



City of Arvada

City Council Agenda

DECEMBER 6, 2021
CITY COUNCIL CHAMBERS
Regular Business

Councilmembers:

Marc Williams, Mayor
David Jones, Mayor Pro-Tem
Bob Fifer, At large
John Marriott, District 3
Randy Moorman, District 1
Lauren Simpson, District 2
Lisa Smith, At large

Staff Members Usually Present:

Mark Deven, City Manager
Lorie Gillis, Deputy City Manager
Rachel Morris, City Attorney
Don Wick, Director of Public Works
Sharon Israel, Director of Utilities
Ryan Stachelski, Dir. of Community & Economic Development
Bryan Archer, Director of Finance
Rob Smetana, Manager of City Planning & Development
Ben Irwin, Chief Communications Manager
Kristen Rush, City Clerk

Info: 720-898-7550

THIRD FLOOR CONFERENCE ROOM
EXECUTIVE SESSION
5:00 P.M.

Instructions to Negotiators, Pursuant to CRS 24-6-402(4)(e) and Legal Advice, Pursuant to CRS-24-6-402(4)(b) Relating to Xcel Energy MOU and Instructions to Negotiators, Pursuant to CRS 24-6-402(4)(e) and Legal Advice, Pursuant to CRS-24-6-402(4)(b) Relating to Field Programming Transition with Apex

CITY COUNCIL MEETING – CITY COUNCIL CHAMBERS
6:00 PM

1. Call to Order - 6:00 PM
2. Moment of Reflection and Pledge of Allegiance - Councilmember Fifer
3. Roll Call of Councilmembers
4. Approval of Minutes
 - A. November 8 Swearing-In Ceremony and November 15, 2021 City Council Meeting
5. Recognitions and Communications
 - A. Proclamation for Official National Radon Action Month - Presented by Mayor Pro Tem Jones
 - B. Recognition of Shelley Long - BPW's Woman of the Year - Presented by Councilmember Simpson
6. Presentations - None

7. Public Comment on Issues not Scheduled on Agenda - Three Minute Limit
8. New Business
 - A. Consent Agenda
 1. R21-146 A Resolution Authorizing an Agreement between the City of Arvada and the Olde Town Arvada Business Improvement District (BID) for the Fiscal Year 2022 Programs and Services in Olde Town Arvada
 2. R21-147, A Resolution Authorizing an Agreement By and Between the City of Arvada and Sturgeon Electric Company, Inc. for CSB-18-TC-03 (CDOT Project No. M040-033, SA 22275) in an Amount Not to Exceed \$1,195,000.00
 3. R21-148 A Resolution Approving A Second Amendment To The Parkway Center Subdivider's Agreement
 - B. Resolutions
 1. R21-149 A Resolution Approving a Cost Contribution Agreement by and between the City Of Arvada and Jefferson Center Metropolitan District No. 1 to Finance a Portion of the Coal Creek Water Tank
 - C. Ordinances (First Reading)
 1. CB21-044 An Ordinance Authorizing Acceptance of the Amended and Restated Intergovernmental Agreement between Jefferson County and the Cities of Arvada, Lakewood, Wheat Ridge, Golden, Westminster and Edgewater for Animal Shelter/Dog Licensing/Funding (Public Hearing to be set for January 3, 2022 at 6:15 p.m.)
9. Other
 - A. Ratification of Arvada Economic Development Association (AEDA) Board Members
10. Public Hearings - 6:15 PM
 - A. CB21-040 An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2021 (Ordinance No. 4787)
 - B. CB21-041 An Ordinance Amending and Restating Plan Documents and Adoption Agreements for the Executive Defined Contribution Retirement Plan, City Manager Retirement Plan, City Attorney Retirement Plan, and Municipal Judge Retirement Plan (Ordinance No. 4788)
 - C. CB21-042 An Ordinance Amending Section 38-34, Definitions and Standards, Section 38-63, Emergencies, and Section 38-65, Exceptions, of Article II, Noise Control, of Chapter 38, Environment, of the Arvada City Code (Ordinance No. 4789)
 - D. CB21-043 An Ordinance Approving a Lease Purchase Financing to Provide Funds for the Construction of a Replacement Aquatics Center on the Site of the Meyers Pool; Authorizing and Approving a Site Lease, a Lease Purchase Agreement, and Other Documentation in Connection with a Cooperative Financing with Jefferson County School District No. R-1; and Providing Other Details, Parameters and Authorization In Connection with the Lease Purchase Financing (Ordinance No. 4790)
 - E. Major Modification for 7400 Simms Residential Privacy Fence, generally located at 7400 Simms Street
11. Public Comment - Five Minute Limit
12. Reports from City Council
 - A. Council Committee Reports
13. Reports from City Manager
 - A. Review of Future Workshops and Presentations

14. Reports from City Attorney
15. Adjournment



CITY OF ARVADA

SUMMARY OF MINUTES OF THE SWEARING-IN CEREMONY OF THE ARVADA CITY COUNCIL HELD NOVEMBER 8, 2021

- I. CITY COUNCIL MEETING: CALL TO ORDER: By Mayor Williams at 7:00 p.m.
- II. MOMENT OF REFLECTION AND PLEDGE OF ALLEGIANCE – Mayor Williams
- III. ROLL CALL OF MEMBERS:
Those Present: Mayor Marc Williams, Mayor Pro Tem Dot Miller, Councilmember Bob Fifer, Councilmember Nancy Ford, Councilmember David Jones, Councilmember John Marriott, Councilmember Lauren Simpson
- IV. PRESENTATION OF PLAQUES
 - A. Councilmember Nancy Ford
Mayor Williams and Council Members all thanked Councilmember Ford for her service. Mayor Williams presented a plaque to Councilmember Ford.

Councilmember Ford thanked City Council, staff, and welcomed new Councilmember Moorman.
 - B. Mayor Pro Tem Dot Miller
Mayor Williams and Council Members all thanked Councilmember Miller for her service. Mayor Williams presented a plaque to Councilmember Miller.

Councilmember Miller thanked City Council, staff, and welcomed new Councilmember Smith.
- V. OATHS OF OFFICE FOR NEW COUNCIL MEMBERS:
 - A. Randy Moorman

Judge Kurtz administered the Oath of Office to Randy Moorman, District 1.
 - B. John Marriott

Judge Kurtz administered the Oath of Office to John Marriott, District 3
 - B. Lisa Smith

Judge Kurtz administered the Oath of Office to Lisa Smith, At large
- VI. ROLL CALL OF NEW COUNCIL MEMBERS

Those Present: Mayor Marc Williams, Councilmember Bob Fifer, Councilmember David Jones, Councilmember John Marriott, Councilmember Randy Moorman, Councilmember Lauren Simpson, Councilmember Lisa Smith

VII. COMMENTS FROM NEWLY ELECTED COUNCIL MEMBERS

Councilmember Moorman and Councilmember Smith made comments and thanked their families, their campaign helpers and the citizens of Arvada.

VIII. ELECTION OF MAYOR PRO TEM

Councilmember Marriott moved to appoint Councilmember Jones as Mayor Pro Tem.

The following votes were cast on the Motion

Those voting yes: Williams, Fifer, Jones, Marriott, Moorman, Simpson, Smith

The Motion was Approved

IX. OATH OF OFFICE FOR MAYOR PRO TEM

Judge Kurtz administered the Oath of Office for Mayor Pro Tem to Councilmember Jones.

X. ADJOURNMENT at 7:50 p.m.

A Reception was held in the City Hall Atrium following adjournment.

Marc Williams, Mayor

SEAL:

Kristen Rush, City Clerk



SUMMARY OF MINUTES OF THE MEETING OF THE ARVADA CITY COUNCIL HELD NOVEMBER 15, 2021

1. Executive Session - Third Floor Conference Room - 5:00 p.m.
 - A. Legal Advice, Pursuant to CRS 24-6-402(4)(b) Relating to the Parks Incident

Councilmember Simpson moved to go into Executive Session for Legal Advice, Pursuant to CRS 24-6-402(4)(b) Relating to the Parks Incident.

The following votes were cast on the Motion:

Those voting Yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson, Smith
The Motion was Approved

2. Call to Order - 6:00 p.m.

This Arvada City Council meeting was held in the City Council Chambers and remotely using webinar technology. Mayor Williams, Mayor Pro Tem Jones; Councilmember Fifer, Councilmember Marriott, Councilmember Moorman, Councilmember Simpson; Councilmember Smith were present in the council chambers.

Members of the public were given notice with instructions on how to participate with public comment.

3. Moment of Reflection and Pledge of Allegiance
4. Roll Call of Councilmembers

Those Present: Mayor Marc Williams, Mayor Pro Tem David Jones, Councilmember Bob Fifer, Councilmember John Marriott, Councilmember Randy Moorman, Councilmember Lauren Simpson, Councilmember Lisa Smith

Also Present: Mark Deven, City Manager; Rachel Morris, City Attorney; Lorie Gillis, Deputy City Manager; Ryan Stachelski, Director of Community and Economic Development; Bryan Archer, Director of Finance and Kristen Rush, City Clerk.

5. Approval of Minutes – none
6. Recognition and Communication –
 - A. Proclamation for Small Business Saturday - Presented by Councilmember Marriott

Councilmember Marriott read the proclamation and said that the Saturday after Thanksgiving (November 27, 2021) is known as Small Business Saturday. The Arvada Visitors Center, the Arvada Economic Development Association (AEDA), the Arvada Chamber and the Olde Town Arvada – Business Improvement District along with the Arvada Resiliency Task Force are partnering in asking people to

shop Arvada Small Businesses this holiday season, highlighting the national shopping holiday – November 27 which is referred to as Small Business Saturday.

Small businesses create jobs, boost Arvada's economy, and preserve neighborhoods. Each purchase made in Arvada goes to pay for City services such as police, parks, and street maintenance. Keeping the dollars in Arvada helps create and retain quality jobs. Small businesses are the nation's largest employer and account for the majority of job growth. Next time you make a purchase, remember Shop Arvada!

At 10 am on the morning of the celebration, everyone is welcome to stop by the Olde Town Arvada Square (Olde Wadsworth and W. 57th) for free coffee and breakfast goodies.

Representatives from AEDA and the Task Force were present to accept the proclamation.

7. Presentations

A. 3rd Quarter Financial Report

Bryan Archer, Finance Director, reviewed performance measures, gave an overview of the major revenue categories in the General Fund, a high level look at the other major funds, a review of the City's investment portfolio and the American Rescue Plan Act funds.

8. Public Comment

A. Mindy Mohr, Arvada resident, addressed council regarding the marketing of Arvada

9. New Business

A. Consent Agenda –

1. R21-133 A Resolution Authorizing a Lease Agreement By And Between The City of Arvada And Sundance School Of Riding, LLC For The Property Located At 7650 Indiana Street, Arvada, CO 80007, Also Known As The Arvada Indoor Equestrian Center
2. R21-134 A Resolution Approving a Lease Agreement by and between the City of Arvada and Denver Urban Gardens for a Community Garden on Approximately .92 acres of land located at 84th Avenue and Alkire Street
3. R21-135 A Resolution Approving the First Amendment to the City of Arvada Retirement Plan Amended and Restated Effective January 1, 2019
4. R21-136 A Resolution Authorizing Amendment C to the Grant Agreement By and Between the State of Colorado Acting by and through the Department of Higher Education, History Colorado, the Colorado Historical Society and the City of Arvada Pertaining to the Restoration of the Denver Tramway Company Streetcar No. .04, Grant No. 2018-01-016
5. R21-137 A Resolution Approving a License Agreement Between the City of Arvada and Comcast of Colorado IX, LLC for a Revocable License to Install, Operate, and Maintain an Underground Fiber Optic Line and Conduits Across Arvada Owned Property Near Ralston Creek
6. R21-138 A Resolution Authorizing Change Order #2 to an Agreement between the City of Arvada and A-1 Chipseal Company for the 2021 Street Chip and Slurry Seal Program in the amount of \$6,017.82 to Accommodate for Billing Excess related to Change Order #1 and in the amount of \$498,075.00 to Accommodate Crackseal Work, for a Total Contract

- Amount Not to Exceed \$1,328,428.80
7. R21-139 A Resolution Authorizing an Intergovernmental Agreement by and between the City of Arvada and the Urban Drainage and Flood Control District d/b/a Mile High Flood District Regarding the Acquisition of 14055 West 68th Avenue on Ralston Creek
8. R21-140 A Resolution Authorizing an Intergovernmental Agreement by and between the City of Arvada and Urban Drainage and Flood Control District d/b/a Mile High Flood District For CIP Project for the Ralston Creek at Ward Road Project

Councilmember Fifer moved that R21-133, A Resolution Authorizing a Lease Agreement By And Between The City of Arvada And Sundance School Of Riding, LLC For The Property Located At 7650 Indiana Street, Arvada, CO 80007, Also Known As The Arvada Indoor Equestrian Center; R21-134, A Resolution Approving a Lease Agreement by and between the City of Arvada and Denver Urban Gardens for a Community Garden on Approximately .92 acres of land located at 84th Avenue and Alkire Street; R21-135, A Resolution Approving the First Amendment to the City of Arvada Retirement Plan Amended and Restated Effective January 1, 2019; R21-136, A Resolution Authorizing Amendment C to the Grant Agreement By and Between the State of Colorado Acting by and through the Department of Higher Education, History Colorado, the Colorado Historical Society and the City of Arvada Pertaining to the Restoration of the Denver Tramway Company Streetcar No. .04, Grant No. 2018-01-016; R21-137, A Resolution Approving a License Agreement Between the City of Arvada and Comcast of Colorado IX, LLC for a Revocable License to Install, Operate, and Maintain an Underground Fiber Optic Line and Conduits Across Arvada Owned Property Near Ralston Creek; R21-138, A Resolution Authorizing Change Order #2 to an Agreement between the City of Arvada and A-1 Chipseal Company for the 2021 Street Chip and Slurry Seal Program in the amount of \$6,017.82 to Accommodate for Billing Excess related to Change Order #1 and in the amount of \$498,075.00 to Accommodate Crackseal Work, for a Total Contract Amount Not to Exceed \$1,328,428.80; R21-139, A Resolution Authorizing an Intergovernmental Agreement by and between the City of Arvada and the Urban Drainage and Flood Control District d/b/a Mile High Flood District Regarding the Acquisition of 14055 West 68th Avenue on Ralston Creek; R21-140, A Resolution Authorizing an Intergovernmental Agreement by and between the City of Arvada and Urban Drainage and Flood Control District d/b/a Mile High Flood District For CIP Project for the Ralston Creek at Ward Road Project, be approved.

The following votes were cast on the Motion

Those voting yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson,
Smith

The Motion was Approved

B. Resolutions –

1. R21-141 A Resolution Approving Termination of a Cooperation Agreement by and Among the City of Arvada; the Arvada Urban Renewal Authority; Arvada Ridge Market Place, LLC; and Kipling Ridge Metropolitan District

Mark Deven, City Manager, reviewed this resolution with council.

Councilmember Marriott moved that R121-141, A Resolution Approving Termination of a Cooperation Agreement by and Among the City of Arvada; the Arvada Urban Renewal Authority; Arvada Ridge Market Place, LLC; and Kipling Ridge Metropolitan District, be approved.

The following votes were cast on the Motion

Those voting yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson,
Smith

The Motion was Approved

2. R21-142 A Resolution Authorizing an Intergovernmental Agreement By and Between the City of Arvada and the Canyon Pines Metropolitan District for Financing of the Construction of the Canyon Pines Pump Station and Modifications to the Ranson Pump Station and the Fifth Amendment to the 2021 Capital Budget in the Amount of \$3,611,535.00

Mark Deven, City Manager, reviewed this resolution with council.

Councilmember Marriott moved that R21-142, A Resolution Authorizing an Intergovernmental Agreement By and Between the City of Arvada and the Canyon Pines Metropolitan District for Financing of the Construction of the Canyon Pines Pump Station and Modifications to the Ranson Pump Station and the Fifth Amendment to the 2021 Capital Budget in the Amount of \$3,611,535.00, be approved.

The following votes were cast on the Motion

Those voting yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson,
Smith

The Motion was Approved

3. R21-143 A Resolution Approving the Fourth Amendment to an Agreement By and Between the City of Arvada and Everside Health, LLC (AKA Paladina Health, LLC) for the Staffing and Operation of an On-Site Wellness Clinic

Mark Deven, City Manager, reviewed this resolution with council.

Councilmember Simpson moved that R21-143, A Resolution Approving the Fourth Amendment to an Agreement By and Between the City of Arvada and Everside Health, LLC (AKA Paladina Health, LLC) for the Staffing and Operation of an On-Site Wellness Clinic, be approved.

The following votes were cast on the Motion

Those voting yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson,
Smith

The Motion was Approved

C. Ordinances (First Reading)

1. CB21-040 An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2021 (Public Hearing to be set for December 6, 2021 at 6:15 p.m.)
2. CB21-041 An Ordinance Amending and Restating Plan Documents and Adoption Agreements for the Executive Defined Contribution Retirement Plan, City Manager Retirement Plan, City Attorney Retirement Plan, and Municipal Judge Retirement Plan (Public Hearing to be set for December 6, 2021 at 6:15 p.m.)
3. CB21-042 An Ordinance Amending Section 38-34, Definitions and Standards, Section 38-63 Emergencies, and Section 38-65, Exceptions, of Article II, Noise Control, of Chapter 38, Environment, of the Arvada City Code (Public Hearing to be set for December 6, 2021 at 6:15 p.m.)
4. CB21-043 An Ordinance Approving a Lease Purchase Financing to Provide Funds for the Construction of a Replacement Aquatics Center on the Site of the Meyers Pool; Authorizing and Approving a Site Lease, a Lease Purchase Agreement, and Other Documentation in Connection with a Cooperative Financing with Jefferson County School District No. R-1; and Providing Other Details, Parameters and Authorization In Connection with the Lease Purchase Financing. (Public Hearing to be set for December 6, 2021 at 6:15 p.m.)

Mayor Pro Tem Jones moved that CB21-040, An Ordinance Authorizing an Additional Appropriation for Fiscal Year; CB21-041, An Ordinance Amending and Restating Plan Documents and Adoption Agreements for the Executive Defined Contribution Retirement Plan, City Manager Retirement Plan, City Attorney Retirement Plan, and Municipal Judge Retirement Plan; CB21-042, An Ordinance Amending Section 38-34, Definitions and Standards, Section 38-63 Emergencies, and Section 38-65, Exceptions, of Article II, Noise Control, of Chapter 38, Environment, of the Arvada City Code CB21-043, An Ordinance Approving a Lease Purchase Financing to Provide Funds for the Construction of a Replacement Aquatics Center on the Site of the Meyers Pool; Authorizing and Approving a Site Lease, a Lease Purchase Agreement, and Other Documentation in Connection with a Cooperative Financing with Jefferson County School District No. R-1; and Providing Other Details, Parameters and Authorization In Connection with the Lease Purchase Financing. be approved on first reading, ordered published in full, and a public hearing set for December 6, 2021 at 6:15 p.m.

The following votes were cast on the Motion

Those voting yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson,
Smith

The Motion was Approved

10. Other – none

11. Public Hearings -

- A. Public Hearing on the 2022 Annual Action Plan for 2022 Community Development Block Grant Funding and 2022 Human Services Grant Funding

1. R21-144 A Resolution Approving the Submission of the 2022 Annual Action Plan for 2022 Community Development Grant Block ("CDBG") Funding
2. R21-145 A Resolution Authorizing the Expenditure of City of Arvada Human Services Funding Pool Funds for 2022 to Agencies Providing Emergency Help, Program Assistance, and Other Assistance to Arvada Citizens

Mayor Williams opened the public hearing on the 2022 Annual Action Plan for 2022 Community Development Block Grant, R21-144 and R21-145

No one wishing to speak on the 2022 Annual Action Plan, the public hearing was closed.

Councilmember Fifer moved that R21-144, A Resolution Approving the Submission of the 2022 Annual Action Plan for 2022 Community Development Grant Block ("CDBG") Funding, be approved

The following votes were cast on the Motion

Those voting yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson,
Smith

The Motion was Approved

Councilmember Fifer moved that R21-145, A Resolution Authorizing the Expenditure of City of Arvada Human Services Funding Pool Funds for 2022 to Agencies Providing Emergency Help, Program Assistance, and Other Assistance to Arvada Citizens, be approved.

The following votes were cast on the Motion

Those voting yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson,
Smith

The Motion was Approved

- B. CB21-037 An Ordinance Amending Various Sections of Chapter 102, Utilities, of the Arvada City Code Pertaining to Water Users Rates and Bimonthly Service Charges (Ordinance No. 4784)

Mayor Williams opened the public hearing on CB21-037.

Mark Deven, City Manager, reviewed this ordinance with council.

No one wishing to speak for or against, the public hearing was closed.

Councilmember Marriott moved that CB21-037, An Ordinance Amending Various Sections of Chapter 102, Utilities, of the Arvada City Code Pertaining to Water Users Rates and Bimonthly Service Charges, be approved on final reading, numbered 4784 and ordered published by title only.

The following votes were cast on the Motion

Those voting yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson,
Smith

The Motion was Approved

- C. CB21-038 An Ordinance Amending Section 102-206 of Chapter 102, Utilities, of the Arvada City Code Pertaining to Wastewater Users Rates and Bimonthly Service Charges (Ordinance No. 4785)

Mayor Williams opened the public hearing on CB21-038.

Mark Deven, City Manager, reviewed this ordinance with council.

Councilmember Marriott moved that CB21-038, An Ordinance Amending Section 102-206 of Chapter 102, Utilities, of the Arvada City Code Pertaining to Wastewater Users Rates and Bimonthly Service Charges, be approved on final reading, numbered 4785 and ordered published by title only.

The following votes were cast on the Motion

Those voting yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson,
Smith

The Motion was Approved

- D. CB21-039 An Ordinance Rezoning Certain Land Within the City of Arvada, from City of Arvada RA (Residential/Agricultural) to City of Arvada PUD (Planned Unit Development) and Amending the Official Zoning Maps of the City of Arvada, Colorado, located at 7275 Kipling Street, Unit A and Unit B, Arvada, Colorado 80005 (Ordinance No. 4786)
- E. PUD Development Plan for Animal Assisted Therapy of Colorado, approximately located at 7275 Kipling St. Unit A and Unit B

Mayor Williams opened the public hearing on CB21-039 and the PUD Development Plan for Animal Assisted Therapy of Colorado.

Rob Smetana, Planning Manager, reviewed this item with council and stated that the posting logs and mailing affidavit have been received and are in order. Mayor Williams made them a part of the official record, along with the staff report.

Sworn Testimony: Linda Chassman Craddock, Representing Applicant
Sara Geering, Representing Applicant

Mayor Williams closed the public hearing.

Councilmember Moorman moved that CB21-039, An Ordinance Rezoning Certain Land Within the City of Arvada, from City of Arvada RA (Residential/Agricultural) to City of Arvada PUD (Planned Unit Development) and Amending the Official Zoning Maps of the City of Arvada, Colorado, located at 7275 Kipling Street, Unit A and Unit B, Arvada, Colorado 80005, be approved on final reading, numbered 4786 and ordered published by title only.

