reviewed the current provisions of the Plan as restated effective January 1, 2012, and subsequently amended, and has determined that the adoption of a new amended and restated Plan is necessary in order to: (a) consolidate two amendments to the Plan, (b) ensure continued compliance with state and federal laws, and (c) clarify that the Plan fund is held in trust by the Committee in order to facilitate the investment of Plan funds in the name of the Trust; and

WHEREAS, the Committee has reviewed the proposed amended and restated Plan dated January 1, 2016, a copy of which is on file with the City Clerk's office, and has recommended its adoption to the City Council; and

WHEREAS, the proposed amended and restated Plan consolidates two amendments to the Plan into one Plan document for ease of use, makes the technical changes required by the federal Internal Revenue Code, and clarifies that the Plan fund is held in trust by the Committee for the exclusive benefit of the participating employees and their beneficiaries.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City of Fort Collins General Employees' Retirement Plan as amended and restated January 1, 2016, a copy of which is attached hereto as Exhibit "A", is hereby adopted effective January 1, 2016.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 5th day of January, A.D. 2016.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

Mayor

ATTEST:

A handwritten signature in blue ink, appearing to read "W Winkelmann", positioned above a horizontal line.

City Clerk

CITY OF FORT COLLINS

GENERAL EMPLOYEES'

RETIREMENT PLAN

As Amended and Restated

Effective January 1, 2016

CITY OF FORT COLLINS GENERAL EMPLOYEES' RETIREMENT PLAN

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ARTICLE I

Purpose

Effective as of January 1, 2016, the City Council of the City of Fort Collins adopted the amended and restated Plan (as defined in Article II, Section 2.u.), as set forth herein, to continue and replace the Plan previously in effect, which was effective January 1, 2012. The Plan and the Retirement Fund (as defined in Article II, Section 2. bb.) are intended to meet the requirements of IRS Code Sections 401(a) and 501(a).

The Plan and the separate related Retirement Fund forming a part hereof were established and shall be maintained for the exclusive benefit of the eligible Employees of the City of Fort Collins and their Beneficiaries. No part of the Retirement Fund can ever revert to the City except as hereinafter provided, or be used for or diverted to purposes other than the exclusive benefit of the Employees of the City and their Beneficiaries.

This amendment and restatement of the Plan shall not, in any way, affect the rights of former Employees who participated in said Plan and who either retired or otherwise terminated their employment prior to January 1, 2016. The rights, if any, of such former Employees and of their Beneficiaries and the amounts of their benefits, if any, shall continue to be governed by the provisions of the Plan as it was in effect on December 31, 2015, or the date, if earlier, of their retirement or termination of employment, unless specifically provided for otherwise herein, or as the result of future amendments to this restated Plan.

This Plan is a governmental Plan established pursuant to IRS Code Section 414(d). As such, it is not subject to the requirements of the Employee Retirement Income Security Act of 1974.

ARTICLE II

Definitions

Section 1. Name. The Retirement Income Plan as set forth in this Ordinance shall be known as the City of Fort Collins General Employees' Retirement Plan (As Amended and Restated Effective January 1, 2012) and is hereinafter referred to as the Plan.

Section 2. Definitions. Unless the context otherwise requires, the definitions and general provisions contained in this Section govern the construction of this restated Plan.

a. "Accrued Benefit" means the benefit determined under the Plan expressed in the form of a monthly single life annuity, commencing at Normal Retirement Date.

b. "Actuarial Equivalence (or Actuarially Equivalent)" means equality in value of the aggregate amounts expected to be received under different forms of payment based on interest rate and mortality assumptions as defined below unless otherwise specifically provided in the Plan:

(1) Interest rate assumption for alternative periodic benefits. The interest rate used for purposes of computing alternative periodic forms of benefits shall be 7.5%, unless otherwise specifically provided in the Plan.

(2) Interest rate assumption for single-sum payments. The interest rate used for purposes of computing single-sum benefits shall be one of the following, as specifically designated in the Plan:

(a) the immediate annuity rate (subject to adjustment as required for deferred annuities) used by the Pension Benefit Guaranty Corporation as of the January 1 coincident with or preceding the date as of which the amount of the alternative form of benefit is being determined hereunder;

(b) the investment return rate used by the Retirement Committee for purposes of the Plan actuarial valuation as of the December 31 coincident with or preceding the date as of which the amount of the alternative form of benefit is being determined hereunder.

(3) Mortality assumption. Effective January 1, 2008, the mortality assumption for calculations based upon the mortality of a Member or Beneficiary shall be a unisex rate that is 50% male, 50% female, taken from the 1983 Group Annuity Table, or such other Group Annuity Table designated by the Committee which meets the minimum standards as set forth in IRS Code Section 417(e). Notwithstanding the foregoing sentence, solely for the purposes of determining applicable benefit limitations under IRS Section 415, the Plan shall use the applicable mortality table under Treas. Regs. Section 1.417(e)-1(d)(2) that is effective for the Retirement Benefit commencement date.

On or before December 31, 2007, the mortality assumption for calculations based upon the mortality of a Member or Beneficiary shall be a unisex rate that is 50% male, 50% female, taken from the 1983 Group Annuity Table, or such other Group Annuity Table designated by the Committee which meets the minimum standards as set forth in IRS Code Section 417(e).

c. "Beneficiary" means the person or persons entitled to receive benefits hereunder upon the death of a Member or former Member, pursuant to Article X, Section 6 hereof.

d. "City" shall mean the City of Fort Collins, State of Colorado.

e. "City Council" shall mean the City Council of the City.

f. "Committee" or "Retirement Committee" means the body designated as the primary fiduciary of the Fund, appointed and serving in accordance with Article XVI hereunder, which shall have primary responsibility for the management, investment and administration of the Plan and the Retirement Fund.

g. "Compensation" means the total cash remuneration paid to an Employee for a calendar year by the City for personal services including performance pay as reported on the Employee's income tax withholding statement or statements (Form W-2, or its subsequent

equivalent), excluding bonuses, compensatory time recorded as additional hours, overtime pay, lump-sum payments for accrued vacation time, worker's compensation, taxable fringe benefits including life insurance in excess of \$50,000 and any contribution by the City under this or any other qualified Plan, but including any pre-tax Employee contributions to qualified retirement plans of the City and any amounts contributed by the City pursuant to a salary reduction agreement which were excludable from the Employee's gross income under Code Section 125, Code Section 132(f)(4), Code Section 402(a)(8), Code Section 403(b), Code Section 402(h), or Code Section 457. However, for Plan Years beginning before January 1, 1998, such amounts contributed by the City pursuant to a salary reduction agreement which were excludable from the Employee's gross income shall not be included in Compensation for the purpose of applying the limitations on allocations and benefits under Code § 415. Solely for the purpose of applying the limitations on allocations and benefits under Code Section 415, for Plan Years beginning on or after January 1, 2009, any "differential wage payments" made by the Employer to an Employee, as defined in Code Section 3401(h)(2), shall be included in the Employee's Compensation. The amount of Compensation for purposes of the Plan during any Plan Year shall not exceed \$200,000, subject to the cost-of-living adjustments in accordance with IRS Code Section 415(d), as amended and then in effect. [Amended 2013; Res. 2013-005]

h. "Covered Employment" means the employment categories for which the Plan is maintained, more particularly described as follows:

(1) all nonfirefighters who perform clerical and technical duties for Poudre Fire Authority;

(2) any employment with the City in a classified position as defined by the City Personnel Policies and Procedures, excluding police officers, paid firefighters, emergency services dispatchers (police and fire);

(3) any Member in the Plan as defined by Article II, Section 2.m, Paragraph (3) "Employee".

Excluded are leased employees within the meaning of IRS Code Section 414(n).

i. "Credited Service" means the period of service rendered by an Employee as a Member, for which credit is allowed. Credited Service will cease when a Member's service as an Employee terminates.

j. "Disability" means a physical or mental condition which:

(1) in the judgment of the City's long-term disability insurance company, qualifies the Member's condition as totally disabled and entitles the Member to receive Disability Benefits;

(2) in the judgment of the Federal Social Security Administration, qualifies the Member's condition as totally disabled within the meaning of the Social Security Act and entitles the Member to receive Disability Benefits; or

(3) in the judgment of the City's designated worker's compensation physician, administrative law judge or, if appealed, the court issuing the final judgment, qualifies the Member's condition as a permanent total disability and entitles the Member to receive Disability Benefits.

k. "Disability Benefits" means monetary payment for disability received from any one or more of the following sources:

(1) the City's long term disability plan;

(2) the Federal Social Security Administration;

(3) the City's workers' compensation plan.

l. "Effective Date of this Plan" means January 1, 1971. Subsequent restatements of the Plan occurred on May 2, 1977, September 1, 1981, January 1, 1982, January 1, 1985, January 1, 1990, January 1, 1992, December 31, 2001, and January 1, 2012. This Amended and Restated Plan is effective January 1, 2016.

m. "Employee" means:

(1) any person who is hired to fill a classified position as defined by the City Personnel Rules and Regulations;

(2) all nonfirefighter personnel who perform clerical and technical duties for Poudre Fire Authority;

(3) any employee of the City who qualifies under the following criteria:

(a) the employee became a Member in the Plan while in a classified position;

(b) either (i) the Employee's classified position was thereafter converted to an unclassified position, or (ii) the Employee thereafter transferred from a classified position into an unclassified management position; and

(c) at the time of the conversion or transfer into an unclassified management position, the Employee elected to remain a Member and continue to accrue Credited Service.

(4) leased employees within the meaning of IRS Code Section 414(n)(2), if such leased employees constitute twenty percent or more of the employer's non-highly compensated workforce within the meaning of IRS Code Section 414(n)(5)(C)(ii).

All phrases such as "employment with the City" (or "employment with the City of Fort Collins") and "Employees of the City" (or "Employees of the City of Fort Collins") are hereby deemed to include "employment with Poudre Fire Authority as nonfirefighter, clerical and technical Employees of Poudre Fire Authority."

n. "Final Average Monthly Compensation" means 1/60th of a Member's total Compensation during the 60 consecutive full calendar months of Credited Service out of the last 120 calendar months of Credited Service, which will produce the highest average monthly compensation. If a Member has less than 60 consecutive full calendar months of Credited Service, the Final Average Monthly Compensation shall be the average of the total

Compensation during all full calendar months of Credited Service. In the event that a Member has been employed on a part-time basis (less than an annualized 2080 hours) during any portion of the period used to calculate the Final Average Monthly Compensation and therefore has received less than full-time Credited Service during that period, the Member's part-time Compensation for that period of time shall be converted to its full time equivalent for the purposes of calculating the Final Average Monthly Compensation.

o. "Funding Agent" means the financial officer of the City, any insurance company or trustee appointed by the Retirement Committee as provided in Article IV, or the Retirement Committee, if no designation has been made.

p. "Funding Agreement" means the insurance contract with the insurance company or the trust agreement with the trustee as approved by the Retirement Committee for the purpose of the investment and management of Retirement Fund assets.

q. "Insurance Company" means any insurance company or companies authorized to do business in the state and appointed by the Retirement Committee as provided in Article IV.

r. "Investment Manager" means the individual(s) and/or company(ies), if any, appointed by the Retirement Committee to serve as a fiduciary of the Fund and to provide investment advice to the Retirement Committee, implement Retirement Committee funding directives, or otherwise manage and invest the assets of the Fund.

s. "IRS Code" means the Internal Revenue Code of 1986 as amended.

t. "Member" means any person included in the membership of this Plan as provided in Article III hereof, including an Employee who qualifies for Disability as defined in Article II, Section 2., Subsection j.

u. "Plan" means the City of Fort Collins General Employees' Retirement Plan (as Amended and Restated Effective January 1, 2012) as it may be amended.

v. "Plan Year" means the calendar year.

w. "Qualified Domestic Relations Order" means a domestic relations order that has been determined, pursuant to procedures established by the Retirement Committee, to be a qualified domestic relations order as defined in Colorado Revised Statutes § 14-10-113.

x. "Qualified Military Service" shall have the meaning set forth in IRS Code Section 414(u), as amended. Notwithstanding any provision to the contrary, contributions, benefits and vesting service credit with respect to Qualified Military Service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended (HEART Act), and IRS Code Section 414(u) with respect to Members who perform Qualified Military Service on or after December 12, 1994. Military service will be counted for purposes of contributions, benefits and vesting service credit, provided all of the following conditions are satisfied:

(1) A Member must have reemployment rights under USERRA in order for periods of Qualified Military Service to be recognized.

(2) A Member must have worked at least one thousand (1,000) hours in Covered Employment before entering Qualified Military Service.

(3) A Member must have earned at least forty (40) Hours of Service in the three (3) months prior to the first day of Qualified Military Service.

No more than five (5) years of Qualified Military Service may be recognized for any purpose, except as required by law. [Amended 2013; Res. 2013-005]

y. "Required Beginning Date" means April 1 of the calendar year following the later of the calendar year in which the Member attains age 70 1/2 or the calendar year in which the Member retires.

(1) For this purpose, a Member shall be deemed retired upon having one calendar month elapse with no hours worked in Covered Employment, provided that such month is concurrent with or follows the April following the calendar year in which the Member attains age seventy and one-half (70½).

z. "Retired Member" means a former Member whose employment terminated by reason of retirement or Disability and who is receiving or is entitled to receive, or whose Beneficiary or estate is entitled to receive, benefits under this Plan.

aa. "Retirement Benefit" or "Pension" means any retirement benefit provided for in Article VIII hereof.

bb. "Retirement Fund" or "Fund" means the "City of Fort Collins General Employees' Retirement Fund," maintained by the Retirement Committee and the Funding Agent in accordance with the terms of this Plan and any Funding Agreement.

cc. "Service" shall mean service rendered as a Covered Employee of the City.

dd. "Trustee" shall mean any qualified and acting Trustee appointed by the Retirement Committee as a named fiduciary for the investment and management of Plan assets.

ee. "Vested Member" means a former Member whose Credited Service has terminated by reason other than retirement or Disability and who is entitled to receive, or whose Beneficiary or estate is entitled to receive, benefits under this Plan.

Section 3. Construction. Words used in the singular shall include the plural unless the context clearly indicates the contrary. Words such as "hereof," "herein," and "hereunder," shall refer to the entire Plan, not to any particular provision or Section. The Plan and Funding Agreement shall each form a part of the other by reference and terms used therein shall be interchangeable.

ARTICLE III

Membership

Section 1. Employees on January 1, 1971. Every person who was an Employee of the City of Fort Collins on January 1, 1971 became a Member in the Plan on such date.

Section 2. Employees Hired After December 31, 1970, but before January 1, 1999. Each Employee of the City hired after December 31, 1970, but before January 1, 1999, shall become a Member in the Plan on their date of employment. However, effective January 1, 1990, an Employee must also be in Covered Employment to become a Member. Employees hired after December 31, 1998 will not be eligible for Membership in the Plan.

Section 3. Termination. Membership of any Member shall terminate (except as a Vested Member) if and when he or she ceases to be in Covered Employment for any reason, except as provided in Article VI, Section 2.

Section 4. Withdrawal. Unless an Employee withdraws from Membership in the Plan pursuant to a specific authorization herein, once an Employee has become a Member of the Plan, such Employee may not withdraw from Membership in the Plan except when he or she ceases to be an Employee.

Section 5. Employment Not Guaranteed. This Plan is not and shall not be deemed to constitute a contract between the City and any Employee or to be a consideration for, or inducement to, or a condition of, the employment of the Employee. Nothing contained in this Plan shall give or be deemed to give an Employee the right to be retained in the employment of the City or to interfere with the right of the City to discharge or retire any Employee at any time. Participation in the Plan shall not give any Employee the right or claim to Retirement Benefits, except to the extent such right or claim is specifically provided for under the terms of this Plan.

ARTICLE IV

Retirement Fund; Method Of Funding

Section 1. Retirement Fund; Establishment of Trust. The City and the Retirement Committee established the Fund to hold all contributions made by the City to the Plan, and the investment earnings thereon. The Fund is intended to be a qualified plan trust under Internal Revenue Code Section 401(a) and exempt from taxation under Internal Revenue Code Section 501(a).

a. Fund Purpose. The assets held by the Fund shall be used for the exclusive purpose of providing benefits to Members and their beneficiaries, as determined by the Retirement Committee, and shall further provide the means for payment of the reasonable expenses of administering and operating the Plan and the Fund. Notwithstanding any other provisions hereof or any amendment hereto to the contrary, at no time shall any assets of the Fund revert to, or be recoverable by, the City or be used for, or diverted to, purposes other than for the exclusive benefit of Members, Retired Members, Vested Members, or their Beneficiaries under the Plan except such funds which upon termination of the Plan are in excess of the amount required to fully fund the Plan and which are due to erroneous actuarial assumptions.

b. Name of Fund. The Fund established hereunder shall be known as the "**City of Fort Collins General Employees' Retirement Fund**".

Section 2. Retirement Committee to Hold Retirement Fund. The Retirement Committee shall receive contributions paid by the City; shall purchase, invest and reinvest in securities, insurance contracts or other properties; shall disburse benefits directly from the Fund or shall provide for the disbursement thereof by the purchase and delivery of insurance contracts, policies or certificates; and shall take all such actions pursuant to and in accordance with the terms of the Plan. Notwithstanding the foregoing sentence, the Retirement Committee has delegated to the Funding Agent certain powers and duties with respect to holding, administering and investing the Fund pursuant to the policies adopted by the Retirement Committee, as set

forth in Article XVII, Section 6. If an insurance company, a Trustee, or another funding vehicle is serving as a successor Funding Agent, the assets of the Plan shall be held pursuant to a Funding Agreement. The Retirement Committee shall comply with the purchasing and contracting provisions of the City Code when entering into a Funding Agreement.