The following votes were cast on the Motion

Those voting yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson,
Smith

The Motion was Approved

Councilmember Moorman moved that the PUD Development Plan for Animal Assisted Therapy of Colorado, approximately located at 7275 Kipling St. Unit A and Unit B, be approved. This motion is based on the findings of fact adopted by Planning Commission.

The following votes were cast on the Motion

Those voting yes: Williams, Jones, Fifer, Marriott, Moorman, Simpson,
Smith

The Motion was Approved

12. Public Comment - Five Minute Limit - none
13. City Council Reports
14. City Manager Reports - none
15. City Attorney Reports – none
16. Adjournment at 7:35 p.m.

Marc Williams, Mayor

SEAL:

Kristen R. Rush, City Clerk



REPORT TO CITY COUNCIL

AGENDA ITEM
5.A.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: Proclamation for Official National Radon Action Month - Presented by Mayor Pro Tem Jones

Report in Brief

Jefferson County Public Health (JCPH) is reaching out to their County, municipalities and townships to request that January 2022 be recognized as National Radon Action Month (NRAM). This is a nationwide effort with support from the Colorado Department of Public Health and Environment, the Environmental Protection Agency, and the American Lung Association.

The Proclamation will be sent to the Jefferson County Public Health.

Prepared by:

Chris Koch, CCO Admin

Reviewed by:

Toni Riebschlager, Law Office Administrator 11/15/2021

Approved by:

Rachel Morris, City Attorney 11/19/2021

Lorie Gillis, Deputy City Manager 11/22/2021

Mark Deven, City Manager 11/22/2021

Enclosure, exhibits & attachments required to support the report

WHEREAS, radon is an invisible, odorless, radioactive gas that threatens the health of our citizens and their families; and radon is a leading environmental cause of cancer mortality in the U.S. and the 8th leading cause of cancer mortality overall; and

WHEREAS, the Colorado Rocky Mountain Region has been ranked Zone 1, an area with the highest radon potential possible by the U.S. Environmental Protection Agency; and

WHEREAS, Colorado residential radon data has shown 50% of Colorado homes tested as being at or above the U.S. Environmental Protection Agency Radon Action Level of 4.0 pCi/L (picocuries per liter of air); and

WHEREAS, any home in Arvada, Colorado may have elevated levels of radon (even if homes in the same neighborhood do not); and supporting recommended radon practices and policies to reduce radon exposure is important to protect our community's health and welfare; and

WHEREAS, testing for radon is simple and inexpensive; and identified radon problems can be fixed; and

WHEREAS, Jefferson County Public Health, the Colorado Department of Public Health and Environment, the U.S. Environmental Protection Agency, and the American Lung Association are supporting efforts to encourage Americans to test their homes for radon, have elevated levels of radon reduced, and have new homes built with radon-resistant features.

NOW, THEREFORE, BE IT PROCLAIMED by the Mayor and City Council of the City of Arvada, Colorado, that January 1-31, 2022 be proclaimed Official National Radon Action Month in Arvada, Colorado.

Dated this 6th day of December, 2021

Marc Williams, Mayor

David Jones, Mayor Pro Tem

Bob Fifer, Councilmember

John Marriott, Councilmember

Randy Moorman, Councilmember

Lauren Simpson, Councilmember

Lisa Smith, Councilmember



REPORT TO CITY COUNCIL

AGENDA ITEM
5.B.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: Recognition of Shelley Long - BPW's Woman of the Year - Presented by Councilmember Simpson

Report in Brief

The Northwest Metro Business and Professional Women's (BPW's) Organization has chosen Shelley Long as their Woman of the Year for 2021.

Shelley Long is a Colorado native, a pastor, an advocate, a business owner, an artist, a realtor, wife to a wonderful pastor and blessed to be mom to four grown children. Shelley and her husband, Rick, along with a good friend, started Grace Church Of Arvada in 1989, where they are both still serving today. Rick is the lead pastor and Shelley has served and volunteered in many areas from children's ministry, worship experience, teaching and counseling and empowering others to see their value and use their gifts. Shelley is currently the Pastor and Director of REACH, overseeing all outreach, working to serve those hurting and in need in the community around us.

In 2016, Shelley founded One By One Helping Arvada Homeless, to help those without homes find their stability again through hard work, accountability and the outpouring of generosity through community by providing resources and encouragement. Shelley founded One By One as a Facebook group originally to share stories about, and resources for, homeless individuals. Her plan was to create a community for information and sharing; however, it ended up that people were joining to ask for help and others were joining to ask how they could help her. Today there are over 2400 people in the group, both those in need of help and those wanting to help, and their mission is to provide hope and opportunity for stability to those who are homeless on the streets of Arvada.

In 2020, the group raised and paid for 322 hotel night stays for 71 different people, costing nearly \$20,000 to get people in shelter on severe weather nights. COVID changed their world and created challenges in the way they were able to meet and interact with people. They are now launching a new effort through the REACH Team at Grace to create a community center that will allow them to increase the efforts of One by One.

The City Council would like to thank Shelley for her work in our community and present her with a Certificate of Recognition.

Prepared by:

Chris Koch, CCO Admin

Reviewed by:

Toni Riebschlager, Law Office Administrator 11/22/2021

Approved by:

Rachel Morris, City Attorney 11/22/2021

Lorie Gillis, Deputy City Manager 11/23/2021

Mark Deven, City Manager 11/23/2021

SUBJECT: Recognition of Shelley Long - BPW's Woman of the Year - Presented by Councilmember Simpson

PAGE: 2
ITEM: 5.B.

Enclosure, exhibits & attachments required to support the report

Certificate of Recognition



presented to

SHELLEY LONG

*In recognition of being named the Northwest Metro Business
and Professional Women (BPW) 's Woman of the Year*

Presented this 6th day of December, 2021

Marc Williams, Mayor

David Jones, Mayor Pro Tem

Bob Fifer, Councilmember

John Marriott, Councilmember

Randy Moorman, Councilmember

Lauren Simpson, Councilmember

Lisa Smith, Councilmember





REPORT TO CITY COUNCIL

AGENDA ITEM
8.A.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: Consent Agenda

Report in Brief

8.A.1. R21-146 A Resolution Authorizing an Agreement between the City of Arvada and the Olde Town Arvada Business Improvement District (BID) for the Fiscal Year 2022 Programs and Services in Olde Town Arvada

8.A.2. R21-147 A Resolution Authorizing an Agreement By and Between the City of Arvada and Sturgeon Electric Company, Inc. for CSB-18-TC-03 (CDOT Project No. M040-033,SA 22275) in an Amount not to Exceed \$1,195,000.00

8.A.3. R21-148 A Resolution Approving a Second Amendment to the Parkway Center Subdivider's Agreement

Suggested Motion: Moved by: _____

I move that the Consent Item(s), Number(s) R_____ be (Removed from the Consent Agenda and Heard Upon Item _____) (Referred to a Workshop) (Postponed Indefinitely).

YES _____ NO _____ ABSENT _____

That All/Remaining Consent Items be (Approved) (Rejected).

YES _____ NO _____ ABSENT _____

Prepared by:
Chris Koch, CCO Admin

Reviewed by:

Approved by:

Enclosure, exhibits & attachments required to support the report



REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM
8.A.1.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: R21-146 A Resolution Authorizing an Agreement between the City of Arvada and the Olde Town Arvada Business Improvement District (BID) for the Fiscal Year 2022 Programs and Services in Olde Town Arvada

Report in Brief

In 2021, Olde Town continued to transform, first in response to the on-going COVID-19 pandemic, but then to turn that challenge into an opportunity by helping to transform the temporary street closures in 2020 into a more semi-permanent pedestrian mall in 2021. The update to the Olde Town physical environment will create new logistical opportunities and challenges for events, operations, and maintenance.

As part of the FY 2021 budget process, the City Council provided support to the BID by allocating matching funds of \$68,000 to create a total operating budget for 2022 of approximately \$265,000.

This Agreement summarizes the business relationship between the City and the BID. The Agreement is for one year which will allow the City to evaluate the BID's performance prior to considering an allocation for 2022. City funds will be used by the BID to support public programs and services, including enhanced maintenance, public safety, and event support. City services are defined by the Baseline Services document. Of note, a change between the 2021 budget and the 2022 budget is the amount of expenditures that the BID has allocated to the "advocacy" and "administration" line items. This change is related to a change in accounting procedures which takes staff salaries out of the advocacy line item and replaces them in the administration line item. The budget change does not represent a change in the work plan.

The BID will present a status update in July and an annual report in December to the City Manager in order to continuously evaluate the services provided through the Agreement. The Arvada team believes that the Agreement provides the foundation for a successful, collaborative and productive implementation of the Business Improvement District for Olde Town, a stated objective of the City and the Olde Town area for many years.

The Arvada team recommends that the City Council approve R21-146 A Resolution Authorizing an Agreement between the City of Arvada and the Olde Town Arvada Business Improvement District for the Fiscal Year 2022 Programs and Services in Olde Town Arvada.

Financial Impact

The City's allocation to the BID in 2022 will be \$68,000. This amount was approved in the 2022 operating budget.

Background

On November 4, 2014, as part of the general election, business and property owners voted 49-14 to approve the BID and authorize the mill levy. The City Council subsequently approved the first Memorandum of Agreement with the Olde Town BID in early 2015 and have annually approved such agreements each year.

Discussion

Attached is the Agreement that outlines the terms and conditions which will continue the cooperative relationship between the City and the Olde Town BID. Through this Agreement the City and BID believe that improved coordination will help focus mutual efforts, provide accountability of how public dollars are utilized, establish clear communication, clarify roles and responsibilities and support the entire community by fostering Olde Town Arvada's ongoing economic vitality.

As in previous years, City team members will continue to work closely with the BID Board to address opportunities, concerns and issues associated with Olde Town and to support effective governance. The City's Baseline Services, which is also attached, is provided to the BID. These services include economic development support such as grants to support infrastructure, park and landscape maintenance of common areas and gathering spaces, site amenities such as benches and bike racks, snow removal of the plaza area and basic patrol services to maintain public safety. City team members, including the City Manager, Community and Economic Development Director and Police Commanders will meet periodically with BID representatives.

The 2022 BID Operating Plan and 2022 BID Budget are also attached. The Plan includes goals, ideas and direction that support the mission and vision of the BID Board and the funding sources and expenditures to implement that vision.

Public Contact

Posting of the City Council agenda and notification to the Olde Town BID Board of Directors.

Commission Recommendation

The Olde Town BID Board of Directors collaborated with the City team to develop the Agreement and support the recommendation presented herein.

Strategic Alignment

The recommended action aligns with the Community and Economic Development and Vibrant Community and Neighborhoods Priority Areas of the City Council Strategic Plan.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that the City Council approve R21-146, A Resolution Authorizing an Agreement between the City of Arvada and the Olde Town Arvada Business Improvement District for the Fiscal Year 2022 Programs and Services in Olde Town Arvada.

Suggested Motion:

I move that R21-146, A Resolution Authorizing an Agreement between the City of Arvada and the Olde Town Arvada Business Improvement District for the Fiscal Year 2022 Programs and Services in Olde Town Arvada, be (approved) (rejected).

Prepared by:

Ryan Stachelski, Director of Community and Economic Development

Reviewed by:

Gail Walker, Legal Specialist-Contracts 11/17/2021

SUBJECT: R21-146 A Resolution Authorizing an Agreement between the City of Arvada and the Olde Town Arvada Business Improvement District (BID) for the Fiscal Year 2022 Programs and Services in Olde Town Arvada

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Approved by:

Emily Grogg, Senior Assistant City Attorney	11/16/2021
Rachel Morris, City Attorney	11/19/2021
Lorie Gillis, Deputy City Manager	11/23/2021
Mark Deven, City Manager	11/23/2021

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R21-146

A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF
ARVADA AND THE OLDE TOWN ARVADA BUSINESS IMPROVEMENT DISTRICT
FOR THE FISCAL YEAR 2022 PROGRAMS AND SERVICES IN OLDE TOWN
ARVADA

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk to attest, in form approved by the City Attorney, an Agreement, which is in substantially the same form as that attached hereto, by and between the City of Arvada and the Olde Town Arvada Business Improvement District.

Section 2. This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 6th day of December, 2021.

Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

**AGREEMENT BETWEEN THE CITY OF ARVADA AND THE OLDE TOWN
ARVADA BUSINESS IMPROVEMENT DISTRICT FOR THE FISCAL YEAR
2022 PROGRAMS AND SERVICES IN OLDE TOWN ARVADA**

1.0 PARTIES. The parties to this Agreement are the City of Arvada, a Colorado home rule municipal corporation ("Arvada") and the Olde Town Arvada Business Improvement District ("BID").

2.0 RECITALS AND PURPOSE.

2.1 Both Arvada and the BID acknowledge that a cooperative relationship is mutually beneficial to each organization and in the best interest of Arvada residents and Historic Olde Town Business and Property owners; and

2.2 Both Arvada and the BID believe that improved coordination will help focus mutual efforts, provide accountability of how public dollars are utilized, establish clear communication, clarify roles and responsibilities, and benefit the entire community while fostering Olde Town Arvada's ongoing economic vitality.

3.0 TERM. This Agreement shall be effective January 1, 2022 to December 31, 2022.

4.0 EXHIBITS. This Agreement shall include the following:

Exhibit A: The BID's Operating Plan;

Exhibit B: The BID's Fiscal Year 2022 Budget; and

Exhibit C: Arvada's Baseline Services.

5.0 ROLES AND RESPONSIBILITIES.

5.1. The BID agrees to:

5.1.1. Provide those programs and services identified in Exhibit A, "Operating Plan".

5.1.2. Acknowledge the partnership between Arvada and the BID, including noting the support of Arvada on advertising, and promotional literature.

5.1.3. The BID's Executive Director shall communicate directly with the City Manager or his or her designee regarding programs, service delivery, and cooperative opportunities and will facilitate regular

communications with the City Council.

- 5.1.4. Permit Arvada the right and ability to review financial records upon request from Arvada including, but not limited to monthly financial transaction reports and auditing of financial statements.

5.2. In addition to the funding identified in Paragraph 6.0, Arvada agrees to:

- 5.2.1 Designate one staff member to work with the BID Board to help ensure ongoing communication and program implementation.
- 5.2.2. Acknowledge the partnership between Arvada and the BID on Arvada's website and The Arvada Report.
- 5.2.3. Continue those baseline services now provided to the Olde Town as described in Exhibit C.
- 5.2.4. The City Manager or his or her designee shall communicate directly with the BID's Executive Director regarding programs, service delivery and cooperative opportunities.

6.0 BUDGET. Arvada agrees to provide \$68,000 for fiscal year 2022 to support the operation of the BID with the primary use of Arvada funds on public programs and services, such as enhanced maintenance, public safety, and event support as outlined in Exhibit B.

7.0 INSTALLMENT PAYMENTS. The BID will invoice Arvada in January for the first half of monies for the fiscal calendar year and on a quarterly basis thereafter for the total funding identified in Paragraph 6.0. Upon receipt of an invoice, Arvada shall have 30 days to render payment to the BID. The BID shall expend Arvada contributed funds on public programs and services as outlined in the Operating Plan and Fiscal Year 2022 budget (Exhibit A and B respectively). The BID shall provide a semi-annual status update and annual report summarizing all activities, events, programs, and significant accomplishments to the City Manager in July and December.

8.0 TERMINATION. Either party may, with 60 days written notice to the other party, terminate this contract. If the contract is terminated, the BID shall submit a final budget report within 45 days of receipt/submittal of such written notice detailing all funds received and expended to date. In the event there are unexpended funds remaining, the BID shall return such funds to Arvada. Termination of this contract shall not imply lack of support or affect other cooperative efforts by and between both parties.

9.0 AMENDMENT. Either party may seek to amend this Agreement including the

Work Plan and budget by providing a written request detailing the terms of the requested amendment. Both Arvada and the BID must approve any amendment for the amendment to take effect.

DATED THIS _____ day of _____, 2021.

CITY OF ARVADA

Marc Williams, Mayor

Attest:

City Clerk

Approved as to Form:

Rachel A. Morris, City Attorney

By: _____

OLDE TOWN ARVADA
BUSINESS IMPROVEMENT
DISTRICT

Joe Hengstler, Executive Director
director@oldetownarvada.org

EXHIBIT A
AGREEMENT BETWEEN THE CITY OF ARVADA AND THE OLDE TOWN
ARVADA BUSINESS IMPROVEMENT DISTRICT FOR THE FISCAL YEAR 2022
PROGRAMS AND SERVICES IN OLDE TOWN ARVADA

Olde Town Arvada BID 2022 Proposed Operating Plan

Name: Olde Town Arvada Business Improvement District (BID).

Legal Authority: A BID in Colorado is organized pursuant to the Business Improvement District Act, Section 31-25-1201 et seq.,

BID Boundaries: The BID area encompasses generally the commercial property in the area from the south side of Ralston Road on the north, Grandview Avenue on the south, Yukon on the west and Teller on the east, encompassing the Olde Town core, and allowing for future expansion south of Grandview Avenue and/or north of Ralston Road when the opportunity to do so arises. Personal property is not included in the BID boundary.

City Services: BID services are designed to supplement existing City services and will be in addition to City services that are currently provided in Olde Town.

Operating Plan: This plan includes goals, ideas and direction that support the mission and visions of BID Board. The plan shall subside and flow throughout the year and into the future as funding and priorities evolve. In no particular order, the plan includes and may not be limited to the following:

MARKETING - To create, partner and implement unique strategies that draw people from near and far to enjoy and patronize Olde Town Arvada through programs such as:

- Continued development and implementation comprehensive marketing plan.
- Host events and support partners' events and festivals.
- Increase social media engagement.
- Consistently provide monthly E-Newsletter to Merchants and/or public on current and up & coming information.
- Continue to market the district wide "gift card" program.
- Partnership with the Visitors Center and other strategic partners to promote Olde Town as a destination for visitors.
- Utilize board members and staff to engage new and existing businesses and owners to educate and promote the BID's efforts and projects.
- Identify and pursue other marketing opportunities as they arise throughout the year.

PLACEMAKING - To emphasize an attractive, historic, and engaging Olde Town through physical, interactive, and branding enhancements through programs such as:

- Seek and deploy a firm to design 'Gateway' arch signs, or other signature Olde Town signs.

- Creative Public Art opportunities and/or installations.
- Directional way finding and directories.
- Identify ways to enhance public spaces in District.
- Continue to pursue partnerships with the City to enhance public spaces.
- Other vitality initiatives as appropriate.

PHYSICAL IMPROVEMENTS & ENHANCED MAINTENANCE - To create an attractive and appealing environment while maintaining the Districts unique character and ambiance through programs and partnership such as:

- Streetscape and public space improvements.
- Power washing sidewalks.
- Upgrade and modernize Olde Town Square Kiosk.
- Other initiatives as appropriate.

ADVOCACY - To advocate for all aspects of a culturally and economically vibrant Olde Town through areas such as:

- Unified district voice.
- Advancing policies.
- Executive staffing oversight of operational advocacy and program management of increased partnerships and opportunities to promote the heart of the City.

PUBLIC SAFETY - To ensure Olde Town remains safe and inviting through programs such as:

- Arvada PD/CORE Team updates.
- Lighting & deterrent solutions.
- Continued safety training opportunities for businesses.

ADMINISTRATION - Annual compliance and delivery of BID programs and services through items such as but not limited to:

- Reporting
- Staffing & support
- Day to day operations

Assessment Methodology/Budget: The budget is based upon an 8.5 mill levy on taxable commercial real property (exempt and residential properties are not included in the BID), raising an estimated

\$131,000. The City of Arvada has agreed to match the BID assessment on a dollar-for-dollar basis up to \$68,000 for 2022 and amounts to be determined annually thereafter.

BID Governance: The BID statute allows for a board of 5 to 11 members who are BID electors. The Olde Town BID board currently consists of 11 members who are commercial property or business owners, or designees of such within the district.

Program Management Structure: The BID delivers programs and services for the areas of the district that pay into the BID through a mill levy. The BID has its own board, operating plan and staffing to support programming.

Term: The Olde Town Arvada BID has an initial ten-year term. This will allow for property owners to evaluate the BID's effectiveness at the end of the term. If the BID is deemed successful, the BID will request that the City Council renew the BID by ordinance after the initial period. If the BID is not considered to be successful, it will sunset at the end of the initial term.

EXHIBIT B
AGREEMENT BETWEEN THE CITY OF ARVADA AND THE OLDE TOWN
ARVADA BUSINESS IMPROVEMENT DISTRICT FOR THE FISCAL YEAR 2022
PROGRAMS AND SERVICES IN OLDE TOWN ARVADA

**Olde Town Arvada
Business Improvement District
2022 Budget**

	2020 Actual Budget	2021 Approved Budget	2021 Actual Budget* - estimate	2022 Budget
<u>Estimated Resources</u>				
<i>Beginning Fund Balance, Estimated</i>	\$166,485	\$168,790	\$168,790	\$118,744
Property tax	\$ 116,111	\$ 109,248	\$ 112,664	\$131,000
City of Arvada match	\$ 68,000	\$ 68,000	\$ 68,000	\$68,000
Marketing Partnerships & Sponsorships	\$ 2,000	\$ -		\$0
CARES Act Funding	\$ 142,500			
TOTAL AVAILABLE RESOURCES	\$ 495,096	\$ 346,038	\$ 349,454	\$317,744
<u>Estimated Expenditures</u>				
Marketing	\$15,331.00	\$55,000	\$42,000.00	Marketing \$48,000.00
Physical Improvements:	\$44,427.00	\$45,000	\$36,000.00	Placemaking/Mobility \$20,000.00
Enhanced Maintenance:	\$29,000.00	\$35,000	\$29,000.00	Physical Improvements/Maintenance \$35,000.00
Advocacy:	\$70,680.35	\$75,000	\$72,710.00	Advocacy \$3,000.00
Safety:	\$0.00	\$5,000	\$1,000.00	Safety \$5,000.00
Administration:	\$36,922.39	\$50,000	\$50,000.00	Administration \$165,000.00
CARES Act	\$142,500.00	N/A	N/A	COVID Response N/A
ESTIMATED EXPENDITURES	\$196,360.74	\$265,000	\$230,710.00	\$276,000
 Reserve Funds	 \$7,000.00	 \$20,000	 \$20,000.00	 \$20,000
TOTAL EXPENDITURES	\$203,360.74	\$285,000	\$250,710.00	\$296,000
 <i>Ending fund balance</i>	 \$166,485	 \$61,038	 \$118,744	 \$21,744
 Assessed value	 11,394,173	 13,637,228	 13,637,228	 15,422,721
Mill levy	8.5	8.5	8.5	8.5

2021 Actual Budget is based on end of year projections. Ending Fund Balance does not reflect savings account amount of \$75,513.53.

EXHIBIT C
AGREEMENT BETWEEN THE CITY OF ARVADA AND THE OLDE TOWN
ARVADA BUSINESS IMPROVEMENT DISTRICT FOR THE FISCAL YEAR 2022
PROGRAMS AND SERVICES IN OLDE TOWN ARVADA

City of Arvada Baseline Services
Olde Town Business Improvement District
2022

Baseline Services for Olde Town Arvada, defined as the area roughly between Ralston Road on the north to the G Line railroad tracks on the south, and from Wadsworth Bypass on the east to Yukon Street on the west, are provided by a variety of work groups within each work system.