Section 3. Expenses of the Fund. The expenses of the Fund, including but not limited to (i) the fees of consultants, actuaries, accountants, attorneys and other persons engaged by the Retirement Committee, (ii) the costs of investing the Fund, (iii) premium or other payments under insurance contracts or policies purchased by the Retirement Committee for the Fund, (iv) the fees and expenses of such Corporate Trustee as may be appointed by the Retirement Committee, and (v) the expense of maintaining bank accounts and safety deposit boxes, shall be paid from the Fund. Retirement Committee Members shall receive no compensation for their services as Retirement Committee Members, but they may be reimbursed from the Fund for any expenses which they may incur in the performance of their duties.

ARTICLE V

Contributions

Section 1. Member Contributions. Members are not required or permitted to make contributions under this Plan.

Section 2. City Contributions. The City shall make contributions to the Fund adequate to finance the benefits which the Plan provides on a sound actuarial basis. The required contributions to the Plan shall be determined by a competent actuary. The City expects to continue such contributions to the Plan, but assumes no responsibility to do so and reserves the right to suspend or to reduce contributions at any time upon appropriate action by an amendment to the Plan by the City Council.

Section 3. Application of Forfeitures. Any amount forfeited because of termination of employment of a Member prior to their having become 100% vested in their Retirement Benefits (because of their death or for any other reason), shall not be applied to increase the benefits provided by the Plan unless such benefits are increased by appropriate amendment, as provided in Article XIV, but shall be used to offset the City's contribution to the Plan.

ARTICLE VI

Credited Service

Section 1. Credited Service. A Member's Credited Service shall be used to determine their Accrued Benefit and eligibility for benefits under the Plan.

a. A Member's Credited Service is the elapsed time period from their date of employment with the City, as an Employee, to their date of termination of such employment, except as limited within this Section. A Member shall receive one year of Credited Service for each full year the Member receives Compensation for 2080 hours of Covered Employment. A Member who receives Compensation for less than 2080 hours of Covered Employment in a year shall accrue Credited Service on a pro rata basis based on the number of hours for which Compensation is paid. For example, a Member who was a part-time Employee and worked 520 hours for six months (half-time) and 1040 hours for six months (full-time) in a year would receive .75 year of Credited Service for that year.

b. A Member shall also accrue Credited Service under the Plan for any period of time during which the Member meets all of the following:

(1) is qualified for either:

(a) a total Disability as defined in Article II, Section 2., Subsection j., Paragraphs 1, 2, or 3; or

(b) a temporary total disability in the judgment of the City's designated worker's compensation physician;

(2) is receiving Disability Benefits; and

(3) is not receiving any payment from this Plan.

c. A Member may also accrue Credited Service under the Plan for any period of time up to a maximum accrual of two (2) years during which the Member meets all of the following:

(1) is qualified for a permanent partial disability in the judgment of the City's designated worker's compensation physician, administrative law judge or, if appealed, the court issuing the final judgment;

(2) is not working as an Employee in Covered Employment;

(3) is receiving Disability Benefits; and

(4) is not receiving any payment from this Plan.

d. A Member who accrues Credited Service because of a Disability pursuant to Subsections b. or c., above, shall accrue Credited Service at the pro rata rate based upon the number of hours for which Compensation was paid as of the date of disablement.

e. In the event a Member receives a lump sum disability benefit payment in lieu of ongoing payments, the period of accrual of Credited Service shall be the period of entitlement which provided the basis for calculation of the lump sum amount.

Section 2. Credited Service.

a. Except as set forth in Subsection b. of this Section, Credited Service lost due to termination of Covered Employment occurring after December 31, 1998, shall not be reinstated upon the Member's return to Covered Employment. A Member who terminated Covered Employment prior to January 1, 1999, may be eligible for restoration of Credited Service upon a return to Covered Employment within five years of the termination of Covered Employment pursuant to the provisions of the Plan as it existed on December 31, 1998.

b. A member who leaves Covered Employment to undertake Qualified Military Service and meets the requirements specified in Article II, Section 2.x. shall be entitled to the accrual of Credited Service for the time spent in the Qualified Military Service providing the Member has not chosen to withdraw from the Plan and receive a benefit.

Section 3. Effect of Other Plans. Credited Service shall not include any period on the basis of which a retirement benefit is payable under any other defined benefit retirement or pension plan to which the City made contributions, other than benefits payable under the Federal Social Security Act.

Section 4. Miscellaneous. No period of Credited Service shall be deemed to be increased or extended by overtime.

ARTICLE VII

Retirement Dates

Section 1. Normal Retirement. The Normal Retirement Date of a Member shall be their 65th birthday upon which date they shall become fully vested in their Accrued Benefit. For purposes of the commencement of payment of a Retirement Benefit, Normal Retirement Date shall mean the first of the month coincident with or following a Member's 65th birthday.

Section 2. Early Retirement. A Member or Vested Member who has attained the age of 55 years and has completed at least two years of Credited Service may elect to retire as of the first day of any calendar month, which shall not be more than 90 days after the filing of written notification with the Retirement Committee.

Section 3. Delayed Retirement. A Member may continue in the employment of the City after their Normal Retirement Date. If the retirement of a Member is delayed under this Section, their "Delayed Retirement Date" shall be the first of the month coincident with or following the Member's retirement.

Notwithstanding the foregoing paragraph, after a Member reaches his or her Required Beginning Date, required minimum distributions must be made to the Member in accordance with IRS Code Section 401(a)(9), as further set forth in Section 1 of Article X of the Plan.

Section 4. Disability Retirement. If a Member's Covered Employment by the City terminates by reason of their Disability, they shall be eligible for a Disability Benefit commencing on the first day of the month, coincident with or next following their 65th birthday, or upon termination of his or her long-term disability insurance benefits, if later.

Disability shall be considered to have ended if, prior to their 65th birthday, the Member loses their qualification for Disability and is no longer entitled to any additional Credited Service under Article VI, Section 1 for their Disability. If Disability ceases prior to the Member's 65th

birthday, no Disability Benefits shall be paid to or for such Member. If the Member's Disability ceases prior to their 65th birthday (and if they are not reemployed by the City as an Employee) and if they have met the requirements for an Early or Deferred Retirement Benefit pursuant to Articles VII or XII on the date of their recovery from Disability, they shall be entitled to receive a benefit equal in amount to the Early or Deferred Retirement Benefit to which they would have been entitled as of the date of their recovery, considering their Final Average Monthly Compensation at the date Disability commenced and their Credited Service on the date of their recovery from Disability.

In lieu of accruing additional Credited Service pursuant to the provisions of Article VI, Section 1, and in lieu of becoming eligible for a Disability Retirement or any other benefits described in the Plan, a Member whose Covered Employment by the City terminates by reason of their Disability may elect to receive:

a. an Early Retirement Benefit if the Member is otherwise qualified for such benefit, even though such Member remains Disabled. Such Early Retirement Benefit shall be based on consideration of their Final Average Monthly Compensation as of the date that their Disability commenced instead of the annual rate of Compensation as of the date of disablement; or

b. a single lump sum benefit described in Article XII, Section 3, if the Member is otherwise qualified for such benefit, even though such Member remains Disabled.

Section 5. Retirement Date. A Member's "Retirement Date" shall be on their Normal Retirement Date, their Early Retirement Date, their Delayed Retirement Date, or their Disability Retirement Date, whichever is applicable.

ARTICLE VIII

Retirement Benefits

Section 1. Normal or Delayed Retirement. Upon retirement at or after their Normal Retirement Date, each Retired Member shall receive a monthly Retirement Benefit equal to 1 1/2% of the Member's Final Average Monthly Compensation multiplied by the total number of years of the Member's Credited Service.

Section 2. Early Retirement. A Member or Vested Member, eligible for early retirement and retiring prior to their Normal Retirement Date, shall be entitled to a reduced Retirement Benefit which shall be their vested Accrued Benefit on their Early Retirement Date, reduced by 1/180 for each of the first 60 months and 1/360 for each additional month by which the payments commence prior to the first of the month following their Normal Retirement Date.

Section 3. Disability Retirement. The Disability Retirement benefit of a Member eligible therefor shall be their Accrued Benefit on the date their Benefit commences, based on their annual rate of Compensation on their date of disablement, and the Credited Service as defined in Article VI, Section 1, unless the Member's disability ceases prior to age 65 (see Article VII, Section 4). In the event that a Member was employed on a part-time basis (less than an annualized 2080 hours) at the date of disablement and therefore has received less than full-time Credited Service during that period, the Member's part-time Compensation shall be converted to its full time equivalent for the purposes of calculating the annual rate of Compensation at the time of disablement.

Section 4. Payment of Benefits. The basic monthly Retirement Benefit, computed as set forth above, shall be paid in equal monthly payments commencing on the last day of the month of their Retirement Date, and continuing at monthly intervals for the Retired Member's lifetime thereafter. If a Retired Member or Beneficiary should die during a monthly interval, a partial monthly payment shall be paid.

Notwithstanding the above, if the value of a terminated Member's vested Accrued Benefit derived does not exceed \$1,000, the entire vested benefit shall be paid to such Member in a single lump sum, regardless of when the Member terminated Covered Employment.