Organizational and Service Effectiveness

- Review and approve special event permits and new liquor licensing applications/transfers of ownership
- Meeting with BID leadership as needed
- Sales tax collection and assistance with sales tax licensing, education and compliance.

Community and Economic Development and Urban Renewal

- Building permit applications and review.
- Code enforcement actions.
- Planning and zoning review, including site development plans and building permit applications.
- Design review for Applications for Certificates of Compliance with the Design Guidelines for Olde Town Arvada
- Façade loans and grants for building and site improvements, signage, water lines and taps, and other assistance.
- Marketing and relocation assistance about available properties in the downtown area.
- Marketing and information about area businesses and attractions through the Arvada Visitor's Center in conjunction with the Arvada Chamber of Commerce.
- Assistance with new business development and retention of existing businesses.
- Development financing and incentives and revitalization projects through the Arvada Urban Renewal Authority (AURA)
- Review of building permit applications and issuance of building permits as needed.
- Building permit construction inspections as needed.
- Building inspections as needed for safety concerns.
- Appointment of staff liaison to BID Board and consultation with the BID and other downtown stakeholders for regular reporting to City Council.
- Facilitating Council consideration of annual request for City matching funds.

Vibrant Community and Neighborhoods

- Coordination of public art program, including RFQ process, siting and future installations
- Olde Town Square fountain equipment pre-operation verification, and operation and maintenance from May 1st through September 30th.
- Weekly mowing and weeding of Olde Town Square turf, including twice yearly aeration and fertilization.
- Extensive tree, shrub and plant care to maintain health, vigor and aesthetic appearance according to accepted horticultural practices. This includes cutting back ornamental grasses, herbaceous perennials, and pruning all dead, diseased and dying branches. Pruning of ground covers to maintain neat, well-kept appearance. Regular pruning of trees to maintain desirable form, eliminate diseased or damaged growth, prevent health or safety hazards, and maintain sidewalk and street clearance. Once a year or more, extensive overall pruning will occur of all trees, shrubs, and plant material. Once a month winter tree watering is done on all trees throughout the streetscape tree wells.
- Staff will energize the irrigation system in the spring, winterize in the fall, adjust heads as needed, repair breaks in a timely manner, and prevent any interruptions in the watering cycles for all landscaping (McIlvoy Park and all other). Performance of routine maintenance on the system components on a weekly basis and winterization of the sprinkler system completed by October 15th.
- Annual flower bed preparation, including soil turning once a year in the fall and flower dead heading on an as needed basis. Daily watering during the growing season. Hand watering of flower pots on Grandview Avenue and the new pots installed since the closure on Olde Wadsworth daily. Flower pots on Old Wadsworth watered through a controller, with flowers displayed from May 1st through September 30th, weather permitting.
- Property owners are incharge of planting and watering flowers beds associated with the Parklets.
- Trash receptacles checked and if necessary, changed once a day 7 days a week from April 1st thru October 31st along with ground litter and debris. Through the winter (weather permitting) the trash receptacles and ground litter and debris are checked Monday through Friday.
- Site amenities such as trash receptacles, bike racks, light poles, banner poles, benches, history walk signs, electrical to tree wells and in shrub beds, brick pavers, and shade structures are inspected once a week and repairs made as necessary.
- Graffiti eradication including all surfaces throughout the site, including but not limited to: walkways, hard surfaces, benches, tables, boulders, retaining walls, signage, lighting and fencing as needed.
- Hanging of seasonal banners and switch out per season 4-6 times a year. Flags will be displayed on President's Day, Memorial Day, Flag Day, Independence Day, Labor Day, Harvest Festival and Veteran's Day.

- Weather permitting, the holiday lights are installed on the street trees approximately November 1st and displayed through March 1st. The holiday display in Olde Town Square is installed around Thanksgiving and displayed through January 1st. The entire display is inspected daily throughout the work week and repaired as necessary.
- Snow removal through the plaza, public parking lots and on all public sidewalk arteries (not adjacent to businesses). Snow removal occurs within twenty four hours after the snow fall, conducted with light duty equipment such as ATV's, snow blowers, etc.
- On call services for all of the special events that are held in Olde Town.

Safe Communities

- 3-5 Police Officers assigned to the overall Baker District 24 hours a day/seven days per week.
- CORE team established with presence in Olde Town in 2019
- Premise checks involving contact with business owners and employees, building relationships and security checks.
- Security for special events.
- Programs for businesses and residents in the area, including crime prevention through environmental design, training to businesses and their employees in reducing the occurrences of crime, as well as a number of other programs based on the needs of the business or resident.
- Ongoing collaboration with community partners in addressing homelessness awareness and impacts.
- Responding to service requests related to crime or traffic, as well as increases to crime or traffic in a particular area.
- Performance of directed traffic enforcement activities as needed
- Responding to animal control and code enforcement calls for service.
- Education and enforcement actions in Olde Town.

Infrastructure

- Parking operation, enforcement, and analysis to better utilize on-street and public parking areas. Staff to be available for BID Board meetings and Parking committee meetings to consider issues and problem resolution.
- Street sweeping as needed. Street sweeping within the closure area may be limited due to availability of equipment suitable for sweeping inside the closure area.
- Street and alley patching as needed.
- Snow removal—plow streets and as needed remove snow between Upham and Yukon and from Grandview to 58th. Snow removal inside the closure would be completed upon the conclusion of each snow event as needed.

- Traffic Signal installation, operation and maintenance as needed.
- Assess traffic circulation and access management as needed.
- Roadway sign installation and maintenance as needed.
- Operation and maintenance of historic style Acorn street lights.
- Striping and pavement marking of streets as needed
- Meter reading every two months for utility billing and maintenance purposes.
- Fire hydrant maintenance once per year per hydrant.
- Water system flushing every two years.
- Water line valve rotation once every two years.
- Repair of meter pits as needed (rare).
- Replacement of water system lines when needed—new system installed in 2005.
- Annual cleaning of sanitary sewer pipes.
- Replacement of wastewater system as needed.
- Grease trap inspection and maintenance.
- Inspection of sanitary sewer pipes every 5 years.
- Review and consultation about private sewer service line issues.
- On-call system for after-hours emergencies.
- Cleaning of stormwater system pipelines as needed—generally every 3 years.
- Replacement of stormwater system as needed—relatively new system at present.
- On-call system for after-hours stormwater management emergencies.
- Managing leases and city obligations for private parking lots
- Coordination with RTD (monthly reports) related to Commuter Parking at the OTTH
- OTTH and Transit Plaza Maintenance and Services through contracted services
- Transportation data collection and analysis as needed.



REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM
8.A.2.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: R21-147, A Resolution Authorizing an Agreement By and Between the City of Arvada and Sturgeon Electric Company, Inc. for CSB-18-TC-03 (CDOT Project No. M040-033, SA 22275) in an Amount Not to Exceed \$1,195,000.00

Report in Brief

Council action is requested on the attached resolution authorizing a construction agreement with Sturgeon Electric Company, Inc. for Traffic Signalization Plans for W. 58th Avenue and Independence Street and W. 86th Parkway and Kipling Street, Project No. 18-TC-03. This project will reconstruct the traffic signals at the intersections of West 58th Avenue and Independence Street and West 86th Parkway and Kipling Street with new traffic signal equipment and upgrade certain pedestrian infrastructure.

The Arvada team recommends that the City Council approve R21-147, A Resolution Authorizing an Agreement By and Between the City of Arvada and Sturgeon Electric Company, Inc. for CSB-18-TC-03 (CDOT Project No. M040-033, SA 22275) in an Amount Not to Exceed \$1,195,000.00.

Financial Impact

Funding for this project is available in Financial Project No. 93731, HSIP 58th and Independence and 93732, HSIP 86th and Kipling. The funding includes a \$950,000 federal grant that requires a 10% local match contribution. An additional \$245,000 of City funds were contributed to this project to supplement construction costs.

Background

In 2017, the City was awarded a grant funded through the Federal Highway Administration as part of the Highway Safety Improvement Program (HSIP). This program is a core Federal-aid program with the purpose of achieving a significant reduction in traffic fatalities and serious injuries on all public roads and whose objective is to target resources where they will be most effective, with a focus on performance.

This project will reconstruct the traffic signals at the intersections of West 58th Avenue and Independence Street and West 86th Parkway and Kipling Street with new traffic signal equipment that will include adding additional signal heads on various approaches. The addition of new signal heads will allow adequate coverage to provide one signal head to be centered over each of the respective lanes. The project will also include slight widening of the eastbound right turn lane at West 58th Avenue and Independence Street and upgrades to certain pedestrian infrastructure at both intersections. The improvements will increase the visibility of the signal indications, improve compliance with signal cues and address turning vehicle movements.

Advertisement for bids for this project occurred on October 15, 2021. Bids for this project were opened at 2:00 PM on November 5, 2021. A total of three (3) bids were received with Sturgeon Electric Company, Inc. submitting the lowest qualified bid. A detailed bid tabulation is attached and the bids are summarized as follows:

Sturgeon Electric Company, Inc: \$1,195,000.00
Lumin8 Transportation Technologies: \$1,244,262.50

Morton Electric, Inc: \$1,435,990.65
The Engineer's Estimate was \$1,267,057.75.

Discussion

Sturgeon Electric Company, Inc. has successfully completed similar projects for the City of Arvada and the Colorado Department of Transportation in the past and is on CDOT's pre-qualified bidders list. The contract time for this project is 90 working days from the issuance of the Notice to Proceed. Sturgeon Electric Company, Inc. is anticipated to begin construction by the end of March 2022.

Both intersections currently have antiquated signal equipment that does not meet current standards. The increased traffic volumes have resulted in safety concerns associated with poor operational characteristics. To address these safety concerns, this project will include the reconstruction of the traffic signals at both intersections with new traffic signal equipment that will include adding additional signal heads on various approaches. The addition of new signal heads will allow adequate coverage to provide one signal head to be centered over each of the respective lanes. The project will also include slight widening of the eastbound right turn lane at West 58th Avenue and Independence Street and upgrades to certain pedestrian infrastructure at both intersections. The improvements will increase the visibility of the signal indications, improve compliance with signal cues and address turning vehicle movements.

Public Contact

The City team, in partnership with CDOT, was able to successfully advertise this project. In addition, the City Council agenda was posted.

Commission Recommendation

N/A

Strategic Alignment

This action aligns with the City Council Strategic Plan Priority Area of Infrastructure.

Implementing routine and preventative measures on existing infrastructure greatly increases the efficiency of the City's transportation system while providing safe travel for all transportation modes.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that the City Council approve R21-147, A Resolution Authorizing an Agreement By and Between the City of Arvada and Sturgeon Electric Company, Inc. for CSB-18-TC-03 (CDOT Project No. M040-033, SA 22275) in an Amount Not to Exceed \$1,195,000.00.

Suggested Motion:

I move R21-147, A Resolution Authorizing an Agreement By and Between the City of Arvada and Sturgeon Electric Company, Inc. for CSB-18-TC-03 (CDOT Project No. M040-033, SA 22275) in an Amount Not to Exceed \$1,195,000.00, be (approved) (rejected).

Prepared by:

SUBJECT: R21-147, A Resolution Authorizing an Agreement By and Between the City of Arvada and Sturgeon Electric Company, Inc. for CSB-18-TC-03 (CDOT Project No. M040-033, SA 22275) in an Amount Not to Exceed \$1,195,000.00

PAGE: 3
ITEM: 8.A.2.

Sylvia Lopo, Traffic Engineer

Reviewed by:

Michele Broski, Executive Assistant 11/12/2021

Approved by:

Jacqueline Rhoades, City Engineer	11/17/2021
Don Wick, Director of Public Works	11/17/2021
Mazedur Hossain, Traffic Engineering Manager	11/18/2021
Bryan Archer, Director of Finance	11/19/2021
Tammy Hedlund, Legal Specialist	11/22/2021
Erika Pierce, Litigation Paralegal	11/22/2021
Jessica Morales, Assistant City Attorney	11/22/2021
Rachel Morris, City Attorney	11/22/2021
Lorie Gillis, Deputy City Manager	11/23/2021
Mark Deven, City Manager	11/23/2021

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R21-147

A RESOLUTION AUTHORIZING AN AGREEMENT BY AND BETWEEN THE CITY OF ARVADA AND STURGEON ELECTRIC COMPANY, INC. FOR CSB-18-TC-03 (CDOT PROJECT NO. M040-033, SA22275) IN AN AMOUNT NOT TO EXCEED \$1,195,000.00

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk to attest, in form approved by the City Attorney, an agreement, which is in substantially the same form as that attached hereto, by and between the City of Arvada and Sturgeon Electric Company, Inc. for CSB-18-TC-03 (CDOT Project No. M040-033, SA22275) in an amount not to exceed \$1,195,000.00.

Section 2. This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 6th day of December, 2021.

Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

BID TAB

City of Arvada Project: Traffic Signalization Plans for W. 58th Ave & Independence St and W. 86th Pkwy & Kipling St
Project Engineer: Sylvia Lopo

Project No. 18-TC-03 (CDOT Project No. M040-033, SA 22275)
Bid Opening: November 5, 2021

Item No.	Item Description	Bid Qty	Unit	Engineer's Estimate		Sturgeon Electric Company, Inc.		Lumin8 Transportation Technologies		Morton Electric, Inc.	
				Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
1	CLEARING AND GRUBBING	1.00	LS	\$10,000.00	\$10,000.00	\$2,410.00	\$2,410.00	\$4,400.00	\$4,400.00	\$5,340.00	\$5,340.00
2	REMOVAL OF TREE	3.00	EA	\$2,000.00	\$6,000.00	\$1,110.00	\$3,330.00	\$1,650.00	\$4,950.00	\$650.00	\$1,950.00
3	REMOVAL OF DELINEATOR	3.00	EA	\$25.00	\$75.00	\$75.00	\$225.00	\$123.00	\$369.00	\$500.00	\$1,500.00
4	REMOVAL OF CONCRETE MEDIAN COVER MATERIAL	35.00	SY	\$50.00	\$1,750.00	\$42.00	\$1,470.00	\$45.00	\$1,575.00	\$36.00	\$1,260.00
5	REMOVAL OF SIDEWALK	117.00	SY	\$35.00	\$4,095.00	\$39.00	\$4,563.00	\$45.00	\$5,265.00	\$37.50	\$4,387.50
6	REMOVAL OF CURB AND GUTTER	300.00	LF	\$15.00	\$4,500.00	\$12.00	\$3,600.00	\$15.00	\$4,500.00	\$14.50	\$4,350.00
7	REMOVAL OF CONCRETE CURB RAMP	98.00	SY	\$50.00	\$4,900.00	\$39.00	\$3,822.00	\$45.00	\$4,410.00	\$38.00	\$3,724.00
8	REMOVAL OF ASPHALT MAT	114.00	SY	\$35.00	\$3,990.00	\$39.00	\$4,446.00	\$45.00	\$5,130.00	\$50.60	\$5,768.40
9	REMOVAL OF PAVEMENT MARKING	521.50	SF	\$6.00	\$3,129.00	\$6.00	\$3,129.00	\$6.00	\$3,129.00	\$5.50	\$2,868.25
10	REMOVAL OF LIGHT STANDARD FOUNDATION	1.00	EA	\$1,000.00	\$1,000.00	\$655.00	\$655.00	\$1,275.00	\$1,275.00	\$980.00	\$980.00
11	REMOVAL OF GROUND SIGN	1.00	EA	\$250.00	\$250.00	\$200.00	\$200.00	\$123.00	\$123.00	\$460.00	\$460.00
12	REMOVAL OF SIGN (SPECIAL)	1.00	EA	\$7,500.00	\$7,500.00	\$2,510.00	\$2,510.00	\$3,895.00	\$3,895.00	\$1,200.00	\$1,200.00
13	REMOVAL OF TRAFFIC SIGNAL EQUIPMENT	1.00	LS	\$30,000.00	\$30,000.00	\$10,425.00	\$10,425.00	\$13,750.00	\$13,750.00	\$8,300.00	\$8,300.00
14	CLEAN INLET	1.00	EA	\$2,000.00	\$2,000.00	\$1,465.00	\$1,465.00	\$2,250.00	\$2,250.00	\$1,500.00	\$1,500.00
15	POTHOLING (SPECIAL)	60.00	EA	\$245.00	\$14,700.00	\$355.00	\$21,300.00	\$365.00	\$21,900.00	\$275.00	\$16,500.00
16	AGGREGATE BAG	470.00	LF	\$6.00	\$2,820.00	\$9.00	\$4,230.00	\$8.00	\$3,760.00	\$6.50	\$3,055.00
17	PRE-FABRICATED CONCRETE WASHOUT STRUCTURE (TYPE 1)	2.00	EA	\$2,500.00	\$5,000.00	\$3,250.00	\$6,500.00	\$3,700.00	\$7,400.00	\$550.00	\$1,100.00
18	STORM DRAIN INLET PROTECTION (TYPE 1)	16.00	LF	\$25.00	\$400.00	\$30.00	\$480.00	\$15.00	\$240.00	\$85.00	\$1,360.00
19	PRE-FABRICATED VEHICLE TRACKING PAD	2.00	EA	\$5,000.00	\$10,000.00	\$1,465.00	\$2,930.00	\$2,500.00	\$5,000.00	\$2,800.00	\$5,600.00
20	REMOVAL AND DISPOSAL OF SEDIMENT (LABOR)	32.00	HR	\$75.00	\$2,400.00	\$75.00	\$2,400.00	\$75.00	\$2,400.00	\$100.00	\$3,200.00
21	REMOVAL AND DISPOSAL OF SEDIMENT (EQUIPMENT)	32.00	HR	\$150.00	\$4,800.00	\$100.00	\$3,200.00	\$110.00	\$3,520.00	\$250.00	\$8,000.00
22	SWEEPING (SEDIMENT REMOVAL)	32.00	HR	\$150.00	\$4,800.00	\$180.00	\$5,760.00	\$325.00	\$10,400.00	\$50.00	\$1,600.00
23	EROSION CONTROL MANAGEMENT	40.00	DAY	\$300.00	\$12,000.00	\$350.00	\$14,000.00	\$400.00	\$16,000.00	\$347.00	\$13,880.00
24	RESET RADIO COMMUNICATION ANTENNA	1.00	EA	\$900.00	\$900.00	\$680.00	\$680.00	\$1,250.00	\$1,250.00	\$4,500.00	\$4,500.00
25	RESET GROUND SIGN	3.00	EA	\$375.00	\$1,125.00	\$415.00	\$1,245.00	\$225.00	\$675.00	\$650.00	\$1,950.00
26	RESET SIGN PANEL	3.00	EA	\$200.00	\$600.00	\$295.00	\$885.00	\$255.00	\$765.00	\$450.00	\$1,350.00
27	MODIFY INLET	1.00	EA	\$6,000.00	\$6,000.00	\$3,775.00	\$3,775.00	\$9,175.00	\$9,175.00	\$7,500.00	\$7,500.00
28	LANDSCAPE RESTORATION	1.00	LS	\$15,000.00	\$15,000.00	\$7,375.00	\$7,375.00	\$6,140.00	\$6,140.00	\$15,000.00	\$15,000.00
29	DECIDUOUS TREE (2 INCH CALIPER)	3.00	EA	\$750.00	\$2,250.00	\$575.00	\$1,725.00	\$750.00	\$2,250.00	\$494.00	\$1,482.00
30	WILDLIFE BIOLOGIST	20.00	HR	\$175.00	\$3,500.00	\$110.00	\$2,200.00	\$100.00	\$2,000.00	\$88.00	\$1,760.00
31	AGGREGATE BASE COURSE (CLASS 6)	50.00	TON	\$180.00	\$9,000.00	\$55.00	\$2,750.00	\$70.00	\$3,500.00	\$149.00	\$7,450.00
32	HOT MIX ASPHALT (PATCHING) (ASPHALT)	166.00	SY	\$300.00	\$49,800.00	\$295.00	\$48,970.00	\$350.00	\$58,100.00	\$195.00	\$32,370.00
33	REMOVAL OF NESTS	2.00	HR	\$175.00	\$350.00	\$170.00	\$340.00	\$145.00	\$290.00	\$128.00	\$256.00
34	DRILLED SHAFT (18 INCH)	16.00	LF	\$325.00	\$5,200.00	\$465.00	\$7,440.00	\$235.00	\$3,760.00	\$350.00	\$5,600.00
35	DRILLED SHAFT (36 INCH)	75.00	LF	\$500.00	\$37,500.00	\$570.00	\$42,750.00	\$475.00	\$35,625.00	\$500.00	\$37,500.00
36	18 INCH REINFORCED CONCRETE PIPE	80.00	LF	\$100.00	\$8,000.00	\$285.00	\$22,800.00	\$500.00	\$40,000.00	\$150.00	\$12,000.00
37	INLET TYPE 16 (5 FOOT)	1.00	EA	\$7,000.00	\$7,000.00	\$10,075.00	\$10,075.00	\$13,000.00	\$13,000.00	\$10,000.00	\$10,000.00
38	FENCE (PLASTIC)	150.00	LF	\$5.00	\$750.00	\$4.50	\$675.00	\$5.00	\$750.00	\$3.75	\$562.50
39	FENCE CHAIN LINK (72 INCH)	364.00	LF	\$30.00	\$10,920.00	\$19.00	\$6,916.00	\$40.00	\$14,560.00	\$33.00	\$12,012.00
40	12 FOOT GATE SINGLE (CHAIN LINK)	1.00	EA	\$250.00	\$250.00	\$965.00	\$965.00	\$1,000.00	\$1,000.00	\$900.00	\$900.00
41	CONCRETE SIDEWALK (6 INCHES)	139.00	SY	\$125.00	\$17,375.00	\$81.00	\$11,259.00	\$95.00	\$13,205.00	\$119.00	\$16,541.00
42	CONCRETE CURB RAMP	127.00	SY	\$250.00	\$31,750.00	\$155.00	\$19,685.00	\$185.00	\$23,495.00	\$218.00	\$27,686.00
43	CURB TYPE 2 (SECTION B)	38.00	LF	\$55.00	\$2,090.00	\$51.00	\$1,938.00	\$60.00	\$2,280.00	\$44.00	\$1,672.00
44	CURB AND GUTTER TYPE 2 (SECTION II-B)	277.00	LF	\$60.00	\$16,620.00	\$52.00	\$14,404.00	\$65.00	\$18,005.00	\$33.50	\$9,279.50
45	CURB AND GUTTER TYPE 2 (SECTION I-B) (SPECIAL)	24.00	LF	\$80.00	\$1,920.00	\$63.00	\$1,512.00	\$70.00	\$1,680.00	\$66.00	\$1,584.00
46	MEDIAN COVER MATERIAL (PATTERNED CONCRETE)	321.00	SF	\$50.00	\$16,050.00	\$28.00	\$8,988.00	\$35.00	\$11,235.00	\$33.00	\$10,593.00
47	DELINEATOR (TYPE 1)	2.00	EA	\$60.00	\$120.00	\$155.00	\$310.00	\$115.00	\$230.00	\$250.00	\$500.00
48	2 INCH ELECTRICAL CONDUIT (BORED)	990.00	LF	\$20.00	\$19,800.00	\$20.00	\$19,800.00	\$17.00	\$16,830.00	\$22.00	\$21,780.00
49	3 INCH ELECTRICAL CONDUIT (BORED)	720.00	LF	\$27.00	\$19,440.00	\$22.00	\$15,840.00	\$21.00	\$15,120.00	\$28.00	\$20,160.00
50	2 INCH ELECTRICAL CONDUIT (PLASTIC)	770.00	LF	\$15.00	\$11,550.00	\$17.00	\$13,090.00	\$17.00	\$13,090.00	\$23.00	\$17,710.00
51	3 INCH ELECTRICAL CONDUIT (PLASTIC)	480.00	LF	\$18.00	\$8,640.00	\$19.00	\$9,120.00	\$21.00	\$10,080.00	\$28.00	\$13,440.00

BID TAB

City of Arvada Project: Traffic Signalization Plans for W. 58th Ave & Independence St and W. 86th Pkwy & Kipling St
Project Engineer: Sylvia Lopo

Project No. 18-TC-03 (CDOT Project No. M040-033, SA 22275)
Bid Opening: November 5, 2021

Item No.	Item Description	Bid Qty	Unit	Engineer's Estimate		Sturgeon Electric Company, Inc.		Lumin8 Transportation Technologies		Morton Electric, Inc.	
				Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
52	TYPE TWO PULL BOX (13 X 24 X 12) (INCHES)	3.00	EA	\$1,400.00	\$4,200.00	\$880.00	\$2,640.00	\$925.00	\$2,775.00	\$1,320.00	\$3,960.00
53	PULL BOX (24 X 36 X 18) (INCHES)	6.00	EA	\$2,000.00	\$12,000.00	\$1,305.00	\$7,830.00	\$1,185.00	\$7,110.00	\$1,520.00	\$9,120.00
54	WIRING	1.00	LS	\$30,000.00	\$30,000.00	\$29,750.00	\$29,750.00	\$9,750.00	\$9,750.00	\$40,000.00	\$40,000.00
55	LUMINAIRE (LED)	6.00	EA	\$1,500.00	\$9,000.00	\$1,100.00	\$6,600.00	\$1,073.00	\$6,438.00	\$750.00	\$4,500.00
56	SERVICE METER CABINET	1.00	EA	\$7,000.00	\$7,000.00	\$5,165.00	\$5,165.00	\$2,025.00	\$2,025.00	\$5,000.00	\$5,000.00
57	SIGN PANEL (CLASS I) (INSTALL ONLY)	219.75	SF	\$25.00	\$5,493.75	\$24.00	\$5,274.00	\$22.00	\$4,834.50	\$20.00	\$4,395.00
58	STEEL SIGN POST (1.75 X 1.75 INCH TUBING)	10.00	LF	\$50.00	\$500.00	\$32.00	\$320.00	\$27.00	\$270.00	\$40.00	\$400.00
59	SIGNAL HEAD BACKPLATE	17.00	EA	\$425.00	\$7,225.00	\$75.00	\$1,275.00	\$213.00	\$3,621.00	\$309.00	\$5,253.00
60	PEDESTRAIN SIGNAL FACE (16) (COUNTDOWN)	10.00	EA	\$700.00	\$7,000.00	\$725.00	\$7,250.00	\$584.00	\$5,840.00	\$554.00	\$5,540.00
61	TRAFFIC SIGNAL FACE (12-12-12)	16.00	EA	\$900.00	\$14,400.00	\$1,050.00	\$16,800.00	\$778.00	\$12,448.00	\$777.00	\$12,432.00
62	TRAFFIC SIGNAL FACE (12-12-12-12)	9.00	EA	\$1,100.00	\$9,900.00	\$1,290.00	\$11,610.00	\$1,076.00	\$9,684.00	\$1,167.00	\$10,503.00
63	TRAFFIC SIGNAL FACE (12-12-12-12-12)	2.00	EA	\$1,300.00	\$2,600.00	\$1,470.00	\$2,940.00	\$1,165.00	\$2,330.00	\$1,252.00	\$2,504.00
64	TRAFFIC SIGNAL CONTROLLER CABINET	1.00	EA	\$27,000.00	\$27,000.00	\$18,680.00	\$18,680.00	\$18,695.00	\$18,695.00	\$18,325.00	\$18,325.00
65	PEDESTRIAN PUSH BUTTON STATION AND SIGN	12.00	EA	\$1,000.00	\$12,000.00	\$1,540.00	\$18,480.00	\$1,212.00	\$14,544.00	\$1,689.00	\$20,268.00
66	PEDESTRIAN PUSH BUTTON POST ASSEMBLY	3.00	EA	\$1,500.00	\$4,500.00	\$995.00	\$2,985.00	\$690.00	\$2,070.00	\$1,041.00	\$3,123.00
67	FIRE PREEMPTION UNIT	4.00	EA	\$4,000.00	\$16,000.00	\$3,980.00	\$15,920.00	\$3,285.00	\$13,140.00	\$4,202.00	\$16,808.00
68	MICROWAVE VEHICLE RADAR DETECTION	12.00	EA	\$9,000.00	\$108,000.00	\$7,240.00	\$86,880.00	\$7,550.00	\$90,600.00	\$6,984.00	\$83,808.00
69	TRAFFIC SIGNAL CONTROLLER (INSTALL ONLY)	1.00	EA	\$3,000.00	\$3,000.00	\$200.00	\$200.00	\$500.00	\$500.00	\$985.00	\$985.00
70	TRAFFIC SIGNAL-LIGHT POLE STEEL (20 FOOT MAST ARM)	1.00	EA	\$18,000.00	\$18,000.00	\$20,775.00	\$20,775.00	\$20,397.00	\$20,397.00	\$29,125.00	\$29,125.00
71	TRAFFIC SIGNAL-LIGHT POLE STEEL (30 FOOT MAST ARM)	1.00	EA	\$20,000.00	\$20,000.00	\$22,625.00	\$22,625.00	\$22,410.00	\$22,410.00	\$29,125.00	\$29,125.00
72	TRAFFIC SIGNAL-LIGHT POLE STEEL (35 FOOT MAST ARM)	1.00	EA	\$25,000.00	\$25,000.00	\$28,200.00	\$28,200.00	\$28,385.00	\$28,385.00	\$29,125.00	\$29,125.00
73	TRAFFIC SIGNAL-LIGHT POLE STEEL (50 FOOT MAST ARM)	2.00	EA	\$35,000.00	\$70,000.00	\$36,390.00	\$72,780.00	\$37,290.00	\$74,580.00	\$39,975.00	\$79,950.00
74	TRAFFIC SIGNAL-LIGHT POLE STEEL (55 FOOT MAST ARM)	1.00	EA	\$40,000.00	\$40,000.00	\$39,440.00	\$39,440.00	\$40,502.00	\$40,502.00	\$39,975.00	\$39,975.00
75	TRAFFIC SIGNAL PEDESTAL POLE STEEL	4.00	EA	\$1,750.00	\$7,000.00	\$1,610.00	\$6,440.00	\$2,100.00	\$8,400.00	\$1,681.00	\$6,724.00
76	UNINTERRUPTED POWER SUPPLY	1.00	EA	\$9,000.00	\$9,000.00	\$5,340.00	\$5,340.00	\$6,185.00	\$6,185.00	\$7,973.00	\$7,973.00
77	FIBER OPTIC CABLE (SINGLE MODE) (12 FIBER)	200.00	LF	\$20.00	\$4,000.00	\$8.00	\$1,600.00	\$13.00	\$2,600.00	\$11.00	\$2,200.00
78	CLOSED CIRCUIT TELEVISION CAMERA (TRAFFIC SURVEILLANCE)	2.00	EA	\$9,000.00	\$18,000.00	\$6,435.00	\$12,870.00	\$5,187.00	\$10,374.00	\$5,808.00	\$11,616.00
79	TEST FIBER OPTIC CABLE	1.00	LS	\$2,000.00	\$2,000.00	\$3,525.00	\$3,525.00	\$1,100.00	\$1,100.00	\$975.00	\$975.00
80	ETHERNET SWITCH	1.00	EA	\$7,500.00	\$7,500.00	\$2,100.00	\$2,100.00	\$4,588.00	\$4,588.00	\$5,500.00	\$5,500.00
81	CONSTRUCTION SURVEYING	1.00	LS	\$50,000.00	\$50,000.00	\$15,845.00	\$15,845.00	\$12,275.00	\$12,275.00	\$15,972.00	\$15,972.00
82	MOBILIZATION	1.00	LS	\$60,000.00	\$60,000.00	\$48,000.00	\$48,000.00	\$64,720.00	\$64,720.00	\$270,000.00	\$270,000.00
83	PAVEMENT MARKING PAINT (HIGH BUILD)	2.00	GAL	\$1,000.00	\$2,000.00	\$575.00	\$1,150.00	\$615.00	\$1,230.00	\$578.00	\$1,156.00
84	PREFORMED THERMOPLASTIC PAVEMENT MARKING	518.00	SF	\$25.00	\$12,950.00	\$20.00	\$10,360.00	\$22.00	\$11,396.00	\$17.00	\$8,806.00
85	FLAGGING	32.00	HR	\$100.00	\$3,200.00	\$30.00	\$960.00	\$35.00	\$1,120.00	\$37.50	\$1,200.00
86	UNIFORMED TRAFFIC CONTROL	32.00	HR	\$250.00	\$8,000.00	\$125.00	\$4,000.00	\$150.00	\$4,800.00	\$189.00	\$6,048.00
87	TRAFFIC CONTROL INSPECTION	30.00	DAY	\$200.00	\$6,000.00	\$55.00	\$1,650.00	\$62.00	\$1,860.00	\$165.00	\$4,950.00
88	TRAFFIC CONTROL MANAGEMENT	150.00	DAY	\$500.00	\$75,000.00	\$1,245.00	\$186,750.00	\$1,225.00	\$183,750.00	\$1,100.00	\$165,000.00
89	CONSTRUCTION TRAFFIC SIGN (PANEL SIZE A)	41.00	EA	\$60.00	\$2,460.00	\$27.00	\$1,107.00	\$31.00	\$1,271.00	\$38.50	\$1,578.50
90	CONSTRUCTION TRAFFIC SIGN (PANEL SIZE B)	36.00	EA	\$70.00	\$2,520.00	\$27.00	\$972.00	\$31.00	\$1,116.00	\$49.50	\$1,782.00
91	PORTABLE MESSAGE SIGN PANEL	4.00	EA	\$5,000.00	\$20,000.00	\$3,625.00	\$14,500.00	\$4,235.00	\$16,940.00	\$1,980.00	\$7,920.00
92	ADVANCE WARNING FLASHING OR SEQUENCING ARROW PANEL (C TYPE)	4.00	EA	\$2,500.00	\$10,000.00	\$1,050.00	\$4,200.00	\$1,227.00	\$4,908.00	\$275.00	\$1,100.00
93	DRUM CHANNELIZING DEVICE	50.00	EA	\$30.00	\$1,500.00	\$11.00	\$550.00	\$13.00	\$650.00	\$38.50	\$1,925.00
94	TRAFFIC CONE	100.00	EA	\$15.00	\$1,500.00	\$11.00	\$1,100.00	\$13.00	\$1,300.00	\$13.20	\$1,320.00
95	F/A MINOR CONTRACT REVISIONS	1.00	FA	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
96	F/A FUEL COST ADJUSTMENT	1.00	FA	\$5,000.00	\$5,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
97	F/A ON-THE-JOB TRAINEE	1.00	FA	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
98	F/A FURNISH & INSTALL ELECTRIC SERVICE	1.00	FA	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
99	F/A EROSION CONTROL	1.00	FA	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
BID TOTAL				\$1,267,057.75		\$1,195,000.00		\$1,244,262.50		\$1,435,990.65	
RANK						1		2		3	

**AN AGREEMENT BY AND BETWEEN THE CITY OF ARVADA AND
STURGEON ELECTRIC COMPANY, INC. FOR CSB-18-TC-03 (CDOT
PROJECT NO. M040-033, SA22275) IN AN AMOUNT NOT TO EXCEED
\$1,195,000.00**

This Agreement made this _____ day of _____, 2021 by and between the City of Arvada, a home rule municipal corporation (“Arvada” and/or “City”) whose mailing Address is 8101 Ralston Road, Arvada, CO 80002 and Sturgeon Electric Company, Inc., a corporation, whose principal place of business is 12150 E. 112th Ave., Henderson, CO 80640 (“Contractor”).

WITNESSETH: That for and in consideration of the covenants, promises, and payments hereinafter mentioned:

1. Contractor will commence and complete the Traffic Signalization Plans for W. 58th Ave & Independence St. and W. 86th Pkwy & Kipling St., described in the Contract Documents, relating to CSB-18-TC-03 (CDOT Project No. M040-033, SA22275), issued October 15, 2021 (the “Work”).
2. Contractor will furnish all material, supplies, tools, equipment, labor, and other services necessary for the completion of the Work.
3. Contractor will commence the work required by the Contract Documents within **five (5) calendar days** after the date of Notice to Proceed.
4. Contractor will complete the work required by the Contract Documents by **ninety (90) working days** after the date of the Notice to Proceed unless the period for completion is extended otherwise by the Contract Documents.
5. Contractor agrees to perform all of the work described in the Contract Documents for an amount not to exceed **\$1,195,000.00** for the Work.
6. The term “Contract Documents” means and includes the following:
 - A. Arvada’s Competitive Sealed Bid Request for Traffic Signalization Plans for W. 58th Ave & Independence St and W. 86th Pkwy & Kipling St., CSB- 18-TC-03 (CDOT Project No. M040-033, SA22275) (“CSB”);
 - B. CSB Exhibits (if any);
 - C. CSB Addenda (if any);
 - D. Contractor’s Response to CSB- 18-TC-03 (CDOT Project No. M040-033, SA22275), Advertisement for Bid, Bid Proposal, Bid Schedule, Bid Bond;
 - E. Notice of Award;
 - F. Performance and Payment Bond;
 - G. Notice to Proceed;
 - H. Change Orders (if any);

- I. City of Arvada Engineering Code of Standards and Specifications for the Design and Construction of Public Improvements;
- J. Project special provisions prepared or issued by City of Arvada (or its Consultant if applicable);
- K. Detail drawings and Bid Documents prepared or issued by City of Arvada (or its Consultant if applicable);
- L. Specification Illustrations and attachments; and
- M. All supplementary requirements regarding wage rates, E.E.O., affirmative action, DOT Standard Title VI Assurances and Non-Discrimination Provisions with related Appendices, FHWA Required Contract Provisions Federal-Aid Construction Contracts Revised May 1, 2012, and all other Federal-State requirements as outlined in the specifications.

7. INVOICES AND COMPENSATION. Contractor will follow Bid schedule and partial payments will be made accordingly NET fifteen (15) but no later than NET thirty (30).

8. GENERAL TERMS AND CONDITIONS, SPECIAL TERMS AND CONDITIONS, INSURANCE REQUIREMENTS, PROJECT SPECIAL PROVISIONS, AND OTHER CSB REQUIREMENTS. Contractor affirms that it has read and is familiar with the Contract Documents, including but not limited to the General Terms and Conditions, Special Terms and Conditions, Insurance Requirements, Project Special Provisions, DOT Standard Title VI Assurances and Non-Discrimination Provisions with related Appendices, and other CSB requirements, and agrees to be bound by those terms and conditions.

9. PREFERENCES IN EMPLOYMENT OF COLORADO LABOR. To the extent that obligations and responsibilities may be established by C.R.S. § 8-17-101 *et seq.*, as amended, with respect to certain public entities and those contracting therewith as to the procurement of services:

- a. Colorado labor shall be employed to perform eighty percent (80%) of the work.
- b. Any waiver of this requirement must comply with C.R.S. § 8-17-101 *et seq.*, as amended.

10. PERFORMANCE MEASURES. The Performance Measures for this Agreement shall be those outlined by Arvada in Section 21 of Special Terms and Conditions for Bidders in the CSB, which are included in the Contract Documents that are exhibits to this agreement.

11. ADDITIONAL DOCUMENTS OR ACTION. The parties agree to execute any additional documents and to take any additional action that is necessary to carry out this Agreement.

12. BINDING EFFECT. This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

13. PARAGRAPH CAPTIONS. The paragraph captions in this Agreement are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

14. INTEGRATION, AMENDMENT, AND SEVERABILITY. This Agreement represents the entire agreement between the parties, and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect if the essential terms and conditions of this Agreement for both parties remain valid, legal, and enforceable.

15. NOTICES. Any notice or notification required or permitted by the Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice or notification shall be deemed to have been given when deposited in the United States mail.

16. BINDING AUTHORITY. Contractor represents and affirms that the signature page hereof accurately states the full legal name of Contractor (whether as a corporation, partnership, limited liability company, sole proprietorship, or other), contains all requisite signature(s) on behalf of Contractor, has been properly acknowledged by attestation, notary acknowledgment, or both, and in all other respects is effective to bind Contractor, in accordance with all applicable statutes, regulations, resolutions, rules, bylaws, agreements, or similar sources of authority or limitation. This Agreement may be executed in counterpart(s), each of which shall be deemed to be an original, and all of which, taken together, shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Contract Agreement in three copies, each of which shall be deemed an original on the date first above written.

[Signatures on next page]

CITY OF ARVADA, COLORADO

Marc Williams, Mayor
8101 Ralston Road
Arvada, CO 80002

ATTEST/WITNESS:

City Clerk

APPROVED AS TO FORM:

For Rachel A. Morris, City Attorney

By:_____

**STURGEON ELECTRIC COMPANY,
INC.**

Jim Bushnell, Vice President CO
Transportation
12150 E 112th Ave.
Henderson, CO 80640
JBushnell@myrgroup.com



REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM
8.A.3.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: R21-148 A Resolution Approving A Second Amendment To The Parkway Center Subdivider's Agreement

Report in Brief

At the request of the developer, the purpose of this Second Amendment To The Parkway Center Subdivider's Agreement is to clarify the remaining obligations of the original agreement and the first amendment. The outstanding items are related to impact fees to be collected by the City of Aravda for both W. 67th Avenue and Eldridge Street. W. 67th Avenue has been completed by the owner/developer and is currently in the City warranty process. The City is holding \$50,000 of the impact fees in escrow during the warranty period. The remaining funds for W. 67th Avenue may be remitted to the owner/developer for the reimbursement of W. 67th Avenue per the first amendment. As additional funds are collected by the City for W. 67th Avenue when land is sold and developed in Parkway Center, the City will remit those funds to the owner/developer per the second amendment. Funds collected by the City for Eldridge Street will be held in a City CIP fund for the future development of Eldridge Street per the agreement.

The Arvada team recommends that the City Council approve R21-148, A Resolution Approving A Second Amendment To The Parkway Center Subdivider's Agreement.

Financial Impact

There is no financial impact to the City for this agreement.

Background

The original subdivider's agreement for Parkway Center was approved on January 5, 1981, and then amended on May 26, 1999. All of the provisions of both the original subdivider's agreement and the first amendment have been completed except for those noted in this second amendment. The outstanding items are related to impact fees to be collected by the City of Aravda for both W. 67th Avenue and Eldridge Street. W. 67th Avenue has been completed by the owner/developer and is currently in the City warranty process. The City is holding \$50,000 of the impact fees in escrow during the warranty period. The remaining funds for W. 67th Avenue may be remitted to the owner/developer for the reimbursement of W. 67th Avenue per the first amendment. As additional funds are collected by the City for W. 67th Avenue when land is sold and developed in Parkway Center, the City will remit those funds to the owner/developer per the second amendment. Funds collected by the City for Eldridge Street will be held in a City CIP fund for the future development of Eldridge Street per the agreement.

Discussion

Attached is the Second Amendment that outlines the remaining obligations of Parkway Investment Company and the City. The Second Amendment includes an up-to-date accounting of impact fees collected and what is remaining, as well as provides a time line for reimbursement of fees as was agreed to in the First Amendment.

This Second Amendment does not add new obligations to the parties. It does reaffirm in clear terms what obligations remain from the original agreement from 1981 and the first amendment from 1999. Parkway Investment Company hopes to sell the remaining parcels and finalize their role in this development by the end of next year. This Second Amendment provides a clear

roadmap of what is required of Parkway Investment Company to finalize their obligations regarding public improvements and memorializes the agreed upon status of current impact fees. Attached to the Second Amendment are two spreadsheets listing the collected impact fees for each public improvement project, specifically W. 67th Avenue and Eldridge Street.

Public Contact

Posting of the City Council agenda.

Commission Recommendation

N/A

Strategic Alignment

The project is consistent with the principles included within the Community and Economic Development Priority Area of the City Council Strategic Plan. The following principle aligns with the recommended action:

Ensures the alignment of all City Master Plans providing an aligned and integrated approach to the achievement of strategic and operational targets.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that City Council approve R21-148, A Resolution Approving A Second Amendment To The Parkway Center Subdivider's Agreement.

Suggested Motion:

I move that R21-148, A Resolution Approving A Second Amendment To The Parkway Center Subdivider's Agreement, be (approved) (rejected).

Prepared by:

Josie Suk, Development Systems and Administrative Manager

Reviewed by:

Approved by:

Robert Smetana, Manager of City Planning and Development	11/10/2021
Ryan Stachelski, Director of Community and Economic Development	11/15/2021
Gail Walker, Legal Specialist-Contracts	11/17/2021
Emily Grogg, Senior Assistant City Attorney	11/18/2021
Rachel Morris, City Attorney	11/19/2021
Lorie Gillis, Deputy City Manager	11/23/2021

SUBJECT: R21-148 A Resolution Approving A Second Amendment To The Parkway
Center Subdivider's Agreement

PAGE: 3
ITEM: 8.A.3.

Mark Deven, City Manager

11/23/2021

Enclosure, exhibits & attachments required to support the report

RESOLUTION NO. R21-148

A RESOLUTION APPROVING A SECOND AMENDMENT TO THE
PARKWAY CENTER SUBDIVIDER'S AGREEMENT

WHEREAS, the City and the Owner/Developer entered into the Parkway Center Subdivider's Agreement ("Original Agreement") on or about January 5, 1981, and recorded the Original Agreement with the clerk and recorder for Jefferson County, Colorado, on April 10, 1981, at Reception Number 81024686; and

WHEREAS, the City and the Owner/Developer entered into the First Amendment to the Parkway Center Subdivider's Agreement on or about May 26, 1999 ("First Amendment") and recorded the First Amendment with the clerk and recorder for Jefferson County, Colorado, on May 27, 1999, at Reception Number F0878001;

WHEREAS, the parties desire to amend the Original Agreement and First Amendment as set forth herein.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk to attest, in form approved by the City Attorney, an Agreement, which is in substantially the same form as that attached hereto, by and between the City of Arvada and Parkway Investment Co.

Section 2. This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 6th day of December, 2021.

Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

**SECOND AMENDMENT TO THE
PARKWAY CENTER SUBDIVIDER'S AGREEMENT**

This Second Amendment to the Parkway Center Subdivider's Agreement ("Second Amendment") is entered into and made between PARKWAY INVESTMENT CO, a Colorado Limited Partnership, whose address is 50 Glenmoor Circle, Englewood, CO 80113, hereinafter referred to as "Owner/Developer," and the CITY OF ARVADA, COLORADO, a municipal corporation of the State of Colorado, whose address is 8101 Ralston Road, Arvada, Colorado 80002, hereinafter referred to as the "City." This Second Amendment shall be effective following its execution by the Owner/Developer, and immediately upon approval by the City Council of the City of Arvada as evidenced by the signature of the City's Mayor or Mayor Pro Tem on the date indicated below.

RECITALS AND REPRESENTATIONS:

WHEREAS, the City and the Owner/Developer entered into the Parkway Center Subdivider's Agreement ("Original Agreement") on or about January 5, 1981, and recorded the Original Agreement with the clerk and recorder for Jefferson County, Colorado, on April 10, 1981, at Reception Number 81024686; and

WHEREAS, the City and the Owner/Developer entered into the First Amendment to the Parkway Center Subdivider's Agreement on or about May 26, 1999 ("First Amendment") and recorded the First Amendment with the clerk and recorder for Jefferson County, Colorado, on May 27, 1999, at Reception Number F0878001;

WHEREAS, the original plat for the Subdivision was recorded on April 10, 1981. There were five subsequent replats, through Filing No. 6, all recorded. A copy of the six recorded plats/replats are attached hereto and collectively referred to as the "Plats"; and

WHEREAS, the parties desire to amend the Original Agreement and First Amendment as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the parties, the sufficiency and adequacy of which are hereby acknowledged by the parties, the parties hereto agree to amend both the Original Agreement and the First Amendment as follows:

A.

All agreements, covenants, duties, and obligations, monetary or otherwise, of Owner/Developer in the Original Agreement and the Plats, which were not deleted by, or amended by, the First Amendment, have been satisfied in full by the Owner/Developer.

B.

Except as detailed, below, all agreements, covenants, duties, and obligations, monetary or otherwise, of Owner/Developer in the First Amendment, have been satisfied in full by the Owner/Developer:

PARAGRAPH 1

Paragraph 1 of the First Amendment describes, among other things, the obligations of the City and the Owner/Developer regarding the construction of, and payment for, Eldridge Street and West 67th Avenue. The only remaining obligations of Owner/Developer under paragraph 1 of the First Amendment relate to Eldridge Street and West 67th Avenue. All other agreements, covenants, duties and obligations, monetary or otherwise, of the Owner/Developer under paragraph 1 have been satisfied in full.

Paragraph 1 in the First Amendment provides that the City shall finance and build (the remainder of) Eldridge Street from the funds collected by the Impact Fees when the City deems it necessary, but shall start no later than ten years after 100% of the cost of Eldridge Street is received by the City. The costs of building Eldridge Street are to be paid as follows. The cost for the west half of constructing Eldridge Street shall be paid from impact fees paid to the City by Owner/Developer, or persons or entities who buy lots within the Subdivision from Owner/Developer, at the time of the issuance of building permits on each lot included within an "impact lot zone," as is defined in the First Amendment (hereafter "Impact Fees"). The Impact Lot Zone is defined to be Lots 7 and 8 of Block 3; Lots 1-7 in Block 4; Lots 1-5 in Block 5; Lots 1-5 in Block 6; and Lots 1 and 2 in Block 7. The Impact Fees are to be paid to the City to be held in escrow until all of the Impact Fees required by the First Amendment have been paid to the City.

The First Amendment divides the Impact Fees into three parts, to be used for funding the construction of three separate roads within the Subdivision. Only two of those parts are relevant here: Eldridge Street and West 67th Avenue. Exhibit B to the First Amendment assesses .46¢ per square foot according to the formula and descriptions for same contained in Exhibit B to fund the construction of the west half of Eldridge Street. A portion of Eldridge Street has been constructed and paid for and is now in use, while the remainder has not been constructed. The portion remaining to be constructed by the City is located from approximately Lot 4, Block 4 south to West 66th Avenue. Exhibit D to the First Amendment provides for Impact Fees of .15¢ per square foot according to the formula and descriptions for same contained in Exhibit D to fund the construction of West 67th Avenue. The City and Parkway agreed that Parkway would construct West 67th Avenue pursuant to the First Amendment. West 67th Avenue has been constructed and was completed in the first half of 2021. On September 8, 2021, the City of Arvada determined that the West 67th Avenue public improvements within the Subdivision were constructed in accordance with the approved plans and Standard Specifications of the City of Arvada and are conditionally approved into the City of Arvada system as of September 1, 2021 (a.k.a. "Warranty Commencement date").

In accordance with the Standard Specifications of the City, Owner/Developer is responsible for all maintenance, settlement, repairs and damages pertaining to the aforesaid construction for a period of two (2) years from the Warranty Commencement date. Also, if final landscaping has not been completed as of this date, adjustments to public improvements under warranty, i.e., fire hydrants, may be required to be adjusted at the time of final inspection. Re-inspection of the West 67th Avenue public improvements will be made approximately one (1) year and nine (9) months from the Warranty Commencement Date and any deficiencies noted shall be corrected to the satisfaction of the City Engineer prior to final acceptance of the work.

The City has the obligation for constructing and paying for the east half of Eldridge Street.

The City is currently holding substantial funds in escrow collected as Impact Fees as described in the First Amendment. Attached to this Second Amendment is the most current spreadsheet prepared by the City showing the Impact Fees now being held by the City. Additional Impact Fees will continue to be collected by the City until Owner/Developer has sold the remaining four lots that it owns in Parkway Center and the Impact Fees are paid for those four lots by the then owners of same.

PARAGRAPH 18

Paragraph 18 of the First Amendment deals with the design, construction and payment for West 67th Avenue. As noted, above, West 67th Avenue is now completed and has been accepted by the City, subject to the warranty obligations of the Owner/Developer. Additionally, Owner/Developer and the City agreed, in a written document dated May 23, 2019, a copy of which is attached to this Second Amendment, that a "Bond" in the amount of Fifty Thousand Dollars (\$50,000.00) from the Impact Fees collected by the City for West 67th Avenue shall be held by the City for a period of two (2) years and then released to Owner/Developer.

C.

As to the Impact Fees collected to date, and to be collected in the future by the City, related to West 67th Avenue, the parties agree that on or before February 1, 2022, the City shall pay to Owner/Developer the amount of \$104,877.62 plus the interest accrued between January 1, 2021 and February 1, 2022, which constitutes the Impact Fees held by the City related to West 67th Avenue, less the \$50,000.00 "Bond" which Owner/Developer agreed will be retained by the City for two years. The City agrees that it shall pay to Owner/Developer the remainder of the Impact Fees collected for, and related to, West 67th Avenue by the City, which have not been retained by the City in accordance with its rights as described in the First Amendment to utilize such funds with regard to the warranty obligations of Owner/Developer related to West 67th Avenue, no later than the two years after the Warranty Commencement Date.

As to Eldridge Street, as provided at page 2 of the First Amendment, the City will finance and construct Eldridge Street partly from the funds collected by the Impact Fees. Construction will occur at a time deemed necessary by the City but shall commence no later than 10 years

from the date that 100 percent of the total estimated cost of the improvements is received by the City. If construction does not commence within said 10 years, then all of the Eldridge Street escrow funds shall be returned to Owner/Developer, with interest compounded at 5% annually.

Except for those obligations of Owner/Developer specifically set forth in Section B, above, and the warranty obligations for West 67th Avenue, Owner/Developer has satisfied all agreements, covenants, duties, and obligations, monetary or otherwise, under the Plats, the Original Agreement, the First Amendment and this Second Amendment.

DATED this ____ day of _____, 2021.

CITY:

City of Arvada, a Colorado
municipal corporation
8101 Ralston Road
Arvada, CO 80002

By: _____
Mayor or Mayor Pro Tem

ATTEST:

City Clerk

APPROVED AS TO FORM:

For Rachel A. Morris, City Attorney

OWNER/DEVELOPER:

Parkway Investment Co, a Colorado
limited partnership

By its General Partner, MAC Holdings, Inc.
a Colorado corporation

By: _____
Peter Niederman
Vice-President

State of _____)
) ss.
County of _____)

This Second Amendment to the Parkway Center Subdivider's Agreement was acknowledged before me this _____ day of _____, 2021, by Parkway Investment Co, a Colorado limited partnership by Peter Niederman as Vice-President of its General Partner, MAC Holdings, Inc., a Colorado corporation.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public



1800 Larimer Street, Suite 1700
Denver, Colorado 80202
T 303.892.1111
ngkf.com

May 23, 2019

Ryan Stachelski
Director, Community and Economic Development
City of Arvada
8101 Ralston Road
Arvada, CO 80002

Re: Escrow funds for Warranty Guaranty for West 67th Ave

Dear Ryan,

Per your email today, this letter shall serve as authorization for the City of Arvada to hold \$50,000 of the \$80,425.90 escrow, currently in escrow with the City of Arvada for the construction of West 67th Avenue. It is the understanding that this deposit "Bond" shall be held for a period of two years and then released to the Parkway Center Investment Company. The remaining balance, \$30,425.90 shall be released upon the completion and acceptance of the West 67th Avenue construction project. The additional impact fees to be collected for the escrow shall be available to Parkway Investment Company for the reimbursement of construction costs for West 67th Ave.

Thank you for your assistance with this project.

Best Regards,

A handwritten signature in cursive script that reads 'Kittie L. Hook'.

Kittie L. Hook
Managing Director

Approved by Parkway Investment Company

DocuSigned by:
A handwritten signature in cursive script that reads 'Peter Niederman'.
Peter Niederman as Vice President of Mac Holdings, Inc.,
as General Partner of Parkway Investment Company,
a Colorado limited partnership,
on behalf of such limited partnership.

May 23, 2019
Date

81024687 189, AR. R. 100-1-33 30.00

KKBNA
CONSULTING ENGINEERS

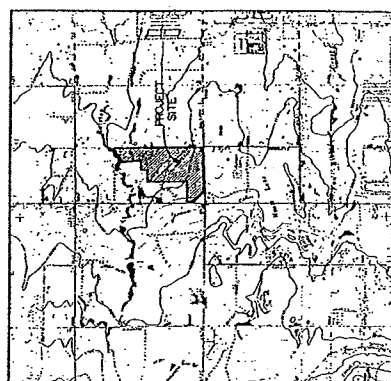
GENERAL NOTES:

1. THESE ARE THE FINAL PLATS FOR THE PARKWAY CENTER SUBDIVISION, FINAL PLAT, REPLAT OF A PORTION OF COBE LABORATORIES ARVADA BUILDING SITE, ALL BEING A PART OF THE WEST HALF SECTION 6, T3S, R69W.
2. THE PLAT IS SUBJECT TO THE EASEMENTS AND RESTRICTIONS SET FORTH IN THE DEEDS OF RECORD IN THE PUBLIC RECORDS OF THE CITY OF ARVADA, COLORADO.
3. THE PLAT IS SUBJECT TO THE EASEMENTS AND RESTRICTIONS SET FORTH IN THE DEEDS OF RECORD IN THE PUBLIC RECORDS OF THE CITY OF ARVADA, COLORADO.
4. THE PLAT IS SUBJECT TO THE EASEMENTS AND RESTRICTIONS SET FORTH IN THE DEEDS OF RECORD IN THE PUBLIC RECORDS OF THE CITY OF ARVADA, COLORADO.
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10. THE PLAT IS SUBJECT TO THE EASEMENTS AND RESTRICTIONS SET FORTH IN THE DEEDS OF RECORD IN THE PUBLIC RECORDS OF THE CITY OF ARVADA, COLORADO.

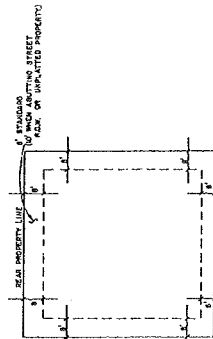
**PARKWAY CENTER SUBDIVISION
FINAL PLAT
AND
REPLAT OF A PORTION OF COBE
LABORATORIES ARVADA BUILDING SITE
ALL BEING A PART OF THE WEST
HALF SECTION 6, T3S, R69W**

LAND DESCRIPTION AND DEDICATION

THESE ARE THE FINAL PLATS FOR THE PARKWAY CENTER SUBDIVISION, FINAL PLAT, REPLAT OF A PORTION OF COBE LABORATORIES ARVADA BUILDING SITE, ALL BEING A PART OF THE WEST HALF SECTION 6, T3S, R69W. THE PLAT IS SUBJECT TO THE EASEMENTS AND RESTRICTIONS SET FORTH IN THE DEEDS OF RECORD IN THE PUBLIC RECORDS OF THE CITY OF ARVADA, COLORADO.



LOCATION MAP
SCALE: 1" = 200'



TYPICAL UTILITY EASEMENT

NOTARIES PUBLIC
STATE OF COLORADO
COUNTY OF ARVADA
I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original plat as the same appears in the office of the County Clerk of Arvada, Colorado, and that the same is a true and correct copy of the original plat as the same appears in the office of the County Clerk of Arvada, Colorado.

STATE OF COLORADO
COUNTY OF ARVADA
I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original plat as the same appears in the office of the County Clerk of Arvada, Colorado, and that the same is a true and correct copy of the original plat as the same appears in the office of the County Clerk of Arvada, Colorado.

APPROVAL CERTIFICATES

APPROVED BY THE PLANNING COMMISSION OF THE CITY OF ARVADA, COLORADO THIS 15th DAY OF SEPTEMBER 1978.

APPROVED BY THE BOARD OF ADJUSTMENT OF THE CITY OF ARVADA, COLORADO THIS 15th DAY OF SEPTEMBER 1978.

APPROVED BY THE CITY CLERK AND RECORDER OF THE CITY OF ARVADA, COLORADO THIS 15th DAY OF SEPTEMBER 1978.

APPROVED BY THE COUNTY CLERK AND RECORDER OF THE COUNTY OF ARVADA, COLORADO THIS 15th DAY OF SEPTEMBER 1978.

13

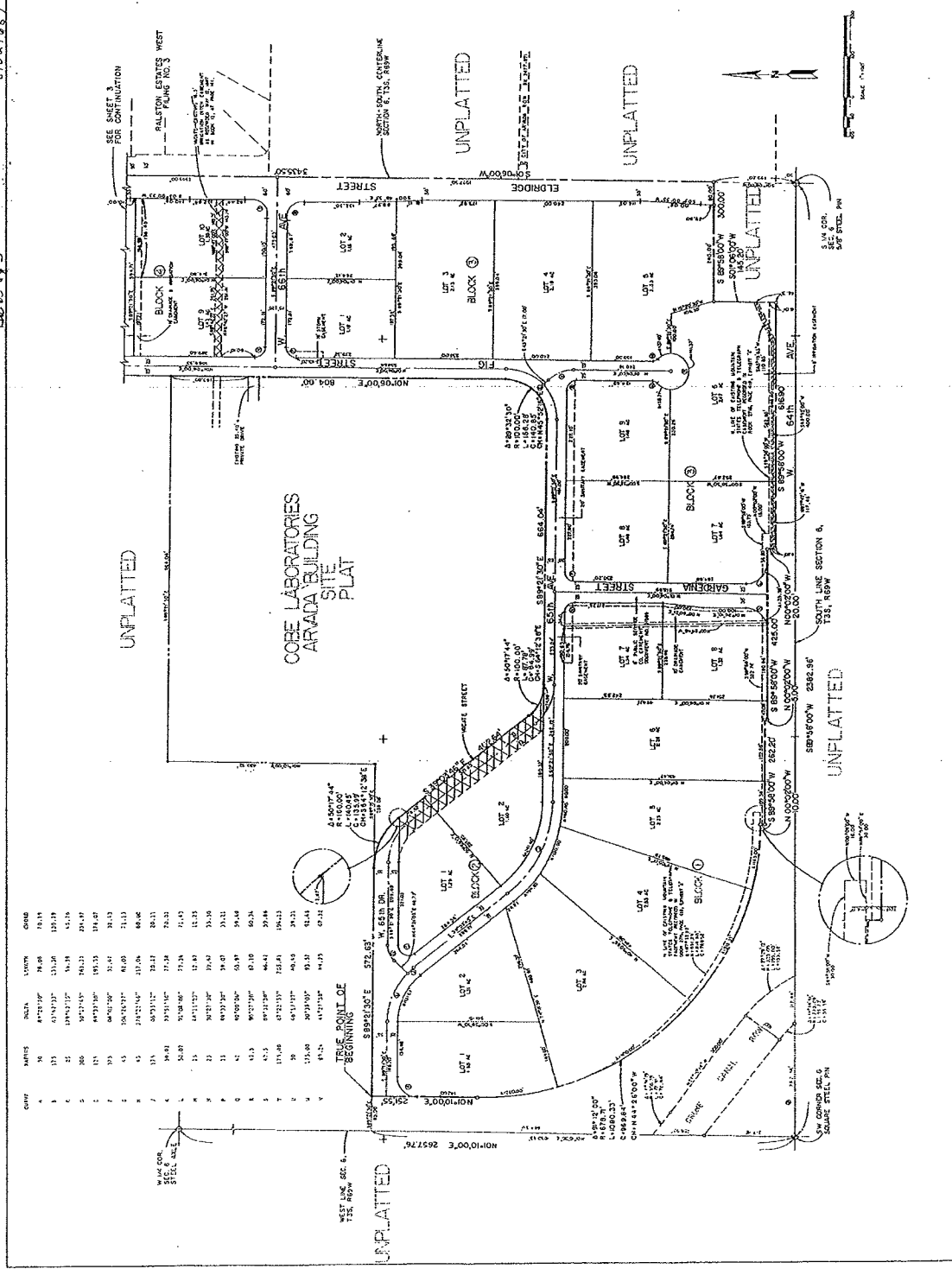
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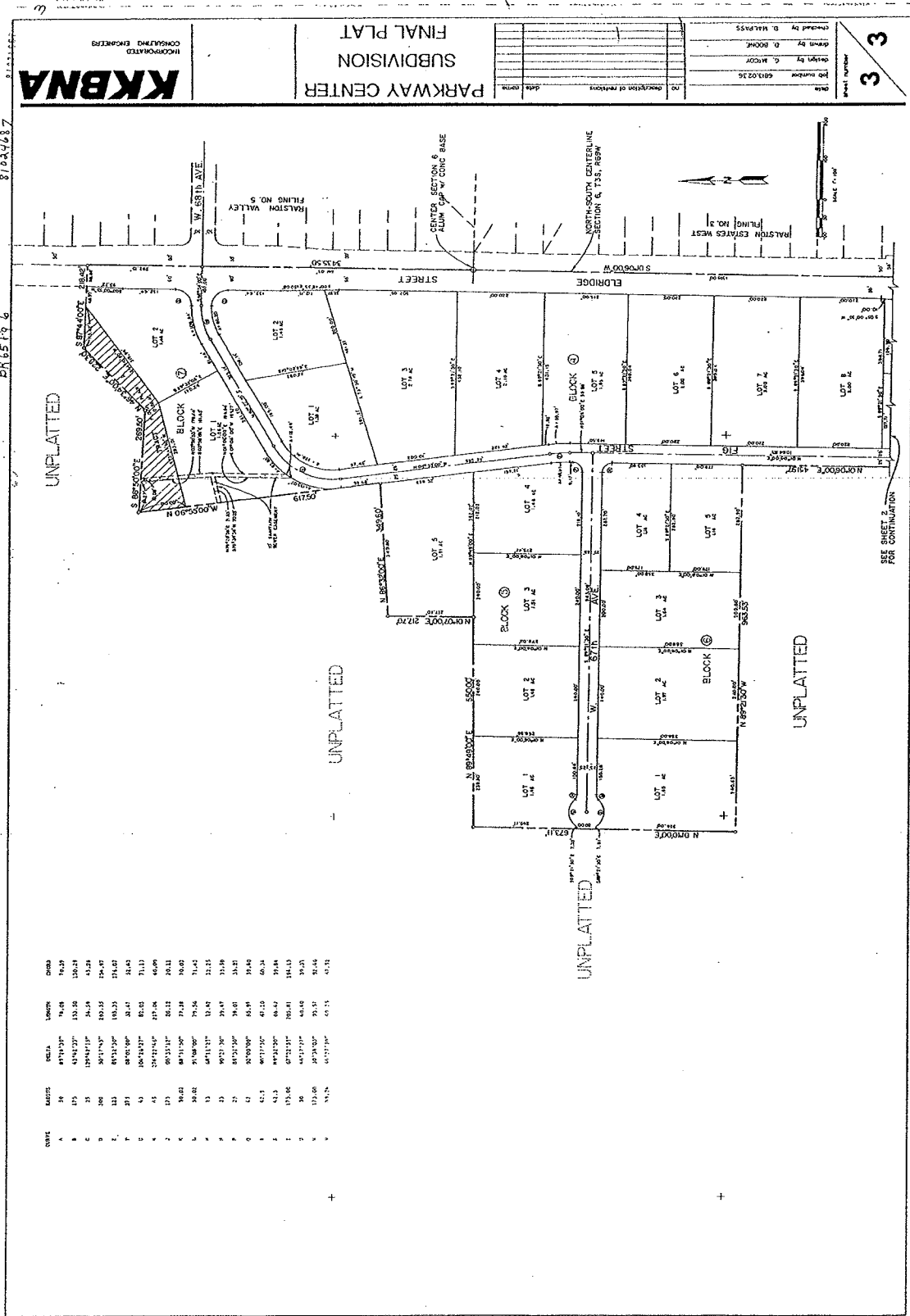
KKBNA
INCORPORATED
CONSULTING ENGINEERS

PARKWAY CENTER
SUBDIVISION
FINAL PLAT

[illegible]

date	sheet number
job number 6B1302 36	23
design by G. MCCORT	
drawn by O. BOONE	
checked by O. McLEASS	