Section 5. Minimum Monthly Payment. If the amount of the monthly Retirement Benefit payable to a retired Member is less than \$100, the retired Member shall be paid a single-sum equal to the Actuarial Equivalent of such Retirement benefit. For retired Members who commenced Covered Employment prior to June 1, 1998, said Actuarial Equivalent specified in this Section 5 shall be as defined by Article II, Section 2, Subsections b(2)(a) and b(3) of this Plan. For retired Members who commenced Covered Employment on or after June 1, 1998, said Actuarial Equivalent specified in this Section 5 shall be as defined by Article II, Section 2, Subsections b(2)(b) and b(3) of this Plan.

Section 6. Accrued Credits and Vested Benefits Under the Previous Plan Preserved.

a. The restatement of the previous Plan by this Plan shall not operate to exclude, diminish, limit or restrict the payment or continuation of the payment of benefits accrued prior to the Effective Date of this Plan. The amount and payment of any such previous Plan benefits, shall be continued by the Funding Agent under the Funding Agreement forming a part of this Plan, in the same manner, undiminished, preserved, and fully vested under this Plan, except as provided in this Article VIII, Sections 6c, 7, 8, 9 and 10.

b. The eligibility for, and amount of, any benefit of any kind, payable under this Plan to or for any person who was a Member of a previous Plan and who became a Member of the January 1, 1992 restated Plan, as amended, and as it is amended and restated December 31, 2001, and as it may be amended and restated in the future, shall be determined under the provisions of this Plan.

c. The methods of calculating Credited Service, Final Average Monthly Compensation, and annual rate of Compensation for Disability Retirement, as amended effective July 1, 2003, shall be applied retroactively in order to better align benefits with the contributions to the Plan based on the Member's actual Compensation. However, this retroactive application

shall not result in a Member's benefit under the Plan being less than the benefit the Member would have been eligible to receive if the Member had terminated Employment on June 30, 2003, under the terms of the Plan then in effect.

ARTICLE IX

Retirement Benefits and Rights Inalienable

Section 1. Inalienability. Members, Retired Members, Vested Members and their Beneficiaries under the Plan are hereby restrained from selling, transferring, anticipating, assigning, hypothecating, or otherwise disposing of their Retirement Benefit, prospective Retirement Benefit, or any other rights or interest under the Plan, and any attempt to anticipate, assign, pledge, or otherwise dispose of the same shall be void. Said Retirement Benefit, prospective Retirement Benefit and rights and interests of said Members, Retired Members, Vested members or Beneficiaries shall not at any time be subject to the claims of creditors or liabilities or torts of said Members, Retired Members, Vested Members or Beneficiaries, nor be liable to attachment, execution, or other legal process. Notwithstanding the foregoing, the Retirement Committee may approve payment to an alternate payee based upon any assignment 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; any income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S.; any writ of garnishment which is the result of a judgment taken for arrearages for child support or for child support debt; and any 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., and such payment shall not be deemed to be a prohibited alienation of benefits. Such Qualified Domestic Relations Orders shall be binding on all Members, Beneficiaries and other parties. In no event shall the existence or enforcement of an Order cause the Trust Fund to pay benefits with respect to a Member in excess of the actuarial present value of the Member's benefits without regard to the Order, and benefits otherwise payable under the Plan shall be reduced by the actuarial present value of any payment required pursuant to an Order.

Section 2. Bankruptcy. If any Member, Retired Member, Vested Member or Beneficiary shall become bankrupt or attempt to anticipate, assign or pledge any benefits under this Plan, then such benefits shall cease, and in that event the Retirement Committee shall have

the authority to cause the same, or any part thereof, to be held or applied to or for the benefit of such Member, their spouse, children, or other dependents, in such manner and in such proportions as the Retirement Committee shall decide.

ARTICLE X

Optional Forms of Benefits

Section 1. General. Subject to such uniform rules and regulations as the Retirement Committee may prescribe and the spousal consent as required in this Article X, Section 6, a Member or Vested Member may, in lieu of the basic Retirement Benefits provided in Article VIII, elect one of the following forms of Retirement Benefits which shall be the Actuarial Equivalent of the benefit to which they would otherwise be entitled. The Member or Vested Member must make any election of an optional form of benefit in writing, and such election must be filed with the Retirement Committee at least 30 days prior to the due date of the first payment of their Retirement Benefits under this Plan. The election of an optional form of benefit may be changed at any time prior to 30 days preceding the due date of the first payment of Retirement Benefits under the Plan.

Notwithstanding any provision of this Plan to the contrary, any payment under the Plan pursuant to an optional form of benefit shall be made in accordance with IRS Code Section 401(a)(9) and the regulations established thereunder, as they are amended, including the following rules:

a. To the extent required by IRS Code Section 401(a)(9) and the regulations promulgated thereunder, payment of the benefits of a Member shall begin not later than the Required Beginning Date.

b. No payment option may be selected by a Member unless the amounts payable to the Member are expected to be at least equal to the minimum distribution required under IRS Code Section 401(a)(9).

c. The amounts payable must satisfy the minimum distribution incidental benefit requirements of IRS Code Section 401(a)(9)(G).

d. Distributions in the event of a Member's death are subject to the minimum distribution rules of IRS Code Section 401(a)(9) and the regulations thereunder.

Section 2. 100% Joint and Survivor Benefit. The Member may elect a 100% Joint and Survivor Benefit which provides reduced monthly Retirement Benefit payments during the Retired Member's life, and, upon their death after retirement, continues payments in the same reduced amount to a designated Beneficiary during the life of such Beneficiary.

Section 3. 50% Joint and Survivor Benefit. The Member may elect a 50% Joint and Survivor Benefit which provides reduced monthly Retirement Benefit payments during the Retired Member's life, and, upon their death after retirement, continues payments in an amount equal to one-half of the amount of such reduced payment to a designated Beneficiary during the life of such Beneficiary.

Section 4. 120 Months Certain and Life Benefit. The Member may elect a 120 Months Certain and Life Benefit which provides reduced monthly Retirement Benefit payments during the Retired Member's life, and in the event they die prior to receiving 120 monthly payments, the same reduced amount shall be continued to their Beneficiary until a total of 120 monthly payments have been made.

Section 5. Single-Sum Benefit. The Member may elect as an optional form of benefit a single-sum benefit equal to the Actuarial Equivalent of the basic Retirement Benefit, as defined by Article II, Section 2, Subsections b(2)(b) and b(3) of this Plan. If so elected, such single-sum shall be paid within 90 days of eligibility for receipt of a Retirement Benefit.

Section 6. Beneficiary. Each active, Vested or Retired Member may designate a Beneficiary to receive any benefit that may become payable under this Plan by reason of their death. However, if a married Member wishes to designate someone other than their spouse to be their Beneficiary, such designation will not become effective unless their spouse (if the spouse can be located) consents in writing to such designation, acknowledges the effect of such designation and has such consent and acknowledgment witnessed by a Plan representative or a notary public. Such designation shall not become effective until filed with the Retirement Committee.

If any Member shall fail to designate a Beneficiary, or if the one designated by them predeceases them, then the Retirement Committee is hereby empowered to designate a Beneficiary (or Beneficiaries) on their behalf, but only from among the following with priority in the order named below, which shall include persons legally adopted:

- a. their spouse, or if none;
- b. their children and children of deceased children, by right of representation, or if none;
- c. their parents, or if none;
- d. their brothers and sisters and nephews and nieces who are children of deceased brothers and sisters, by right of representation, or if none;
- e. their estate.

ARTICLE XI

Death Benefits

Section 1. Death of an Active Member, a Disabled Member or a Vested Member Prior to Normal Retirement Date. In the event that a Member who is actively employed in Covered Employment or a Disabled Member dies prior to the commencement of their Retirement Benefit, a single-sum death benefit will be paid to the Member's Beneficiary. The single-sum death benefit will be determined such that it is equal to 47% of the Actuarial Equivalent value of the life annuity benefit which would have been paid had the Member separated from service at the earlier of the actual time of separation or death, survived until the earliest retirement age (or date of death, if later) and retired with a life annuity. If the Beneficiary is the Member's spouse, the spouse may elect a monthly benefit which is the Actuarial Equivalent of the single-sum death benefit. The monthly benefit to the surviving spouse shall commence on the last day of the month following the later of the Member's 55th birthday or the Member's date of death and be payable for the spouse's life. If the Member was not married at the time of death, the Beneficiary will receive the Single-Sum Death Benefit. If no Beneficiary exists, the estate will receive the Single-Sum Death Benefit.

For Beneficiaries of Members who commenced Covered Employment prior to June 1, 1998, the Actuarial Equivalence for the single-sum death benefit will be determined by using the interest rate specified in Article II, Section 2, Subsections b(1) and b(3) of this Plan. For Beneficiaries of Members who commenced Covered Employment on or after June 1, 1998, the Actuarial Equivalence for the Single-Sum Death Benefit will be determined by using the interest rate specified in Article II, Section 2, Subsections b(2)(b) and b(3) of this Plan.