3 3 3	Date 08/15/2016 Design by D. MCKAY Checked by D. MCKAY	JOB NUMBER 0815.0235 PROJECT PARKWAY CENTER SUBDIVISION PREPARED BY KKBNA CONSULTING ENGINEERS
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LINE	BEARING	LENGTH	AREA
1	N 89° 15' 00" E	12.00	12.00
2	S 89° 15' 00" E	12.00	12.00
3	N 89° 15' 00" E	12.00	12.00
4	S 89° 15' 00" E	12.00	12.00
5	N 89° 15' 00" E	12.00	12.00
6	S 89° 15' 00" E	12.00	12.00
7	N 89° 15' 00" E	12.00	12.00
8	S 89° 15' 00" E	12.00	12.00
9	N 89° 15' 00" E	12.00	12.00
10	S 89° 15' 00" E	12.00	12.00
11	N 89° 15' 00" E	12.00	12.00
12	S 89° 15' 00" E	12.00	12.00
13	N 89° 15' 00" E	12.00	12.00
14	S 89° 15' 00" E	12.00	12.00
15	N 89° 15' 00" E	12.00	12.00
16	S 89° 15' 00" E	12.00	12.00
17	N 89° 15' 00" E	12.00	12.00
18	S 89° 15' 00" E	12.00	12.00
19	N 89° 15' 00" E	12.00	12.00
20	S 89° 15' 00" E	12.00	12.00
21	N 89° 15' 00" E	12.00	12.00
22	S 89° 15' 00" E	12.00	12.00
23	N 89° 15' 00" E	12.00	12.00
24	S 89° 15' 00" E	12.00	12.00
25	N 89° 15' 00" E	12.00	12.00
26	S 89° 15' 00" E	12.00	12.00
27	N 89° 15' 00" E	12.00	12.00
28	S 89° 15' 00" E	12.00	12.00
29	N 89° 15' 00" E	12.00	12.00
30	S 89° 15' 00" E	12.00	12.00
31	N 89° 15' 00" E	12.00	12.00
32	S 89° 15' 00" E	12.00	12.00
33	N 89° 15' 00" E	12.00	12.00
34	S 89° 15' 00" E	12.00	12.00
35	N 89° 15' 00" E	12.00	12.00
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Ok 165 pg 52 Rev # F1432000 2-28-2002 12:25:18 pm County of Jefferson State of Colorado \$100

PARKWAY CENTER SUBDIVISION FILING NO. 2

A REPLAT OF LOTS 6 & 7, BLOCK 4, PARKWAY CENTER SUBDIVISION
 LOCATED IN THE SOUTHWEST QUARTER OF SECTION 6,
 TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN
 CITY OF ARVADA, COUNTY OF JEFFERSON, STATE OF COLORADO

SHEET 1 OF 1

CODE LABORATORIES ARVADA BUILDING SITE
 FILING NO. 8004854
 RECEPTION NO. 8004854

BLOCK 6
 PARKWAY CENTER SUBDIVISION
 RECEPTION NO. 8004887

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FIG STREET
 RECEPTION NO. 8004887
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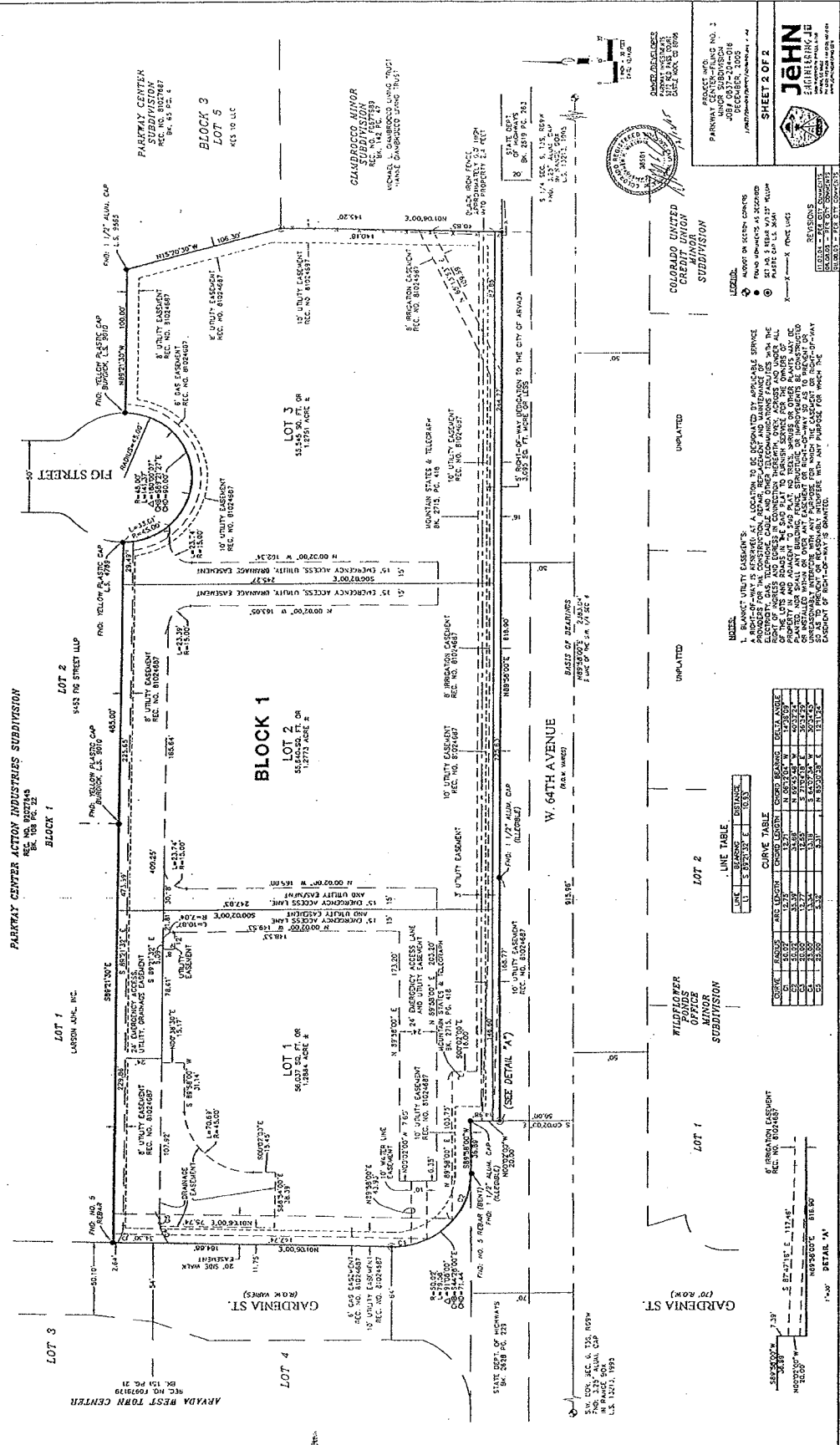
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BEING A REPLAT OF LOTS 6 AND 7, BLOCK 3, PARKWAY CENTER SUBDIVISION,
LOCATED IN SOUTHWEST ONE-QUARTER OF SECTION 5,
TOWNSHIP 3 SOUTH, RANGE 69 WEST 6TH P.M.,
CITY OF ARVADA, COUNTY OF JEFFERSON, STATE OF COLORADO
3.9099 ACRES
SHEET 2 OF 2

PARKWAY CENTER ACTION INDUSTRIES SUBDIVISION

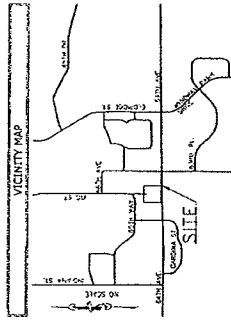


RECEPTION = 2008104283 11-13-2008 12:13:31 PM COUNTY OF JEFFERSON STATE OF COLORADO \$2,142

PARKWAY CENTER SUBDIVISION FILING NO. 4
MINOR SUBDIVISION PLAT
 BEING A REPLAT OF LOTS 2 AND 3, BLOCK 1
 PARKWAY CENTER SUBDIVISION FILING NO. 3
 LOCATED IN THE SOUTHWEST 1/4 OF SECTION 6
 TOWNSHIP 3 SOUTH, RANGE 69 WEST, OF THE 6TH PRINCIPAL MERIDIAN
 CITY OF ARVADA, COUNTY OF JEFFERSON, STATE OF COLORADO
 SHEET 1 OF 2

LEGAL DESCRIPTION AND DEDICATION

THE LANDS HEREIN ARE PART OF THE LANDS OWNED BY THE CITY OF ARVADA, COLORADO, AND ARE BEING OFFERED FOR SALE TO THE PUBLIC BY THE CITY OF ARVADA, COLORADO, THROUGH THE CITY MANAGER, JEFFREY L. BROWN. THE LANDS ARE BEING OFFERED FOR SALE TO THE PUBLIC BY THE CITY OF ARVADA, COLORADO, THROUGH THE CITY MANAGER, JEFFREY L. BROWN, FOR THE PURPOSE OF DEVELOPING THE LANDS FOR THE USE OF THE CITY OF ARVADA, COLORADO, AS A PARKWAY CENTER SUBDIVISION. THE LANDS ARE BEING OFFERED FOR SALE TO THE PUBLIC BY THE CITY OF ARVADA, COLORADO, THROUGH THE CITY MANAGER, JEFFREY L. BROWN, FOR THE PURPOSE OF DEVELOPING THE LANDS FOR THE USE OF THE CITY OF ARVADA, COLORADO, AS A PARKWAY CENTER SUBDIVISION. THE LANDS ARE BEING OFFERED FOR SALE TO THE PUBLIC BY THE CITY OF ARVADA, COLORADO, THROUGH THE CITY MANAGER, JEFFREY L. BROWN, FOR THE PURPOSE OF DEVELOPING THE LANDS FOR THE USE OF THE CITY OF ARVADA, COLORADO, AS A PARKWAY CENTER SUBDIVISION.



TITLE CERTIFICATION

I, the undersigned, being a duly qualified and licensed surveyor under the laws of the State of Colorado, do hereby certify that the foregoing plat is a true and correct representation of the facts as shown by the survey and the records of the County of Jefferson, State of Colorado, and that the same is in accordance with the laws of the State of Colorado and the rules and regulations of the Board of Surveyors of the State of Colorado.

SURVEYOR'S STATEMENT

I, the undersigned, being a duly qualified and licensed surveyor under the laws of the State of Colorado, do hereby certify that the foregoing plat is a true and correct representation of the facts as shown by the survey and the records of the County of Jefferson, State of Colorado, and that the same is in accordance with the laws of the State of Colorado and the rules and regulations of the Board of Surveyors of the State of Colorado.

NOTES

1. THE SURVEY WAS MADE BY THE SURVEYOR, JEFFREY L. BROWN, ON THE 10TH DAY OF OCTOBER, 2008, AT THE CITY OF ARVADA, COLORADO. THE SURVEY WAS MADE FOR THE PURPOSE OF DEVELOPING THE LANDS FOR THE USE OF THE CITY OF ARVADA, COLORADO, AS A PARKWAY CENTER SUBDIVISION.
2. THE SURVEY WAS MADE IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO AND THE RULES AND REGULATIONS OF THE BOARD OF SURVEYORS OF THE STATE OF COLORADO.
3. THE SURVEY WAS MADE IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO AND THE RULES AND REGULATIONS OF THE BOARD OF SURVEYORS OF THE STATE OF COLORADO.
4. THE SURVEY WAS MADE IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO AND THE RULES AND REGULATIONS OF THE BOARD OF SURVEYORS OF THE STATE OF COLORADO.

OWNER

THE LANDS HEREIN ARE PART OF THE LANDS OWNED BY THE CITY OF ARVADA, COLORADO, AND ARE BEING OFFERED FOR SALE TO THE PUBLIC BY THE CITY OF ARVADA, COLORADO, THROUGH THE CITY MANAGER, JEFFREY L. BROWN. THE LANDS ARE BEING OFFERED FOR SALE TO THE PUBLIC BY THE CITY OF ARVADA, COLORADO, THROUGH THE CITY MANAGER, JEFFREY L. BROWN, FOR THE PURPOSE OF DEVELOPING THE LANDS FOR THE USE OF THE CITY OF ARVADA, COLORADO, AS A PARKWAY CENTER SUBDIVISION.

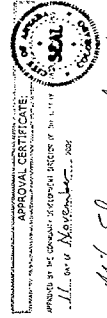
STATE OF COLORADO

COUNTY OF JEFFERSON

THE LANDS HEREIN ARE PART OF THE LANDS OWNED BY THE CITY OF ARVADA, COLORADO, AND ARE BEING OFFERED FOR SALE TO THE PUBLIC BY THE CITY OF ARVADA, COLORADO, THROUGH THE CITY MANAGER, JEFFREY L. BROWN. THE LANDS ARE BEING OFFERED FOR SALE TO THE PUBLIC BY THE CITY OF ARVADA, COLORADO, THROUGH THE CITY MANAGER, JEFFREY L. BROWN, FOR THE PURPOSE OF DEVELOPING THE LANDS FOR THE USE OF THE CITY OF ARVADA, COLORADO, AS A PARKWAY CENTER SUBDIVISION.



WITNESSE MY HAND AND SEAL OF THE CITY OF ARVADA, COLORADO, THIS 10TH DAY OF OCTOBER, 2008.



WITNESSE MY HAND AND SEAL OF THE COUNTY OF JEFFERSON, STATE OF COLORADO, THIS 10TH DAY OF OCTOBER, 2008.

CERTIFICATE OF CLERK AND RECORDER

I, the undersigned, being a duly qualified and licensed clerk and recorder under the laws of the State of Colorado, do hereby certify that the foregoing plat is a true and correct representation of the facts as shown by the survey and the records of the County of Jefferson, State of Colorado, and that the same is in accordance with the laws of the State of Colorado and the rules and regulations of the Board of Surveyors of the State of Colorado.

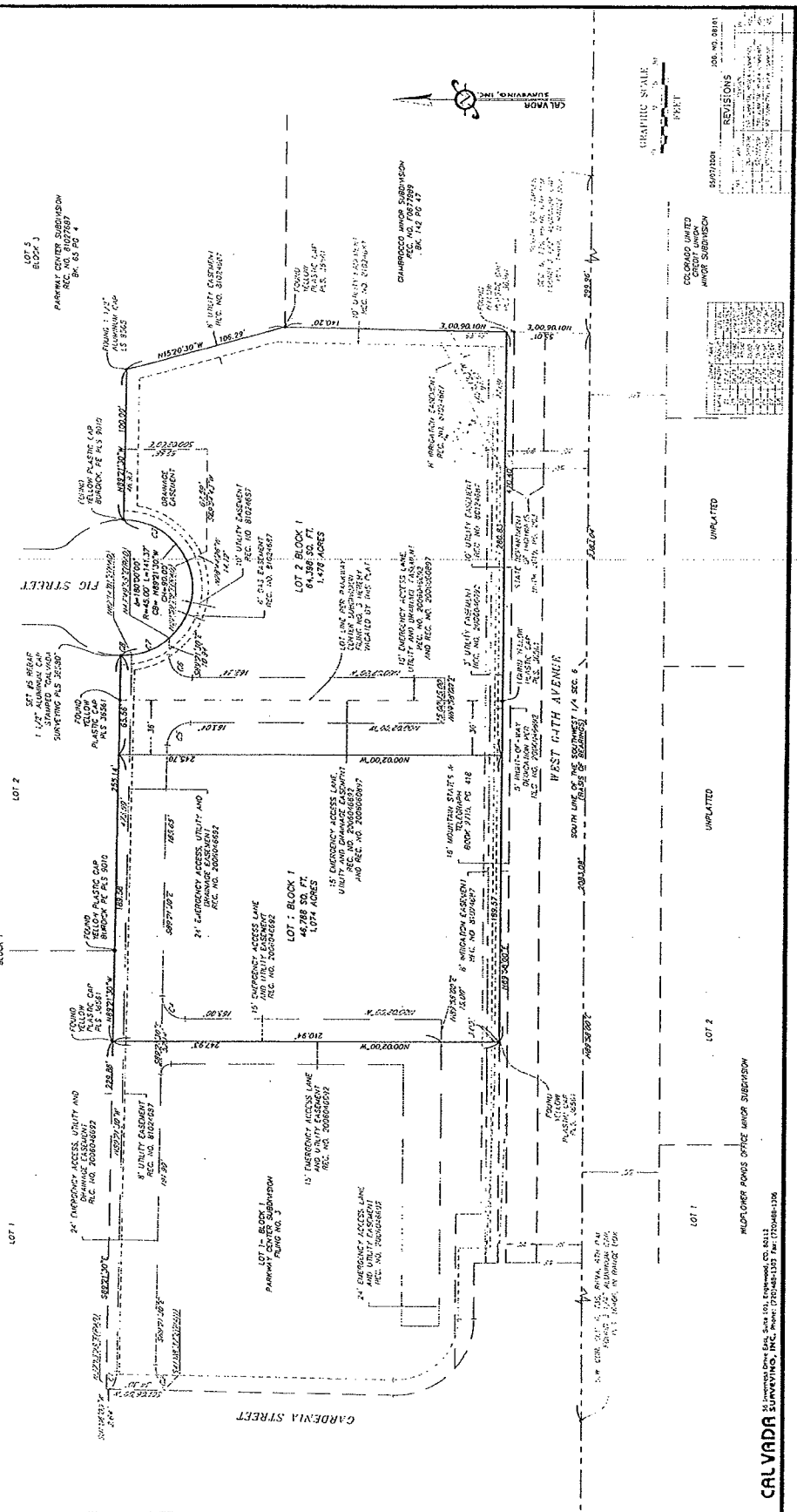
REVISIONS	DATE	BY	FOR
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2	10/10/08	JLB	INITIAL
3	10/10/08	JLB	INITIAL
4	10/10/08	JLB	INITIAL
5	10/10/08	JLB	INITIAL
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8	10/10/08	JLB	INITIAL
9	10/10/08	JLB	INITIAL
10	10/10/08	JLB	INITIAL

RECEPTION # 200804283

PARKWAY CENTER SUBDIVISION FILING NO. 4 MINOR SUBDIVISION PLAT

BEING A REPLAT OF LOTS 2 AND 3, BLOCK 1
PARKWAY CENTER SUBDIVISION FILING NO. 3
BEING A PORTION OF THE SOUTHWEST 1/4 OF SECTION 6
TOWNSHIP 3 SOUTH, RANGE 69 WEST, OF THE 6TH PRINCIPAL MERIDIAN
CITY OF ARVADA, COUNTY OF JEFFERSON, STATE OF COLORADO
SHEET 2 OF 2

PARKWAY CENTER ACTION INDUSTRIES SUBDIVISION
REC. NO. 20027843
Bk. 108 PG. 22



PARKWAY CENTER SUBDIVISION FILING NO. 6
MINOR SUBDIVISION

MINOR SUBDIVISION

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 6,

TOWNSHIP 3 SOUTH, RANGE 69 WEST 6TH P.M.

CITY OF ARVADA, COUNTY OF JEFFERSON, STATE OF COLORADO

SHEET 2 OF 2

LINE TABLE		
LINE #	LENGTH	BEARING
11	7.80'	S89°21'30"E
12	7.84'	N89°21'30"W

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	82.83'	45.00'	104°56'27"	S85°15'40"E	71.13'
C2	12.82'	15.00'	94°11'23"	S66°35'46"W	12.25'
C3	12.62'	15.00'	94°11'23"	S65°15'49"E	12.25'

DUNN & HUMPHREY, INC.
 LOT 1
 ROBE LABORATORIES, ARVADA
 FULL-DISC. S&P FILMS (N.Y.)
 ROBERTSON, ARVADA, CO.

$$T_{\text{eff}} = T_0 \left(1 + \frac{1}{2} \frac{v^2}{c^2} \right) \quad \text{for } v \ll c$$


THE UNIVERSITY OF ALABAMA LIBRARY COLLECTION

ORACLE ACCOUNT # 70 0000 22201

Fund 70	Escrow	Acct #	Description	Development	Receipt Date	Original Escrow Amt	Balance as of 12/31/2020	Current Escrow Balance
			Easter Owens Main Property Impact Amount \$28,138 W 67th Ave. (1) \$50,000 is in lieu of LOC	Parkway Center 6692 Fig - Lots 6 and 7 Block 4	11/09/01	(28,072.64)	(39,685.07)	(39,685.07)
		364	W 67th Ave. Should have been \$9,408.90 (2) \$50,000 is in lieu of LOC	Parkway Center 6428 Gardena - TCF Bank Lot 7 Block 3	05/31/06	(9,581.22)	(10,934.98)	(10,934.98)
		364	W 67th Ave. Impact Amount \$16,138.95	Parkway Center 6412 Fig - Academy Child Care Lot 6 Block 3	10/29/08	(16,986.63)	(19,627.99)	(19,627.99)
		6017	6783 Fig Street / W 67th Ave Impact Fee	Front Range Excavation - Nance	04/20/18	(12,480.00)	(13,192.28)	(13,192.28)
		6487	14250 W 67th Ave / Casey Adagna	Parkway Center Filing No 5	05/24/19	(38,746.35)	(40,271.59)	(40,271.59)
		6675	Easter Owens 6712 Fig St for W 67th Ave	Parkway Center Final Plat	04/06/20	(12,741.30)	(13,001.16)	(13,001.16)
		6865	W 67th Ave DA2021-0025 Sheena identified	Parkway Center Final Plat	09/01/21	(18,164.55)	(18,164.55)	(18,164.55)
			Subtotals			(133,762.69)	(154,877.62)	(154,877.62)

In place of a Letter of Credit

50,000.00

Amount to be refunded

-\$104,877.62

Contribution Description	Parcel	Escrow Acct #	Project Number	Project Name	Task Number	Task Name	Date Received	Original Escrow Amount	CIP Amount	Uses	Amount Available
Parkway Center Subdivision Ebdage St Honor	Block 4 - Lots 687, Block 3, Lot 7, Block 3, Lot 6	383	9370	Dev Fees for Transportation	1000	Ebdage Street	1/9/2001 - 10/29/2008	38,272.00	21,745.00		21,745.00
6723 Tig Street Ebdage Street Impact Fee	Block 3, Lot 5	6016	9370	Dev Fees for Transportation	1000	Ebdage Street	9/22/2019	38,272.00	10,448.24		10,448.24
D2019-0042 Parkway Center Subdivision Ebdage St - Jeff Wieser	Block 4, Lot 3	6074	9370	Dev Fees for Transportation	1000	Ebdage Street	9/22/2020	38,073.32	38,070.21		38,070.21
D2019-0165 Parkway Center Subdivision Hing No St Ebdage 14250 Yr 6th Ave Casey Adairya	Block 0, Lots 2, 3, 4, 5	6408	9370	Dev Fees for Transportation	1000	Ebdage Street	9/22/2019	18,672.14	125,498.55		125,498.55
D2017-0025, 0782 Hg St Roadway Impact Fees, Parkway Center Subdivision Final Phil Cole Habere	Block 4, Lot 3		9370	Dev Fees for Transportation	1000	Ebdage Street	9/20/21	55,704.02	55,704.02		55,704.02
								410,174.92			470,768.78



REPORT TO CITY COUNCIL RESOLUTION

AGENDA ITEM
8.B.1.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: R21-149 A Resolution Approving a Cost Contribution Agreement by and between the City Of Arvada and Jefferson Center Metropolitan District No. 1 to Finance a Portion of the Coal Creek Water Tank

Report in Brief

The Jefferson Center Metropolitan District (JCMD) No. 1 is a quasi-governmental government which was created to, in part, build and maintain public infrastructure in the JCMD service area. Given the growth in the northwest area of Arvada, which includes the JCMD service area, the City has identified the need for additional water storage to help meet peak demand periods. The Coal Creek water tank is currently being constructed by the City of Arvada, which will directly provide additional water storage capacity to JCMD. This IGA provides funding from JCMD to the City of Arvada for the construction of the Coal Creek water tank.

The Arvada team recommends that the City Council approve R21-149, A Resolution Approving a Cost Contribution Agreement by and between the City Of Arvada and Jefferson Center Metropolitan District No. 1 to Finance a Portion of the Coal Creek Water Tank.