In the event that a Vested Member who became such after January 1, 1994, and, thus, accrued Credited Service after December 31, 1993, dies prior to commencement of their Retirement Benefit, a death benefit will be paid. This death benefit shall be paid as set forth in the first paragraph of this Section. Death Benefits, if any, payable to any Vested Member who

became such prior to January 1, 1994 and did not accrue any Credited Service after December 31, 1993 shall be determined in accordance with the provisions of the Plan as of the date the Member ceased to be in Covered Employment.

Section 2. *Death of a Retired Member.* In the event a Retired Member dies while receiving Retirement Benefit payments, their death benefit, if any, will be determined by the form of Retirement Benefit being paid. If a Retired Member or Beneficiary should die during a monthly interval, a partial monthly payment shall be paid.

Section 3. *Uniform Simultaneous Death Act.* The provisions of any State law providing for the distribution of estates under the Uniform Simultaneous Death Act shall govern the distribution of money payable under this Plan when applicable.

Section 4. *Minimum Monthly Payment.* If the amount of the monthly benefit payable to a Beneficiary is less than \$100, the Beneficiary shall be paid a single-sum equal to the Actuarial Equivalent of such benefit. For Beneficiaries of Members who commenced Covered Employment prior to June 1, 1998, said Actuarial Equivalent specified in this Section 4 shall be as defined by Article II, Section 2, Subsections b(1) and b(3) of this Plan. For Beneficiaries of Members who commenced Covered Employment on or after June 1, 1998, said Actuarial Equivalent specified in this Section 4 shall be as defined by Article II, Section 2, Subsections b(2)(b) and b(3) of this Plan.

Section 5. *Death During Qualified Military Service.* If a Member's death occurs on or after January 1, 2007 while the Member is performing Qualified Military Service, the Member's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Member had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Member's Qualified Military Service as service for vesting purposes, as though the Member had resumed employment under USERRA immediately prior to the Member's death.
[Amended 2013; Res. 2013-005]

ARTICLE XII

Vesting and Severance Benefits

Section 1. Coverage. Benefits shall be paid to a Member under this Article if their employment with the City of Fort Collins terminates for reasons other than retirement or death.

Section 2. Vesting Schedule. In the event a Member's employment terminates prior to their Normal Retirement Date, and they have two or more years of Credited Service, they shall become a Vested Member. A Vested Member shall be entitled to a deferred Retirement Benefit which shall be the vested portion (as shown in the table below) of their Accrued Benefit on the date of the termination of their Credited Service.

<u>Completed Years of Credited Service</u>	<u>Percent of Vested Accrued Benefit</u>
Less than 2	0%
2	40%
3	60%
4	80%
5 or more	100%

Such deferred Retirement Benefit shall be payable at the Vested Member's Normal Retirement Date.

In lieu of receiving a deferred Retirement Benefit upon their Normal Retirement Date, the Vested Member may elect to receive a reduced Retirement Benefit beginning upon the last day

of any month subsequent to their attainment of age 55. The reduction shall be 1/180 for each of the first 60 months and 1/360 for each additional month beyond the first 60 months by which payments commence prior to the first of the month following their Normal Retirement Date.

Section 3. Single Lump Sum Benefit. Following termination of employment with the City of Fort Collins and in lieu of receiving a monthly Retirement Benefit upon their Normal or Early Retirement Date, a Vested Member has the option of receiving a single lump sum benefit equal to the Actuarial Equivalent of the Member's deferred Retirement Benefit as defined by Article II, Section 2, Subsections b(2)(b) and b(3) of this Plan. To receive this lump sum benefit, the Vested Member must make a written request for this benefit at or after the time of termination of employment but not less than 30 days prior to the due date of the first payment of the Normal or Early Retirement Benefit. If so requested, this lump sum benefit shall be paid within 90 days of the receipt of the written request. If the value of a terminated Vested Member's derived Accrued Benefit does not exceed \$1,000, the entire vested benefit shall be paid to such Member in a single lump sum, regardless of when the Member terminated employment with the City of Fort Collins.

If the deferred Retirement Benefit to which a Vested Member will be entitled at their Normal Retirement Date is less than \$100.00 per month, the Vested Member shall not have the election set forth in the previous paragraph and they shall be paid, within 90 days of termination of employment with the City of Fort Collins, a single-sum equal to the Actuarial Equivalent of such deferred Retirement Benefit, in lieu of all other benefits due to such Vested Member under this Plan. For Vested Members who commenced Covered Employment prior to June 1, 1998, said Actuarial Equivalent specified in this paragraph shall be as defined by Article II, Section 2, Subsections b(2)(a) and b(3) of this Plan. For Vested Members who commenced Covered Employment on or after June 1, 1998, said Actuarial Equivalent specified in this paragraph shall be as defined by Article II, Section 2, Subsections b(2)(b) and b(3) of this Plan.

ARTICLE XIII

Direct Rollovers

Section 1. Distributions Made On or After January 1, 1993. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Retirement Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

Section 2. Definitions

a. "Direct Rollover" means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

b. "Distributee" means a Member or Retired Member. In addition a Member's or Retired Member's surviving spouse and the Member's or Retired Member's spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order as defined in Article II, Section 2.w, are Distributees with regard to the interest of the spouse or former spouse. Further, a Member's or Retired Member's Beneficiary that is a person other than a spouse or former spouse is a Distributee with respect to the Beneficiary's interest in the Plan.

c. "Eligible Retirement Plan" means an individual retirement account described in IRS Code Section 408(a), an individual retirement annuity described in IRS Code Section 408(b), a Roth IRA described in IRS Code Section 408A (subject to applicable income tax requirements), an annuity described in IRS Code Section 403(a), an annuity described in IRS Code Section 403(b), an eligible plan under IRS Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or a qualified trust described in IRS Code Section 401(a), that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply to the case of a distribution to a surviving spouse of a Member or Retired Member, or to a spouse or

former spouse of a Member or Retired Member who is the alternate payee under a Qualified Domestic Relations Order as defined in Article II, Section 2.w. In the case of a distribution to a Beneficiary other than a spouse or former spouse of a Member or Retired Member, an Eligible Retirement Plan shall only be an individual retirement account described in IRS Code Section 408(a) or an individual retirement annuity described in IRS Code Section 408(b) that is treated as an inherited IRA in accordance with the provisions of IRS Code Section 402(c)(11).

d. "Eligible Rollover Distribution" means a distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

(i) 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 10 years or more;

(ii) any distribution to the extent such distribution is required under IRS Code Section 401(a)(9); and

(iii) the portion of any distribution that is not includible in gross income.

ARTICLE XIV

Modification Or Termination Of Plan

Section 1. *Expectation.* It is the expectation of the City Council that it will continue this Plan and the payment of its contributions hereunder indefinitely, but continuance of the Plan is not assumed as a contractual obligation of the City.

Section 2. *Amendment.* The City Council reserves the right to alter, amend, or terminate the Plan or any part thereof in such manner as it may determine, and such alterations, amendment or termination shall take effect upon notice thereof from the City Council to the Retirement Committee; provided that no such alteration or amendment shall permit any part of the Fund to revert to or be recoverable by the City or to be used for or diverted to purposes other than for the exclusive benefit of Members, Retired Members, Vested Members or Beneficiaries under the Plan, except such monies, if any, that may remain after termination of the Plan and the funding agreement (and after satisfaction of all liabilities with respect to Members, Retired Members, Vested Members and Beneficiaries under the Plan) and which are due solely to erroneous actuarial assumptions.

Section 3. *Approval Under the Internal Revenue Code.* The Plan is intended to comply with the requirements of the applicable provisions of IRS Code Section 401(a) as now in effect or as hereafter amended, and any modification or amendment of the Plan may be made retroactive, as necessary or appropriate, to establish and maintain such compliance.

Section 4. *Discontinuance.* The City Council reserves the right at any time and for any reason satisfactory to it to discontinue permanently all contributions under this Plan. Such discontinuance shall be deemed to be a complete termination of the Plan.

Section 5. *Termination.* In the event of a partial or complete termination of the Plan, all affected monies covered by the Plan and the funding agreement shall be allocated to Members, Retired Members, Vested Members and Beneficiaries in proportion to the actuarial

reserves for each Member's (or Beneficiary's) Accrued Benefit at the date of termination of the Plan.

Section 6. Distribution. When the monies covered by the Plan and the Funding Agreement have been allocated as indicated above, the distribution may be made in the form of cash or nontransferable annuity contracts as determined by the Retirement Committee, provided that any monies remaining after the satisfaction of all liabilities to Members, Retired Members, Vested Members and Beneficiaries under the Plan may be withdrawn by the Retirement Committee from the Fund and refunded to the City.

ARTICLE XV

Limitations

Section 1. Limitation of Benefits. Notwithstanding any other provision contained herein to the contrary, the benefits payable to a Member from this Plan provided by City contributions shall be subject to the limitations of Code Section 415 in accordance with subparagraphs a. through e. below:

a. Any annual Pension payable to a Member hereunder shall not exceed the “defined benefit dollar limitation” under IRS Code Section 415(b), which is \$160,000, as adjusted under IRS Code Section 415(d) in such manner as the Treasury Secretary shall prescribe, and payable in the form of a straight life annuity.

b. **Determining Limitation if Benefit Not Single Life Annuity:** If the form of benefit is other than a single life annuity, such form must be adjusted to an Actuarially Equivalent single life annuity. For Limitation Years beginning on or after July 1, 2007:

1. The Actuarial Equivalent of a Plan benefit payable in a form not subject to Code Section 417(e)(3) means the actuarially equivalent straight life annuity equal to the greater of the annual amount of the straight life annuity payable to the Member under the Plan commencing on the same date as the Member’s form of benefit and the annual amount of the straight life annuity commencing on the same date that has the same actuarial present value as the Member’s form of benefit, computed using a five percent (5%) interest rate assumption and the mortality assumption set forth in Section 2.b. of Article II.

2. The Actuarial Equivalent of a Plan benefit payable in a form subject to Code Section 417(e)(3) means the actuarially equivalent straight life annuity equal to the greater of the benefit computed using the Plan’s interest rate and mortality table used for Actuarial Equivalence for the particular form of benefit payable to the Member on the benefit commencement date and the benefit computed using a five and one-half percent (5.5%) interest rate assumption and the mortality assumption set forth in Section 2.b. of Article II, commencing at the same date. For Plan Years beginning after December 31, 2005, the Actuarial Equivalent of

a Plan benefit payable in a form subject to Code Section 417(e)(3) means the actuarially equivalent straight life annuity payable on the Member's benefit commencement date equal to the benefit computed using the mortality assumption set forth in Section 2.b. of Article II and an interest rate assumption that is the greatest of:

- i. Five and one-half percent (5.5%);
- ii. the rate that provides a benefit that is not more than one hundred five percent (105%) of the benefit that would be provided if the "applicable interest rate" under Code Section 417(e)(3) were the interest rate assumption; or
- iii. the rate used for Actuarial Equivalence for the particular form of benefit payable.

No adjustment is required for the following: qualified joint and survivor annuity benefits; pre-retirement disability benefits; pre-retirement death benefits; and post-retirement medical benefits.

(c) Effective January 1, 2008, the maximum annual Pension shall be adjusted when required, as provided in paragraph 1. below, and if applicable, 2. or 3. below).

(1) Adjustment for Less than Ten (10) Years of Service or Participation: If the Member has fewer than ten (10) years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the Plan and (ii) the denominator of which is ten (10). If the Member has fewer than ten (10) years of service with the Employer, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the City and (ii) the denominator of which is ten (10). The provisions of this subparagraph 1. shall not apply to distributions made on account of a Member's Disability or Death.

(2) Payment Beginning Before Age 62. If payment to a Member commences before the Member attains age sixty-two (62), the defined benefit dollar limitation applicable to the Member at such earlier age is an annual benefit payable in the form of a straight life annuity

beginning at the earlier age that is the Actuarial Equivalent of the defined benefit dollar limitation applicable to the Member at age sixty-two (62) (adjusted under paragraph 1. above, if required). The defined benefit dollar limitation applicable at an age before age sixty-two (62) is determined as the lesser of:

(i) the Actuarial Equivalent (using the Member's age based upon completed calendar months as of the commencement of Retirement Benefits) of the defined benefit dollar limitation computed using a 5% interest rate and the mortality table specified in Section b.(3) of Article II of the Plan, and

(ii) the product of the defined benefit dollar limitation multiplied by the ratio of (1) the annual Retirement Benefit of the Member as of the date of commencement of Retirement Benefits, to (2) the annual Retirement Benefit of the Member at age 62, with components (1) and (2) of the ratio computed without regard to the limitations of IRS Code Section 415.

Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph (b) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

(3) **Payment Beginning After Age 65.** If payment to a Member commences after the Member attains age sixty-five (65), the defined benefit dollar limitation applicable to the Member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is the Actuarial Equivalent of the defined benefit dollar limitation applicable to the Member at age sixty-five (65) (adjusted under paragraph 1. above, if required). The Actuarial Equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as the lesser of:

(i) the Actuarial Equivalent (using the Member's age based upon completed calendar months as of the commencement of Retirement Benefits) of the defined benefit dollar limitation computed using a 5% interest rate and the mortality table specified in Section b.(3) of Article II of the Plan, and

(ii) the product of the defined benefit dollar limitation multiplied by the ratio of (1) the annual Retirement Benefit of the Member as of the date of commencement of Retirement Benefits, to (2) the annual Retirement Benefit of the Member at age 65, with components (1) and (2) of the ratio computed without regard to the limitations of IRS Code Section 415.

For these purposes, mortality between age sixty-five (65) and the age at which benefits commence shall be ignored.

(d) In no event shall a Member's maximum annual Pension allowable under this Section be less than the annual amount of Pension (including Early Retirement Benefits and qualified joint survivor annuity amounts) duly accrued by such Member under IRS Code Section 415 limitations then in effect as of December 31, 1982 (disregarding any Plan changes or cost-of-living adjustments occurring after July 1, 1982, as to the 1982 accrued amount).

(e) Aggregation of Employer Plans. In applying the limits of this Article XV, Section 1, all defined benefit plans sponsored by the Employer are treated as a single plan. Benefits payable under any other plan with respect to a Member shall be reduced to the extent possible before any reduction will be made in such Member's benefits under this Plan, if necessary to observe these limits.

Section 2. Consolidation or Merger. This Plan shall not be merged or consolidated with, nor shall any assets or liabilities be transferred to any other Plan, unless the benefits payable to each Member (if the Plan were terminated immediately after such action) would be equal to or greater than the benefits to which such Member would have been entitled if this Plan had been terminated immediately before such action.

ARTICLE XVI

Retirement Committee.

Section 1. Appointment and Term of Retirement Committee Members. The Retirement Committee shall be composed of six (6) members. The City's Chief Financial Officer or his or her designee within Financial Services shall be a member of the Retirement Committee and shall keep all records and minutes of meetings. The other five (5) members of the Retirement Committee shall be appointed by the City Council to serve at its pleasure and for overlapping terms designated by the City Council. Of the five (5) appointed members, four (4) shall be either an employee of the City who is covered by the Plan, a terminated-vested Member of the Plan, or a retired Member of the Plan who is receiving a monthly retirement benefit. The fifth appointee shall be either an employee of the City who is covered by the Plan or a tax-paying elector of the City. [Amended effective 10-2-12 by Ord. 099-2012]

Section 2. Resignation of Retirement Committee Member. Any Retirement Committee Member may resign at any time upon giving written notice thereof to the City Clerk. Such resignation shall become effective immediately upon the receipt of such written notice by the City Clerk.

Section 3. Removal of Retirement Committee Member. Any Retirement Committee Member may be removed at any time for any reason, with or without cause, by the City Council so notifying the Retirement Committee Member in writing. Such removal shall be effective immediately upon the Retirement Committee Member receiving any such notice.

Section 4. Rights as Successor Retirement Committee Members. Each successor Retirement Committee Member appointed as provided in Section 1 of this Article shall upon succeeding as such Retirement Committee Member be vested with all of the rights, powers and discretions herein vested in and imposed upon the Retirement Committee Members.

Section 5. Responsibility of Successor Retirement Committee Member for Acts of Predecessors. No successor Retirement Committee Member shall have any duty to examine the accounts or doings of his predecessors. Any successor Retirement Committee 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 or by the Retirement Committee prior to the date of the successor Retirement Committee Member's appointment.

Section 6. Use of Corporate Trustee. At any time and from time to time the Retirement Committee may appoint, as Corporate Trustee, a bank or trust company located in the United States which has capital and surplus aggregating not less than \$500,000,000.00, as shown by its last published statement. The Retirement Committee may delegate to the Corporate Trustee (i) the power to hold all or any part of the Fund as sole trustee of a trust separate from the Fund created by this Agreement (and not as agent of the Retirement Committee or as Co-Fiduciary hereunder with the Retirement Committee), (ii) the power to invest and reinvest the Fund in the Corporate Trustee's sole discretion, and (iii) such other duties and powers as the Retirement Committee may deem advisable. The Retirement Committee may enter into and execute a trust agreement with the Corporate Trustee, which agreement shall contain such provisions as the Retirement Committee may deem advisable. The Corporate Trustee shall have no obligations under this Agreement or under the Plan and its powers and duties shall be limited to those set forth in the agreement between it and the Retirement Committee. Upon execution of an agreement with the Corporate Trustee, the Retirement Committee may transfer and convey to the Corporate Trustee any part or all of the assets of the Fund acceptable to the Corporate Trustee, and thereupon, the Retirement Committee shall be 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 Fund is in the hands of the Corporate Trustee. Notwithstanding such transfer, the Retirement Committee shall continue to carry out its administrative functions under the Plan in accordance with the provisions of the Plan.