Financial Impact

The IGA will allocate \$3.8M to the water enterprise fund for the construction of the Coal Creek Water Storage Tank.

Background

As part of the implementation of the City's various master plans, such as the comprehensive plan and water master plan, the City team evaluates the need for additional infrastructure capacity to meet the needs of planned development. The Coal Creek tank is a planned expansion of the City's overall water storage system targeting the JCMD service area. As a result of this tank's benefit to the JCMD service area, and previous Intergovernmental Agreements (IGA's) with JCMD, JCMD has an obligation to help fund this improvement. The agreement helps supply the City with the funds for the Coal Creek tank.

Discussion

The City team and JCMD have been working in partnership on the expansion of this water tank for several years. The land for the tank was provided to the City of Arvada by a separate agreement by JCMD in exchange for 500,000 gallons of water storage capacity. The Coal Creek tank is a 1.5M gallon tank of which 1.0M gallons is intended to support all growth in west Arvada, including the JCMD service area. The remaining 500K is being allocated specifically for the JCMD service area.

The Coal Creek tank is currently under construction and is scheduled to be completed in the summer of 2022, ahead of the peak water demand season. Adding 1.5M gallons of water storage to the water system's capacity will increase the City's resiliency during days of high water use. As the City continues to grow, additional water storage needs will continue to be evaluated and added to the system as needed until the buildout conditions for the City have been met.

Public Contact

Posting of the City Council agenda.

Commission Recommendation

N/A

Strategic Alignment

This IGA supports the City Council's Infrastructures principle that the City provides the community with a safe, reliable, high-quality water supply, drainage system, and wastewater disposal services for full city build-out, as defined by the Comprehensive Plan. This includes maintaining utility rates at lowest practical levels with accurate billing that supports replacement of aging infrastructure in order to maintain robust utility systems.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that the City Council approve R21-149, A Resolution Approving a Cost Contribution Agreement by and between the City Of Arvada and Jefferson Center Metropolitan District No. 1 to Finance a Portion of the Coal Creek Water Tank.

Suggested Motion:

I move that R21-149, A Resolution Approving a Cost Contribution Agreement by and between the City Of Arvada and Jefferson Center Metropolitan District No. 1 to Finance a Portion of the Coal Creek Water Tank, be (approved) (rejected).

Prepared by:
Abigail Ogg, Administrative Specialist

Reviewed by:

Approved by:

Ryan Stachelski, Director of Community and Economic Development	10/18/2021
Jacqueline Rhoades, City Engineer	10/24/2021
Brad Moloney, Deputy City Attorney	11/17/2021
Bryan Archer, Director of Finance	11/17/2021
Gail Walker, Legal Specialist-Contracts	11/18/2021
Emily Grogg, Senior Assistant City Attorney	11/18/2021
Rachel Morris, City Attorney	11/22/2021
Lorie Gillis, Deputy City Manager	11/23/2021
Mark Deven, City Manager	11/23/2021

Enclosure, exhibits & attachments required to support the report

SUBJECT: R21-149 A Resolution Approving a Cost Contribution Agreement by and between the City Of Arvada and Jefferson Center Metropolitan District No. 1 to Finance a Portion of the Coal Creek Water Tank

PAGE: 3

ITEM: 8.B.1.

RESOLUTION NO. R21-149

A RESOLUTION APPROVING A COST CONTRIBUTION AGREEMENT BY AND BETWEEN THE CITY OF ARVADA AND JEFFERSON CENTER METROPOLITAN DISTRICT NO. 1 TO FINANCE A PORTION OF THE COAL CREEK WATER TANK

WHEREAS, the City of Arvada (the “City” or “Arvada”) and Jefferson Center Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”) previously entered into a Purchase and Sale Agreement dated April 12, 2021 (the “PSA”), whereby the District agreed to convey approximately two acres of land located in the vicinity of the northeast corner of the intersection of Colorado State Highway 72 and 93 (the “Coal Creek Tank Site”) and upon the City’s acquisition of the Coal Creek Tank Site, the City would construct a potable water tank and related facilities (the “Coal Creek Tank”); and

WHEREAS, in consideration of the District’s June 16, 2021 conveyance of the Coal Creek Tank Site, the City agreed to credit 500,000 gallons of water storage capacity in the Coal Creek Tank to the District subject to the conditions of the PSA, to be reserved for the benefit of the District and development therein; and

WHEREAS, the Coal Creek Tank is needed to serve growth and provide reliable, efficient pumping operations on the west side of the City, including the development within the boundaries of the District; and

WHEREAS, through the District’s Amended and Restated Service Plan approved by the City of Arvada on March 1, 2004 (the “Service Plan”), the District is authorized to provide for the design, acquisition, construction, installation, perpetual maintenance, and financing of certain water, sanitation, street, safety protection, park and recreation, transportation, television relay and translation, limited fire protection and mosquito control improvements and services within and without the boundaries of the District (the “Public Improvements”); and

WHEREAS, the District issued its \$16,265,000 Special Revenue Bonds, Series 2020A-2 and its \$90,980,000 Subordinate Special Revenue Bonds, Series 2020B (the “District Bonds”) for the purpose of financing Public Improvements; and

WHEREAS, in consideration for the City constructing the Coal Creek Tank, the District has agreed to contribute \$3,800,000.00 of the District Bond proceeds to the City to finance that portion of the costs associated with the construction and completion of the Coal Creek Tank (the “District Contribution”).

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

Section 1. The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk to attest, in form approved by the City Attorney, a Cost Contribution Agreement, which is in substantially the same form as that attached hereto.

Section 2. This resolution shall be effective upon its approval by the City Council.

APPROVED AND ADOPTED this 6th day of December, 2021.

Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By:

COST CONTRIBUTION AGREEMENT

THIS COST CONTRIBUTION AGREEMENT (the “**Agreement**”) is made and entered into as of this _____ day of _____, 2021 (the “**Effective Date**”), by and between **JEFFERSON CENTER METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and the **CITY OF ARVADA**, a Colorado home rule municipal corporation (the “**City**” or “**Arvada**”). The District and the City shall each be referred herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITAL

A. The District and the City previously entered into that Purchase and Sale Agreement (Water Tank Site) dated April 12, 2021 (the “**PSA**”), whereby the District agreed to convey approximately two (2) acres of land generally located in the vicinity of the northeast corner of the intersection of Colorado State Highway 72 and 93 (the “**Tank Site**”) and upon the City’s acquisition of the Tank Site, the City would construct a 1.5 million gallon potable water tank and related facilities, previously referred to as the “Sleeping Indian Tank” (the “**Coal Creek Tank**”).

B. In consideration for the District’s conveyance of the Tank Site to the City, the City agreed to credit 500,000 gallons of water storage capacity in the Coal Creek Tank to the District (the “**District Capacity**”), subject to conditions in the PSA, to be reserved for the benefit of the District and the development therein.

C. Pursuant to the PSA, following the City’s acquisition of the Tank Site, the City is obligated to commence construction of the Coal Creek Tank on or before April 30, 2022 and to complete the construction of the Coal Creek Tank on or before December 31, 2023.

D. The District conveyed the Tank Site to the City on June 16, 2021 and the City has since commenced construction of the Coal Creek Tank.

E. The Coal Creek Tank is needed to serve growth and provide reliable, efficient pumping operations on the west side of the City, including the development within the boundaries of the District.

F. Further, the Coal Creek Tank will enhance water system operations and eliminate the current labor intensive efforts needed to maintain proper pressures and water turnover.

G. Pursuant to the authority granted to the District by its Amended and Restated Service Plan approved by the City of Arvada on March 1, 2004, as may be further amended from time to time (the “**Service Plan**”), the District is authorized to provide for the design, acquisition, construction, installation, perpetual maintenance, and financing of certain water, sanitation, street, safety protection, park and recreation, transportation, television relay and translation, limited fire protection and mosquito control improvements and services within and without the boundaries of the District (the “**Public Improvements**”).

H. The District issued its \$16,265,000 Special Revenue Bonds, Series 2020A-2 and its \$80,980,000 Subordinate Special Revenue Bonds, Series 2020B (the “**Bonds**”) for the purpose of financing the Public Improvements.

I. The District recognizes the benefit of the Coal Creek Tank, specifically the District Capacity therein to the residents and users within the District’s boundaries or service area.

J. In consideration for the City constructing the Coal Creek Tank, the District has agreed to contribute Three Million Eight Hundred Thousand and 00/100 Dollars (\$3,800,000.00) (the “**District Contribution**”) of Bond proceeds to the City to finance costs associated with the construction and completion of the Coal Creek Tank.

K. In exchange for receiving the District Contribution, the City will reallocate Three Million Eight Hundred Thousand and 00/100 Dollars (\$3,800,000.00) that was previously budgeted to fund construction of the Coal Creek Tank to a different future project or projects that will specifically address infrastructure capacity issues within the City’s existing jurisdiction and authority, which support one or more of the Service Plan’s Public Improvements (the “**City Allocation**”).

L. The Parties desire to set forth in this Agreement the procedures for and provisions that will govern the foregoing contemplated actions.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

1. District Contribution. In exchange for the benefit conferred upon the District and the residents and users within the District’s boundaries or service area with respect to the District Capacity within the Coal Creek Tank, the District shall pay to the City the District Contribution within seven (7) days of the Effective Date (being the date the last Party executes this Agreement). Upon the District’s payment of the District Contribution to the City the District shall have no further obligation under this Agreement.

2. City Allocation. In exchange for receiving the District Contribution, the City will reallocate Three Million Eight Hundred Thousand and 00/100 Dollars (\$3,800,000.00) that was previously budgeted to fund construction of the Coal Creek Tank to a different future project or projects that will specifically address infrastructure capacity issues within the City’s existing jurisdiction and authority, which support one or more of the Service Plan’s Public Improvements. Designation of the specific future project or projects for the reallocation is within the City’s sole discretion.

3. District Contribution Limitation. The Parties agree that the District Contribution is the total and final one-time contribution amount due and owing from the District with respect to the construction of the Coal Creek Tank and shall not be adjusted in the event of any construction cost overruns, construction cost saving, change orders or like occurrences. The

District shall have no further obligation to provide the City with any additional funding related to the Coal Creek Tank.

4. Construction of the Coal Creek Tank. The City shall utilize the District Contribution solely for the purpose of the construction and completion of the Coal Creek Tank in full conformance with the design standards and specifications as established and in use by the District, the City, and if applicable, any other appropriate governing jurisdiction, pursuant to the provisions of this Agreement. The City shall diligently work to complete the Coal Creek Tank within the timeframes provided in the PSA. The City shall be solely responsible for the ownership, operation, and maintenance of the Coal Creek Tank and the costs associated therewith. Upon completion of the construction of the Coal Creek Tank, the City shall provide the District with documentation evidencing the District Contribution was used solely for those costs associated with the construction and completion of the Coal Creek Tank.

5. District Limitations. It is hereby agreed and acknowledged that this Agreement and the obligations of the District contemplated in this Agreement are subject to annual appropriation and shall not be deemed to be multiple-fiscal year obligations for the purposes of Article X, Section 20 of the Colorado Constitution.

6. Term. This Agreement is effective as of the date first set forth above and shall continue in full force and effect until all obligations with respect to delivery of the District Contribution and completion of construction of the Coal Creek Tank have been satisfied.

7. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally recognized overnight air courier service, by electronically-confirmed facsimile transmission or electronically-confirmed electronic mail, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District:	Jefferson Center Metropolitan District No. 1 141 Union Blvd., Suite 150 Lakewood, Colorado 80228 Phone: 303-987-0835 Email: dsolin@sdmsi.com Attn: David Solin, Manager
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With a Copy To:	McGeady Becher P.C. 450 E. 17 th Ave., Suite 400 Denver, Colorado 80203-1254 Phone: 303-592-4380 Email: legalnotices@specialdistrictlaw.com
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To the City: City of Arvada
8101 Ralston Road
Arvada, CO 80001
Attn: Ryan Stachelski
Telephone: 720-898-7016
Email: rstachelski@arvada.org

With a Copy To: Rachel Morris
City Attorney
City of Arvada
8101 Ralston Road
Arvada, CO 80001

All notices, demands, requests or other communications shall be effective upon such personal delivery, one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service, on the date of transmission if sent by confirmed facsimile or confirmed electronic mail, or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address or contact information.

8. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof.

9. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

10. Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the District Court in and for the County of Jefferson, Colorado.

11. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

12. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

13. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of

such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

15. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

16. Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto, provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the Parties unless the same is in writing and duly executed by the Parties hereto.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO COST CONTRIBUTION AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Cost Contribution Agreement as of the day and year first set forth above.

JEFFERSON CENTER METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
Gregg A. Bradbury, President
gbradbury@churchranch.com

Attest:

David Solin, Secretary
dsolin@sdmsi.com

ARVADA

CITY OF ARVADA, a Colorado home rule municipal corporation

By: _____
Name: Marc Williams
Its: Mayor

Attest:

Kristen Rush, City Clerk

Approved as to form:
Rachel Morris, City Attorney

By: _____



REPORT TO CITY COUNCIL ORDINANCE FIRST READING

**AGENDA ITEM
8.C.1.**

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: CB21-044 An Ordinance Authorizing Acceptance of the Amended and Restated Intergovernmental Agreement between Jefferson County and the Cities of Arvada, Lakewood, Wheat Ridge, Golden, Westminster and Edgewater for Animal Shelter/Dog Licensing/Funding (Public Hearing to be set for January 3, 2022 at 6:15 p.m.)

Report in Brief

On August 15, 2012, Jefferson County and the Cities of Arvada, Lakewood, Wheat Ridge, Golden, Westminster, and Edgewater entered into an amended and restated intergovernmental agreement (IGA) for Animal Shelter/Dog Licensing/Funding. The Foothills Animal Shelter Board (FAS Board) includes representation from each of the participating agencies. Over the past several months, the FAS Board has reviewed the 2012 IGA and is recommending changes and clarifications to the 2012 agreement. The changes reflect current operations and practices while also bringing additional certainty to agency funding requirements. The 2012 IGA established a funding formula that was dependent on licensing revenue levels that have proven to be unattainable. The proposed changes include reconfiguring the funding formula that provides for funding generated through an annual agency assessment offset by revenue generated by the agency dog licensing program. Additionally, this amendment updates the timing of budget recommendations and re-establishes a 20% compliance rate goal for the dog licensing program.

The Arvada team recommends that the City Council approve CB21-044, An Ordinance Authorizing Acceptance of the Amended and Restated Intergovernmental Agreement between Jefferson County and the Cities of Arvada, Lakewood, Wheat Ridge, Golden, Westminster, and Edgewater for Animal Shelter/Dog Licensing/Funding on first reading, ordered published in full, and a public hearing be set for January 3, 2022 at 6:15 p.m.

Financial Impact

The City's financial participation in the current intergovernment agreement for facility operations and capital maintenance for 2020 and 2021 has been \$166,501 and \$171,335 respectfully. This amount includes the City's operational assessment, and licensing shortfall. Projected funding for the Shelter is included in the 2022 Operating Budget. Future funding levels are anticipated to remain consistent depending on dog licensing generated within Arvada.

The City's share for repayment of debt service for construction of the facility, facility debt service, for 2022 will be \$81,176.65, payable to Jefferson County.

Background

Jefferson County and several Jefferson County municipalities, including Arvada, Lakewood, Wheat Ridge, Golden, Westminster and Edgewater, entered into an Intergovernmental Agreement dated June 20, 2007, to implement a county-wide dog licensing program in order to fund the construction of the Foothills Animal Shelter. The parties entered into a second Intergovernmental Agreement dated January 1, 2009, in order to provide additional funding for the construction of the Shelter through Certificates of Participation issued by Jefferson County and repaid by the municipalities. The parties entered into a third Intergovernmental Agreement dated August 15, 2012, to establish a funding mechanism by which revenue generated by the dog licensing program and assessments of participating agencies funds the costs of operation of the Shelter. The parties

recognized that the 2012 funding mechanism was insufficient to support the costs associated with operating and maintaining the Shelter.

In 2021, the County Attorney began working closely with partnering municipalities and the Board and Shelter staff on these proposed IGA modifications. The underlying goal was to provide a sustainable and predictable model for funding the Shelter. Additionally, the agencies recognized the importance of dog licensing and wanted to ensure a 20% licensing goal was included in the IGA modifications.

Discussion

This proposed IGA amends and restates the 2012 Facility IGA and supersedes and terminates the Dog Licensing IGA and the Facility Funding IGA to, in part, provide for the parties to pay an annual assessment for the operation of the Shelter and use the revenue from the Dog Licensing Program to offset the cost of operating the Shelter. The parties agree that each party and its residents should contribute toward the funding for the cost of capital construction of the facility and operation and maintenance of the shelter. The annual assessment shall be offset by money generated by the dog licensing program. This amendment updates the timing of budget recommendations and establishes a 20% compliance rate goal for the dog licensing program. The IGA also incorporates the debt service assessment for payment of Certification of Participation issued to finance the construction of the current facility. There are no proposed changes to Repayment of Debt Service For Construction of Facility.

Public Contact

The Foothills Animal Shelter Board hosts monthly public meetings where changes to intergovernmental agreements have been discussed. Board meeting agendas are posted, meetings are open to the public and meeting minutes are posted on the Foothills Animal Shelter website. City approval of recommended changes to the Intergovernmental Agreement are reflected in documents presented for Public Hearings on December 6nd and January 3rd Council Agendas.

Commission Recommendation

NA

Strategic Alignment

The proposed amendment is consistent with City Council priorities to provide Safe Communities, Infrastructure, Community and Economic Development, Vibrant Community and Neighborhoods, and Organizational and Service Effectiveness by maintaining this relationship with these community and governmental partners and providing this resource and service to regional members of the public.

Alternative Courses of Action

NA

Recommendation for Action

The Arvada team recommends that the City Council approve CB21-044, An Ordinance Authorizing Acceptance of the Amended and Restated Intergovernmental Agreement between Jefferson County and the Cities of Arvada, Lakewood, Wheat Ridge, Golden, Westminster, and Edgewater for Animal Shelter/Dog Licensing/Funding on first reading, ordered published in full, and a public hearing be set for January 3, 2022 at 6:15 p.m.

Suggested Motion:

SUBJECT: CB21-044 An Ordinance Authorizing Acceptance of the Amended and Restated Intergovernmental Agreement between Jefferson County and the Cities of Arvada, Lakewood, Wheat Ridge, Golden, Westminster and Edgewater for Animal Shelter/Dog Licensing/Funding (Public Hearing to be set for January 3, 2022 at 6:15 p.m.)

PAGE: 3
ITEM: 8.C.1.

I move that CB21-044, An Ordinance Authorizing Acceptance of the Amended and Restated Intergovernmental Agreement between Jefferson County and the Cities of Arvada, Lakewood, Wheat Ridge, Golden, Westminster, and Edgewater for Animal Shelter/Dog Licensing/Funding, be (approved on first reading, ordered published in full and a public hearing date be set for January 3, 2022 at 6:15 p.m.) (rejected).

Prepared by:

Toni Riebschlager, Law Office Administrator

Reviewed by:

Approved by:

Elizabeth Blythe, Executive Assistant	11/18/2021
Toni Riebschlager, Law Office Administrator	11/18/2021
Laura Hemler, Assistant City Attorney	11/18/2021
Rachel Morris, City Attorney	11/19/2021
Lorie Gillis, Deputy City Manager	11/23/2021
Mark Deven, City Manager	11/23/2021

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. CB21-044
ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING ACCEPTANCE OF THE AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT BETWEEN JEFFERSON COUNTY AND THE
CITIES OF ARVADA, LAKEWOOD, WHEAT RIDGE, GOLDEN, WESTMINSTER AND
EDGEWATER FOR ANIMAL SHELTER/DOG LICENSING/FUNDING

WHEREAS, Jefferson County and several Jefferson County municipalities (“Parties”), including Arvada, entered into an Intergovernmental Agreement dated June 20, 2007 to implement a county-wide dog licensing program in order to fund construction of the Foothills Animal Shelter (“Shelter”); and

WHEREAS, the Parties entered into a second Intergovernmental Agreement dated January 1, 2009 in order to provide additional funding for the construction of the Shelter through Certificates of Participation issued by Jefferson County and repaid by the municipalities; and

WHEREAS, the Parties entered into a third Intergovernmental Agreement dated August 15, 2012 to establish a funding mechanism by which revenue generated by the dog licensing program funds the costs of operation and debt for the Shelter; and

WHEREAS, the Parties recognize the 2012 funding mechanism was insufficient to support the costs associated with operating and maintaining the Shelter; and

WHEREAS, it is in the Parties’ best interests to reconfigure the funding mechanism so that the Shelter’s operation and maintenances costs are funded by money generated through an annual assessment; and

WHEREAS, the Parties agree the annual assessment shall be offset by money generated by the dog licensing program; and

WHEREAS, the Parties desire to update the timing of budget recommendations and establish a 20% compliance rate goal for the dog licensing program; and

WHEREAS, the City Council has determined these modifications are in Arvada’s best interests, and necessary to protect the health, safety, and welfare of its citizens; and

WHEREAS, it is in the Parties’ best interests to memorialize these modifications in an intergovernmental agreement; and

WHEREAS, intergovernmental agreements between political subdivisions of the State of Colorado are authorized by C.R.S. Sec. 29-1-103.

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

Section 1. The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk to attest, in form approved by the City Attorney, an Intergovernmental Agreement, which is in substantially the same form as that attached hereto, between Jefferson County and the cities of Arvada, Lakewood, Wheat Ridge, Golden, Westminster, and Edgewater for animal shelter/dog licensing/funding.

Section 2. Copies of the proposed Intergovernmental Agreement are on file in the Office of the City Clerk and are available for inspection by the public.

Section 3. This ordinance shall take effect five days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 6th day of December, 2021.

PASSED, ADOPTED, AND APPROVED this ____day of _____, 2021.

Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By:

Publication Dates: December 9, 2021

AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
BETWEEN JEFFERSON COUNTY AND THE CITIES OF ARVADA,
LAKEWOOD, WHEAT RIDGE, GOLDEN,
WESTMINSTER AND EDGEWATER

ANIMAL SHELTER/DOG LICENSING/FUNDING

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (“***Amended IGA***”¹), dated for reference purposes only this ____ day of _____, 2021, is made and entered into by and between the **COUNTY OF JEFFERSON, STATE OF COLORADO**, a body politic and corporate (the “***County***”); the **CITY OF ARVADA**, a municipal corporation (“***Arvada***”); the **CITY OF LAKEWOOD**, a municipal corporation (“***Lakewood***”); the **CITY OF WHEAT RIDGE**, a municipal corporation (“***Wheat Ridge***”); and the **CITY OF GOLDEN**, a municipal corporation (“***Golden***”); the **CITY OF WESTMINSTER**, a municipal corporation (“***Westminster***”) and the **CITY OF EDGEWATER**, a municipal corporation (“***Edgewater***”)(collectively, the “***Parties***” and individually a “***Party***”)(Arvada, Lakewood, Wheat Ridge, Golden, Westminster, and Edgewater may be referred to individually as a “***City***” or collectively as the “***Cities***”).