Section 7. Removal of Corporate Trustee. Any Corporate Trustee appointed as provided in Section 6 may be removed at any time, with or without cause, by majority vote of the

Retirement Committee and upon written notice thereof being furnished to such Corporate Trustee as provided by the terms of the Corporate Trustee or Co-Trustee Agreement previously entered into by the Retirement Committee with such Corporate Trustee or Co-Trustee. If and when so removed, such Corporate Trustee or Co-Trustee shall, cause to be transferred to the Retirement Committee any and all Fund property, assets and records then in its possession.

Section 8. Meetings and Procedures of Retirement Committee. The meetings and procedures of the Retirement Committee shall be as set forth in the City Code and the Boards and Commissions Manual adopted by City Council, as the same may be amended from time to time by City Council.

ARTICLE XVII

Administration Of The Plan; Investment of Fund

Section 1. Retirement Committee. The Retirement Committee shall administer the Plan.

Section 2. Management of the Plan. The Retirement Committee shall have all powers necessary to effect the management and administration of the Plan in accordance with its terms, including, but not limited to, the following:

a. To designate a Funding Agent, which may be the Retirement Committee, the financial officer of the City, an insurance company, or a trustee, to manage the Retirement Fund.

b. To establish rules and regulations for the administration of the Plan, for managing and discharging the duties of the Committee, for the Committee's own government and procedure in so doing, and for the preservation and the protection of the Funds.

c. To interpret the provisions of the Plan and to determine any and all questions arising under the Plan or in connection with the administration thereof. A record of such actions and all other matters properly coming before the Committee shall be kept and preserved.

d. To determine all considerations affecting the eligibility of any Employee to be or become a Member of the Plan.

e. To determine the Credited Service of any Member and to compute the amount of Retirement Benefit, or other sum, payable under the Plan to any person.

f. To authorize and direct all disbursements of Retirement Benefits and other sums under the Plan.

g. With the advice of its actuary, to adopt, such mortality and other tables as it may deem necessary or appropriate for the operation of the Plan from time to time.

h. To make or arrange for valuations and appraisals of Fund assets held under the Plan, and, with the advice of the actuary, to determine the liabilities of the Plan.

i. To hold assets of the Plan in a special account entitled "Retirement Plan Fund," and invest and reinvest the same and to make such withdrawals therefrom as are authorized by the Plan for the payment of Retirement Benefits and the expenses of the Committee and the members thereof.

j. To maintain such records and accounts and to render such financial statements and reports as may be required by the City Council.

k. To authorize one or more members of the Retirement Committee to sign all legal documents and reports on behalf of the Retirement Committee.

Section 3. *Miscellaneous Administrative Provisions.* All proper expenses incurred by the Retirement Committee in the administration of the Plan, if not paid by the City, shall be paid from the Fund when authorized by the Retirement Committee.

The Retirement Committee shall have no power to add to, subtract from or modify any of the terms of the Plan, nor to change or add to any benefits provided by the Plan, nor to waive or fail to apply any requirements of eligibility for Retirement Benefits under the Plan. A member of the Retirement Committee shall not vote on any matter relating solely to such Member's rights or benefits under the Plan. If a Committee Member is so disqualified to act and the remaining Members cannot agree, the City Council shall appoint a temporary substitute member to exercise all of the powers of the disqualified Member concerning the matter in which such disqualified Member is disqualified.

The decision of the Retirement Committee and any action taken by it in respect to the management of the Plan shall be conclusive and binding upon any and all Employees, officers, former Employees and officers, Members, Retired Members, Vested Members, their Beneficiaries, heirs, distributees, executors, and administrators and upon all other persons whomsoever, but the Committee at all times shall act in a uniform and nondiscriminatory manner. Neither the establishment of this Plan nor any modifications thereof or any action taken thereunder or any omission to act, by the Retirement Committee, the City Council or any of their

members shall be construed as giving to any Member or other person any legal or equitable right against the City or any officer or employee thereof or against the Retirement Committee, the City Council, or any of their members.

Section 4. Investment Powers and Duties. Notwithstanding any delegation of investment powers by the Retirement Committee to the Funding Agent or to an Investment Manager hereunder, the Retirement Committee reserves the ultimate power to direct the investment and/or reinvestment any and all money or property of any description at any time held by it and constituting a part of the Fund.

The Retirement Committee shall at all times direct the investment of all money and property held by the Fund in accordance with the investment policy duly adopted by the Retirement Committee, as the same may be modified from time to time, and with the Colorado Uniform Prudent Investor Act, Article 1.1, of Title 15, C.R.S., as amended.

Section 5. Fund Management Powers and Duties of Retirement Committee. The Retirement Committee shall have the power to do any of the following:

a. ***Investment.*** The Retirement Committee may hold such amount of uninvested cash as the Retirement Committee in its discretion deem appropriate and may invest and reinvest the principal and income of the Fund in any property or undivided interest in property, wherever located, including bonds, secured and unsecured notes, stocks of corporations regardless of class and including investment companies, real estate or any interest in real estate and interest in trusts, including common trust funds, in such amounts or proportions as the Retirement Committee shall determine without being limited by any present or future statute or rule of law of the State of Colorado or any other jurisdiction concerning investments by the Retirement Committee, nor shall the Retirement Committee be limited to the amount or type of any investment by its relations to the amount or type of investments constituting the Fund as a whole. The Retirement Committee may elect in each case either to exercise or to sell any subscription rights received as the result of any such investments. Notwithstanding the foregoing paragraph, the Retirement Committee shall exercise its investment authority hereunder in accordance with its investment policy, as the same may be modified from time to time.

b. Conflict of Interest. No member, officer, or employee of the City or of a local public body during his tenure or six months thereafter shall have any interest, direct or indirect, in the Fund or the proceeds thereof, other than the benefits to which an employee shall or may become entitled pursuant to the Plan.

c. Purchase of Insurance Contracts. The Retirement Committee may enter into such insurance contracts and policies, make such premium or other payments thereon, make such elections thereunder and take such actions with respect thereto, as are authorized, directed or contemplated by the Plan and as the Retirement Committee shall, in the exercise of the discretion given to it under the Plan, determine, but in no event may the amount of insurance be greater than one hundred times the anticipated monthly annuity of a Plan Member.

d. Sale of Property. The Retirement Committee may sell for cash or on credit, at public or private sale, any property included in the principal or income of the Fund, or exchange any such property for other property, or grant options to acquire such property, and the Retirement Committee may determine the prices and terms of all such sales, exchanges and options and may execute contracts, conveyances and other instruments, including instruments containing covenants and warranties binding upon the Fund and containing provisions excluding the personal liability of the Retirement Committee Members.

e. Bank Accounts. The Retirement Committee may establish such bank accounts and make deposits to and withdrawals from such accounts and may delegate the right and power to make such deposits and withdrawals to members of the Retirement Committee or the Funding Agent.

f. Enforcement, Settlement and Litigation. The Retirement Committee may take any and all actions it deems necessary or advisable to enforce and protect the property, rights and interests of the Fund, including enforcing the performance of any insurance contracts or policies or other contracts or commitments of and with the Fund. The Retirement Committee may take any and all actions with respect to conserving or realizing upon the value of any property included in the principal or income of the Fund and with respect to foreclosures, reorganizations or other charges affecting such property, which an individual owner of such

property could take. The Retirement Committee may arbitrate, compromise, settle or abandon claims by or against the Fund, as the Retirement Committee shall, in its sole discretion, deem best.

g. Assistants and Agents. The Retirement Committee may employ attorneys, auditors, depositaries, real estate managers and agents with or without discretionary powers, may vote any stocks or other property included in the principal of the Fund either in person or by proxy and may keep any property in the name of a Retirement Committee Member or nominee, with or without disclosure of any fiduciary relationship, or in bearer form. The Retirement Committee may delegate to voting Retirement Committee Members, bondholders' committees and any other person any duties which the Retirement Committee deem it desirable to delegate for the preservation of the principal or income of the Fund.

h. Trust Expenses. The Retirement Committee shall pay promptly out of the Fund all taxes and expenses incurred in the administration of the Fund and may pay any amount necessary to preserve the principal or income of the Fund and any amounts incidental to the exercise of any of the powers, or to the performance of any of the duties, given to the Retirement Committee hereunder.

i. Construction of Trust Provisions of Plan. The Retirement Committee may interpret and construe the trust provisions hereunder and may adopt reasonable regulations not inconsistent herewith and such interpretation and construction of the Retirement Committee shall be binding on all concerned, whomsoever.

Section 6. Delegation of Fund Management and Investment Duties to Funding Agent. The Retirement Committee delegates the performance of the following of its duties hereunder to the financial officer of the City, acting as the Funding Agent hereunder, who shall be a co-fiduciary of the Fund:

a. The Funding Agent shall receive from the City, all contributions to the Fund therein established.

b. The Funding Agent shall receive all of the income from the Fund.

c. The Funding Agent shall pay out of the Fund, upon written instructions from the Retirement Committee or its agents, the funds required for payments under the Plan.

d. The Funding Agent shall invest and reinvest the corpus and income of the Fund, subject to the requirements of the Plan, in accordance with the investment policies of the Retirement Committee, as the same may be modified from time to time.

e. The Funding Agent shall maintain such records and accounts of the Fund, and shall render such financial statements and reports thereof, as may be required from time to time by the City Council or the Retirement Committee.

f. The Funding Agent may, by specific written authorization, delegate to a City finance department employee any of the powers and duties of the Funding Agent set forth in this Section, including, but not limited to, the power to carry out and manage the investments of the Fund.

Section 7. Delegation of Investment Powers to Investment Manager. The Retirement Committee shall have full discretion and authority with regard to the investment of the Fund, as provided in Section 4, except to the extent it has delegated such discretion and authority to the Funding Agent and/or an Investment Manager with respect to Fund assets under the Funding Agent's or Investment Manager's control or direction, as the case may be.

a. Appointment of Investment Manager. The Retirement Committee may appoint one or more Investment Managers to manage the assets of all or any part of the Fund. Each such Investment Manager shall be either:

(i) registered as an investment adviser under the Investment Advisers Act of 1940;

(ii) a bank, as defined in such Act; or

(iii) an insurance company qualified to perform the services of Investment Manager under the laws of more than one state.

The Retirement Committee shall obtain from any Investment Manager a written statement:

(i) acknowledging that if ERISA applied to the Plan, such Investment Manager would be or on the effective date of its appointment would become a fiduciary within the meaning of ERISA Section 3(21)(A) with respect to the Fund assets under its management; and

(ii) certifying that it is either an investment adviser, a bank, or an insurance company, which is qualified to be appointed as an Investment Manager hereunder.

The Retirement Committee shall enter into a written contract or agreement with each such Investment Manager in connection with its appointment as such, and such contract shall be subject to such terms and conditions and shall grant to the Investment Manager such authority and responsibilities as the Retirement Committee deems appropriate under the circumstances. The Retirement Committee shall not be responsible for any investment decision made by an Investment Manager unless the Retirement Committee or an individual Member actually makes the investment decision.

b. Investment Manager Communications with Retirement Committee. Any investment directions or notifications from an Investment Manager to the Retirement Committee may be made orally or in writing, or in such manner as shall be agreed upon between the Investment Manager and the Retirement Committee; provided, in the event the Investment Manager gives the Retirement Committee oral recommendations, directions or notifications, the Investment Manager shall confirm such directions or notifications in writing immediately thereafter.

c. Conflict with Fiduciary Duties. Notwithstanding the foregoing, if, in the Retirement Committee's sole discretion, the execution of any instruction with respect to, or the continued holding of any assets in, an investment managed by an Investment Manager would be in violation of the Retirement Committee's fiduciary responsibilities, the Retirement Committee may refuse to execute such instruction or may dispose of such asset or assets, respectively; provided, the Retirement Committee shall not be responsible for the acts or omissions of such

Investment Manager. In any such case, the Retirement Committee shall promptly notify the Investment Manager of such situation.

d. Failure to Invest Portion of Fund Assets. In the event that an appointed Investment Manager shall fail to invest all or any portion of the assets under its management, the Retirement Committee shall be responsible for the investment of such assets. If an appointed Investment Manager shall fail to give the Retirement Committee instructions or directions relating to the voting of shares held pursuant to an investment directed by the Investment Manager or the execution and delivery of proxies, or relating to the purchase and sale of fractional shares or the exercise of any other ownership right, the Retirement Committee shall take such action as it deems to be in the best interest of the Fund, provided such action is consistent with the then existing Investment Policy Statement established by the Retirement Committee.

e. Termination of Appointment. Upon termination of the appointment of an Investment Manager, the Retirement Committee may appoint a successor Investment Manager with respect to the investments formerly under the management of the terminated Investment Manager or may merge or combine such investments with other investments or Trust assets within the guidelines of the Retirement Committee's investment policy.

f. Asset Transfer. If the Retirement Committee directs an Investment Manager to hold a portion of the assets of the Fund as well as make the investment decisions for such assets, the Retirement Committee shall enter into such contractual or other arrangements as are necessary for the transfer and custody of such assets of the Fund. If the Retirement Committee terminates such Investment Manager, it shall take such action to recapture and take directly into the Fund any assets so transferred.

g. Reports and Valuations. An Investment Manager who has custody of any portion of the assets of the Fund shall keep accurate and detailed books and records on all investments, receipts, disbursements and other transactions for such account and shall determine the fair market value of the assets of such account as of each reporting date determined by the Retirement Committee, and, further, shall file a copy of such books and records and valuations with the Retirement Committee on or before such deadlines as the Retirement Committee shall

reasonably set. The Retirement Committee also shall have the right to request that any person who is responsible for making the investment decisions for an investment account determine the fair market value of any asset, or all of the assets, held for that account and file a copy of such valuation with the Retirement Committee before such deadlines as the Retirement Committee reasonably shall set, and each such person shall comply with any such request.

Section 8. Retirement Committee May Rely Upon Documents Which Are Apparently Genuine. The Retirement Committee shall be fully protected in relying upon any written instrument purporting to be signed by a duly authorized officer of the City or by any other person authorized to sign for the City, or in reliance upon a certified copy of resolutions of the City Council or in reliance upon the sworn statements of any duly authorized representatives of the City, any of which the Retirement Committee, in good faith, believes to be genuine.

Section 9. Fiduciary Responsibilities. The Retirement Committee is empowered to allocate fiduciary responsibilities among the Retirement Committee Members and to designate persons other than Retirement Committee Members, including the Funding Agent, to carry out fiduciary responsibilities as provided in the Plan. The power to allocate fiduciary responsibility shall not apply to the allocation of the responsibility to manage the assets of the Fund other than the power to appoint the Funding Agent or the Investment Manager or Managers.

Section 10. Liability and Insurance.

a. Limitation of Liability. The Retirement Committee is hereby empowered to do all acts whether or not expressly authorized herein which the Retirement Committee may deem necessary to accomplish the general objective of maintaining the Fund solely in the interests of the Plan Members and beneficiaries for the exclusive purpose of (1) providing benefits to Members and beneficiaries; and (2) defraying reasonable expenses of administering, managing and investing the Plan and the Fund. Such actions shall be taken with care, skill, prudence, and diligence required by the Colorado Uniform Prudent Investor Act, Article 1.1, of Title 15, C.R.S., as amended. Such actions shall include the diversification of the investments of the Plan so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so, and all such actions shall be in accordance with documents and instruments governing the Plan insofar as such documents and instruments are consistent with applicable law. If an

Investment Manager or Managers have been duly appointed in accordance with the terms hereunder, no Retirement Committee Member shall be liable for the acts or omissions of such Investment Manager or Managers or under an obligation to invest or otherwise manage any asset of the Plan which is subject to the management of such Investment Manager or Managers.

b. Errors and Omissions Insurance. The Retirement Committee may authorize the purchase of errors and omissions insurance for the Members collectively and/or individually and for any other fiduciary to the Retirement Fund, including the Funding Agent, to cover liability or losses occurring by reason of the act or omission of a fiduciary. Payment for said errors and omissions insurance, where permissible by law, may be made out of the Fund.

c. Indemnity. The City shall indemnify and hold harmless each Retirement Committee Member and any City Employee serving as the Funding Agent from any and all claims, losses, damages, expense (including attorneys' fees approved by the Retirement Committee or the Funding Agent), and liability (including any amounts paid in settlement with the Retirement Committee's or the Funding Agent's approval) arising from any act or omission of such Retirement Committee Member or such Funding Agent, if all of the following circumstances exist:

(1) The claim against the Retirement Committee Member or the Funding Agent arises from an act or omission of the Retirement Committee Member or the Funding Agent occurring during the performance of the his or her duties and within the scope of the his or her employment with the City;

(2) The Retirement Committee Member's or the Funding Agent's act or omission was not "willful and wanton," that is, conduct purposely committed which he or she must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or the of the rights and safety of others, particularly the person injured;

(3) The defense of sovereign or governmental immunity is not available under the Colorado Governmental Immunity Act to bar the claim against the Retirement Committee Member or the Funding Agent (this circumstance, however, shall not apply to the City's obligation under this Section to pay the defense costs of its employees);

(4) The Retirement Committee Member or the Funding Agent has not compromised or settled the claim without the consent of the City;

(5) If the civil claim is asserted in a lawsuit filed against the Retirement Committee Member or the Funding Agent that does not name the City as a co-defendant, the Retirement Committee Member or the Funding Agent has notified the City in writing about the lawsuit within fifteen (15) days after being served with the summons and complaint;

(6) The Retirement Committee Member or the Funding Agent has not willfully and knowingly failed to notify the City of the incident or occurrence which led to the claim within a reasonable time after such incidence or occurrence, if such incidence or occurrence could reasonably have been expected to lead to a claim; and

(7) If there exists any other prerequisite under the Colorado Governmental Immunity Act to the City's obligations to defend and indemnify the Retirement Committee Member or the Funding Agent, he or she has satisfied that prerequisite.

The Retirement Committee and the Funding Agent hereby accept the terms of and execute this Amended and Restated Plan this ____ day of _____, 20____.

RETIREMENT COMMITTEE

Date

Date

Date

Date

RETIREMENT COMMITTEE (cont)

Date

Date

FUNDING AGENT

Date