RECITALS

1. C.R.S. Section 30-15-101(1) authorizes the board of county commissioners of each county to establish an animal holding facility and engage personnel to operate it, provide for the impoundment of animals, and to establish terms and conditions for the release or other disposition of impounded animals.
2. C.R.S. Section 30-15-101(2) authorizes counties and municipalities to enter into an intergovernmental agreement to provide for the control, licensing, impounding, or disposition of pet animals or to provide for the accomplishment of any other aspect of a county or municipal dog control or pet animal control licensing resolution or ordinance.
3. C.R.S. Section 31-15-401(m)(I) authorizes municipalities to regulate and control animals within the municipality including, but not limited to, licensing, impoundment, and disposition of impounded animals.
4. Part 2 of Article 1 of Title 29, C.R.S. permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments.
5. Part 2 of Article 1 of Title 29, C.R.S. authorizes governments to contract with one another to provide any function, service, or facility lawfully authorized to each of the contracting units through the establishment of a separate legal entity.

¹ The first use of a defined term is bolded and italicized for reference purposes.

6. Pursuant to C.R.S. Section 30-11-107(1) the Parties are authorized to enter into agreements for the joint use and occupation of public buildings.
7. The Parties (except Edgewater) entered into the June 20, 2007 Intergovernmental Agreement (“**Dog Licensing IGA**”) implementing a County-Wide Dog Licensing Program (“**Dog Licensing Program**”) which provided that the revenue from the Dog Licensing Program would be used to construct a new animal shelter facility due to the deterioration of the prior facility.
8. The Parties (except Edgewater) entered into the Intergovernmental Agreement dated January 1, 2009 (“**Facility Funding IGA**”), in which the County agreed to issue Certificates of Participation (“**COPs**”) in the amount of \$5,200,000 that expire in 2029, contribute \$3,000,000, and to provide additional financing in the amount of \$1,500,000. In accordance with the terms of the Facility Funding IGA, the Parties have repaid the County the \$1,500,000.
9. The Parties entered into the Intergovernmental Agreement dated August 15, 2012 (“**2012 Facility IGA**”), that renamed the separate legal entity the Foothills Animal Shelter (“**Shelter**”) and addressed the operation and administration of the Shelter’s facility located at 580 McIntyre Street, Golden CO 80401 (“**Facility**”). The 2012 Facility IGA, in part, superseded the Dog Licensing IGA and amended the Facility Funding IGA.
10. By this Amended IGA, the Parties desire to amend and restate the 2012 Facility IGA and supersede and terminate the Dog Licensing IGA and the Facility Funding IGA to, in part, provide for the Parties to pay an annual assessment for the operation of the Shelter and use the revenue from the Dog Licensing Program to offset the cost of operating the Shelter.
11. The Parties agree that each Party and its residents should contribute toward the funding for the cost of capital construction of the Facility and operation and maintenance of the Shelter pursuant to the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreement of the Parties hereinafter contained, the receipt and sufficiency of which are hereby confessed, it is understood and agreed as follows:

PART 1. FOOTHILLS ANIMAL SHELTER FORMATION AND OPERATION

I. GENERAL PROVISIONS

A. ESTABLISHMENT OF FOOTHILLS ANIMAL SHELTER. The Parties reaffirm the establishment of the separate legal entity known as the Foothills Animal Shelter, which is responsible for the administration and operation of the Shelter and the Facility.

B. FACILITY LEASE. The Shelter entered into the Lease Agreement dated August 9, 2010 (“**Lease Agreement**”) with the County for the Facility located at 580 McIntyre Street, Golden CO 80401. The Shelter, for the purpose of organizing, administering, and operating the central animal facility on the land so leased, will improve, maintain, and operate the Facility as provided herein and as provided in the Lease Agreement.

C. JURISDICTION. As used herein, the “**Jurisdiction**” of each City shall be the area within its municipal boundaries. The Jurisdictions of Arvada and Westminster include the areas within their respective municipal boundaries within Adams County and Jefferson County. The Jurisdiction of the County shall be the unincorporated area of the County.

D. REPORTING PERIOD. As used herein, the term “**Reporting Period**” shall mean the period from January 1 to December 31 of each year.

II. POWERS OF THE SHELTER

A. GENERAL POWERS. The Parties agree the Shelter shall be empowered with the authority to improve, construct, maintain, repair, control, regulate, and operate the Facility within Jefferson County, Colorado, as a complete animal shelter for the use and benefit of the Parties to this Amended IGA and their constituents.

B. POWER TO SHELTER ANIMALS AND PROVIDE EDUCATIONAL PROGRAMS. The principal purposes of the Shelter are (1) to retain in temporary custody and to provide for the subsequent adoption or disposition of animals taken into possession by the respective governing bodies or animals tendered to the Shelter by residents of the respective governing bodies, and (2) to provide educational, volunteer and related programs to individuals and the community to promote responsible pet ownership. As used herein, the term “**animals**” shall include, but is not necessarily limited to, dogs, cats, all other domestic animals, and injured wild animals if required.

C. POWER TO ESTABLISH CLINICS FOR ANIMAL WELFARE PURPOSES. In addition to providing temporary custody for said animals, the Shelter shall have the authority to establish a clinic for the purpose of spaying and neutering animals, or any other animal welfare related purposes as deemed appropriate by the governing Shelter Board of Directors (“**Shelter Board**”).

D. POWER TO MAKE CONTRACTS, HIRE, AND FIRE. The Parties further agree the Shelter shall have the authority to contract and purchase all necessary supplies, equipment, materials, and services, including professional services, and further to hire and discharge employees as deemed necessary to operate the Shelter. The Shelter shall also have the power to contract with other governing bodies who are not Parties to this Amended IGA to provide the same temporary custody, adoption or disposition services provided for the Parties.

E. POWER TO SET FEES. The fees to be charged for services shall be established by the Shelter Board, shall be uniform and reasonable, and shall supersede any fees previously

established by the respective governmental bodies. Fees for services provided to governing bodies who are not Parties to this Amended IGA and their residents shall be set by the Shelter Board and shall be set to include the costs for operation and maintenance of the Shelter and capital costs of the Facility.

F. POWER TO LEASE PROPERTY. The Parties agree the Shelter is empowered to negotiate and enter into a lease of the Facility which is suitable for an animal facility and additional property if necessary.

III. BOARD OF DIRECTORS

A. POWERS. All powers, privileges and duties vested in the Shelter shall be exercised and performed by and through the Shelter Board. Only Parties to this Amended IGA shall be entitled to appoint a Director to serve on the Shelter Board.

B. APPOINTMENTS. Each Party shall designate and appoint one Director to serve on the Shelter Board. Each Director shall be in regular attendance and participate in Shelter meetings and activities. Each Director shall serve in accordance with the terms and conditions set forth by the Party that appointed the Director. Each Party may also appoint an alternate board member.

C. ELECTION OF OFFICERS. At the annual meeting of the Shelter Board regularly scheduled in May of each year, the Shelter Board shall elect from its membership a President, a Vice President (and President pro tem), a Secretary and a Treasurer, who will assume their office at the following meeting. These officers shall serve until their successors have been elected. The officers shall be elected by an affirmative vote of at least a majority of the Shelter Board.

D. BYLAWS AND POLICIES AND PROCEDURES. The Shelter Board shall have the power to promulgate bylaws and policies and procedures which shall establish the organizational rules and policies and procedures for the management and operation of the Shelter.

IV. CAPITAL IMPROVEMENT FUND

The Shelter has established or shall establish a “*Capital Improvement Fund*” equal to a minimum of Five Hundred Thousand Dollars (\$500,000) (“*Minimum Threshold*”). The uses to which the Capital Improvement Fund may be put include, but are not necessarily limited to, replacement of capital equipment, procurement of new capital equipment, and improvement or expansion of the Facility. If funds are used from the Capital Improvement Fund, the Fund shall be returned to the Minimum Threshold as soon as funds become available but within no more than a two-year period from the date the fund fell below the Minimum Threshold. The Shelter Board may adjust the Minimum Threshold above \$500,000 on an annual basis if approved by a two-thirds vote of all the Directors. Any adjustment of the Minimum Threshold below \$500,000 shall require the approval of all Directors.

V. CONTINGENCY/EMERGENCY FUND ESTABLISHED

The Shelter has established or shall establish a contingency/emergency fund (“**Emergency Fund**”) with a minimum of three months of operating expenses as calculated from the prior year (“**Minimum Balance**”). The Emergency Fund shall be used to defray the costs of unanticipated operating expense shortfalls. If funds are used from the Emergency Fund, the Fund shall be returned to the Minimum Balance as soon as funds become available but within no more than a two-year period from the date the fund fell below the Minimum Balance.

VI. BUDGET

Each year, the Shelter shall prepare a preliminary budget and submit said budget to the Shelter Board. The budget shall contain detailed estimates of the operating costs of the subsequent year. The budget shall be approved by the Shelter Board on or before September 30th of each year and shall be certified by the secretary and treasurer of the Shelter Board. The final budget shall be provided to each of the governing bodies of the Parties no later than December 15th of each year that this Amended IGA is in effect.

VII. OPERATIONS FUND AND SHELTER OPERATIONS

A. DESIGNATION OF OPERATIONS FUND. The Shelter and Parties agree that the various monies paid to the Shelter from all sources of revenue including, without limitation, the Dog Licensing Program, annual assessments, and any monies generated by the Shelter, shall be placed into a designated fund (“**Operations Fund**”), and any operating expenses of the Shelter shall be paid from the Operations Fund.

B. ANNUAL CONTRIBUTION TO OPERATIONS FUND. The “**Annual Contribution**” of each Party shall be the sum of the actual Dog Licensing Program revenue attributable to the Party (“**Dog Licensing Revenue**”) and the Party’s “**Annual Assessment**” based on the formulas described below.

1. Total Annual Contribution. Each year the Shelter Board shall determine the total Annual Contribution of the Parties to the Shelter, which shall be placed in the Operations Fund.
2. Each Party’s Annual Contribution. Each Party’s individual portion of the Annual Contribution shall be calculated based on the “**Estimated Dog Population**” of its Jurisdiction divided by the sum of the Parties’ Estimated Dog Populations. A Party’s Estimated Dog Population is calculated as follows:

“Total Households”* of the Jurisdiction x 0.47** x 1.6***

* Based on 2018 Colorado State Demography Office data, to be updated yearly beginning on July 1.

** Estimated dog population per US Pet Ownership demographic source book.

*** Estimated dogs per household per US Pet Ownership demographic source book.

3. Annual Assessment. Each Party’s Annual Assessment shall be the amount of its Annual Contribution minus its actual Dog Licensing Revenue attributable to the Party from the previous fiscal year, per the Shelter’s Pet Licensing Annual Report. A spreadsheet showing the calculations for each Party’s Annual Assessment and other calculated terms is attached as **Exhibit A**.

C. CHOICE OF DEPOSITORY. All monies belonging to the Shelter or designated for use by the Shelter shall be deposited in the name and to the credit of the Shelter with such depositories as the Shelter shall from time to time designate.

D. FISCAL RESPONSIBILITY. The Shelter shall not borrow money nor shall it approve any claims or incur any obligations for expenditures unless there is sufficient unencumbered cash in the appropriate fund, credited to the Shelter, with which to pay the same. The provisions and terms set forth in Part 3 of this Amended IGA shall not be considered debt of the Shelter.

VIII. BOOKS AND RECORDS

A. RECORD KEEPING. The Shelter shall maintain adequate and correct accounts of its funds, properties, and business transactions, which accounts shall be open to inspection at any reasonable time by the Parties, their attorneys, or their agents.

B. ANNUAL AUDIT. The Shelter shall cause to be conducted an “**Annual Audit**” within 90 days after the end of the fiscal year. The Shelter fiscal year shall be from January 1st to December 31st. The Annual Audit shall be conducted by an independent certified public accountant, registered accountant, or partnership, or certified public accountants, or registered accountants licensed to practice in the State of Colorado. The Shelter shall tender a copy of each Annual Audit to the governing bodies of the respective Parties.

IX. REPORTS

A. ANNUAL REPORT. By June 1st of each year the Shelter shall prepare a comprehensive “**Annual Report**” of the Shelter’s activities and finances during the preceding year and tender a copy of the Annual Report to the governing bodies of the respective Parties.

B. REPORTS REQUIRED BY LAW, REGULATION OR CONTRACT. The Shelter shall also prepare and present such reports as may be required by law, regulation, or contract to any authorized federal, state, and/or local officials to whom such report is required to be made in the course and operation of the Shelter.

C. REPORTS REQUESTED BY THE PARTIES. The Shelter shall also render to the Parties, at reasonable intervals, such reports and accountings as the Parties may from time to time request.

PART 2. COUNTY-WIDE LICENSING PROGRAM/FUNDING FOR SHELTER

I. COUNTY-WIDE LICENSING PROGRAM

A. ORDINANCE ADOPTION. Each Party has adopted an ordinance which establishes a dog licensing program and penalties within its jurisdiction. The dog licensing ordinances adopted by the Parties shall be consistent with the County ordinance concerning licensing of dogs and license fees; however, each Party has discretion to adopt its own penalties.

B. ENFORCEMENT. Each Party shall be responsible for enforcement of the penalties for its dog licensing ordinance within their own jurisdiction. Each Party agrees to actively pursue enforcement of said ordinance.

C. LICENSING ADMINISTRATOR DEFINED. The “**Licensing Administrator**” is the entity delegated the authority by the Parties to issue licenses and collect fees for said dog licenses on behalf of all Parties.

D. DOG LICENSES. The dog licenses shall all be identified as “**County Dog Licenses.**”

E. DEPOSIT OF DOG LICENSING REVENUE. Except as otherwise provided for herein, the Licensing Administrator shall deposit the Dog Licensing Revenue in the Operations Fund on a monthly basis on the 10th of the following month.

F. DELEGATION OF AUTHORITY. The Parties hereby have delegated authority to the County to be the Licensing Administrator to issue licenses and collect fees for said dog licenses on behalf of all Parties. A new Licensing Administrator may be appointed by written approval of the Shelter Board. If the Licensing Administrator appointed is not a Party or the Shelter, the Shelter Board shall enter into an agreement with the entity chosen to be the Licensing Administrator to bind the new Licensing Administrator to the terms of this Amended IGA and any other terms deemed necessary by the Shelter Board. Alternatively, if the Licensing Administrator is a Party or the Shelter, the terms of Part 2., Section I.G. below shall apply.

G. LICENSING ADMINISTRATOR’S ADMINISTRATIVE COSTS. On August 1st of each year this Amended IGA is in effect, the Licensing Administrator shall provide each Party with a statement of the Licensing Administrator’s administrative costs directly attributable to the operation of the Dog Licensing Program from January 1st through December 31st of each year, and the projected administrative costs for the upcoming year shall be due to the Shelter Board for

purposes of budgeting by the September Shelter Board meeting. The Licensing Administrator shall retain the amount of the Licensing Administrator's administrative costs from the Dog Licensing Program revenue on a monthly basis. The Licensing Administrator shall be entitled to payment for the cost of, at a maximum, one full time employee including salary, benefits and overhead. The Licensing Administrator employee position shall be Administrative Specialist I or II positions as currently defined by the County or equivalent positions. Any future staffing needs, beyond those currently listed above, require approval of the Shelter Board. The Licensing Administrator shall also be entitled to the cost of tags, mailers (for new tags and renewals), postage, printing, maintenance/updates of dog licensing software and miscellaneous office supplies, and any other costs directly attributable to the operation of the Dog Licensing Program.

II. BOOKS AND RECORDS

The Licensing Administrator shall maintain adequate and correct accounts of the funds, which accounts shall be open to inspection at any reasonable time by the Parties, their attorneys, or their agents.

III. REPORTS

A. COMPLIANCE RATE. As used herein, "**Compliance Rate**" shall mean the rate calculated by dividing:

1. the number of licenses issued for dogs residing in a Party's Jurisdiction during a one year Reporting Period by
2. the Estimated Dog Population in the Party's Jurisdiction for the same Reporting Period.

The target Compliance Rate for each Party is 20%.

B. ANNUAL REPORT. By February 1st of each year, the Licensing Administrator shall prepare and present to the Shelter Board an annual report of the number of dogs licensed during the prior year in each Party's Jurisdiction, the estimated household population of each Party's Jurisdiction as reported in the most current publication by the State Demographer's Office, the Compliance Rate for each Party's Jurisdiction and the funds collected during the prior year.

C. REPORTS REQUESTED BY THE PARTIES. The Licensing Administrator shall also render to the Parties reports and accountings as the Parties may from time to time request.

PART 3. REPAYMENT OF DEBT SERVICE FOR CONSTRUCTION OF FACILITY

A. DEBT SERVICE ASSESSMENT. 5.2 million dollars of the proceeds from the COPs issued by the County were used to partially pay the cost for construction of the Facility. The Parties agree that each City shall annually pay an assessment ("**Debt Service Assessment**")

to the County to repay that portion of the debt service on the COPs attributable to the portion of the proceeds used to fund the construction of the Facility (the “**Facility Debt Service**”) until the COPs are defeased. The Facility Debt Service schedule (“**Schedule**”) is attached hereto as **Exhibit B** and incorporated by reference. The Schedule may be modified if the COPs are refinanced as provided herein or to allow for prepayments or other events as deemed appropriate by all the Parties. Each City’s annual Debt Service Assessment will be determined as follows:

1. Determine the Estimated Dog Population for each Party’s Jurisdiction as of December 31st of each year.
2. Add the Estimated Dog Population for all the Parties together to determine the Total Dog Population. Determine what percentage each Party’s Estimated Dog Population is compared to the Total Dog Population for all of the Parties’ Jurisdictions combined (“**Dog Population Percentage**”).

Each City shall pay the County a portion of the Facility Debt Service equal to that City’s Dog Population Percentage.

B. ANNUAL DEBT SERVICE STATEMENT AND INVOICE FOR COPs. By August 1st of each year, the County shall prepare and present to the Shelter Board and the governing bodies of the Parties a statement and invoice of the Facility Debt Service due from January 1 to December 31 for the upcoming year, each Party’s Dog Population Percentage and the Debt Service Assessment of each Party.

C. FACILITY DEBT SERVICE REPORT. The County shall provide the Parties with a report each year stating the amount received each year and the balance owing.

D. APPROPRIATION AND PAYMENT OF FUNDS. The Parties agree to consider for appropriation the amounts computed as set forth above by the first day of January of the year during which said monies are to be paid to the County. The Parties agree to pay the amounts for the Facility Debt Service to the County by January 31st of the year during which said monies are to be paid by the County for the debt service. All payments to the County pursuant to this Amended IGA are subject to annual appropriation by both the County and each City hereto in the manner required by statute. It is the intention of the Parties that no multiple-year fiscal debt or other obligation be created by this Amended IGA.

E. REPORTS REQUESTED BY THE PARTIES. The County shall also render to the other Parties, at reasonable intervals, such other reports and accountings as the Parties may from time to time request.

F. REFINANCING. The County shall have the right to refinance the debt on the COPs if deemed beneficial to the County so long as the amount owed by the Cities for debt service does not increase due to the refinancing.

PART 4. GENERAL CONTRACT TERMS

I. DEFAULT IN PERFORMANCE

A. **DEFAULT.** If any Party fails to make its Annual Contribution when due as provided in Part 1, Article VII or payments to the County as provided in Part 3, or to perform any of its covenants and undertakings under this Amended IGA, the County or any other Party shall cause written notice to be given to the City Manager or the County Manager (as the case may be) at the official address of the defaulting Party of the termination of the Party's participation in the Amended IGA, unless such default is cured within thirty (30) days from the date of such notice. Upon failure to cure said default within said thirty (30) day period, membership in the Shelter of the defaulting Party shall thereupon terminate, and said defaulting Party shall thereafter have no voting rights as a member of the Shelter at any regular or special meeting thereto, nor be entitled to representation on the Shelter Board, and said defaulting Party shall thereafter be denied service by the Shelter. Further, the Licensing Administrator shall no longer provide licensing services to said defaulting Party. The defaulting Party whose participation is terminated under this section of this Amended IGA shall forfeit all right, title, and interest in and to any Shelter funds and any right, title or interest in and to any property of the Shelter to which said Party may otherwise be entitled upon the dissolution of this Amended IGA. If a Party is in default of this Amended IGA for any reason other than nonappropriation of funds for payment of its Annual Contribution or payments to the County as provided for in Part 3, termination of the defaulting Party's participation in the Amended IGA shall not relieve the defaulting Party of the obligation to make the payments to the County as provided in Part 3 or its Annual Contribution that were due prior to the defaulting Party's termination. This Section is not intended to limit the right of any Party under this Amended IGA to pursue any or all other remedies it may have for breach of this Amended IGA. A Party who fails to make the payments required by Part 2 or 3 for any reason other than nonappropriation of funds shall be obligated to pay all costs of collection of said payment, including reasonable attorneys' fees. A City that fails to make the payments for any reason other than nonappropriation of funds shall be obligated to pay interest at a default rate of 10% plus all costs of collection of said payment, including reasonable attorneys' fees.

B. **PAYMENT DEFAULT/COPs.** If any City fails to make the payments to the County when due other than for non appropriation as set forth in Part 3, that City shall be in default. In the event of a payment default or non appropriation by any of the Cities, the remaining Cities and County shall be responsible for the debt service amount owed by the defaulting or non-appropriating City or Cities in the same ratio calculation set forth in Part 3 except the ratio shall be calculated without the defaulting Party or Parties inclusion in the ratio.

II. TERM, RENEWAL AND TERMINATION OF AMENDED IGA

A. **TERM AND RENEWAL OF AMENDED IGA.** As previously set forth in the 2012 Facility IGA, this Amended IGA shall remain in full force and effect for a term of 50 years from July 1, 2012 or until sooner terminated by two-thirds of the Parties. The Parties entering into this Amended IGA shall have the option to extend its term by amendment pursuant to Part 4, Section III below.

B. CONTINUATION OF SHELTER OPERATION/FEES FOR NON-PARTIES. All Shelter property and animals shall remain at the Facility under the terms of this Amended IGA. Entities not Parties to this Amended IGA who have animals at the Shelter that were placed at the Shelter by the entity or residents living within the boundaries of the entity on effective date of this Amended IGA shall pay a fee as set by the Shelter Board which may be per animal per day as long as said animal remains at the Shelter.

C. TERMINATION BY WRITTEN NOTICE. This Amended IGA, or any Party's participation in this Amended IGA, may be terminated effective by written notice from the Party or Parties to the Shelter at least 180 days prior to January 1st of any given year. Any Party terminating its participation pursuant to this provision shall not be entitled to any reimbursement for said Parties' contributions to the County, the Shelter or the Licensing Administrator for capital costs, assessments or any operating costs previously paid by said Party or any dog licensing fees previously paid by its residents. Such Party shall be entitled to be readmitted to the membership of the Shelter if approved by the Shelter Board and if the terminated Party has paid all dollar amounts the terminated Party is in arrears under the terms of this Amended IGA.

D. TERMINATION WITHOUT REQUIRED NOTICE. If any Party elects to terminate its participation in this Amended IGA prior to the end of any period of this Amended IGA and not in accordance with subsection C of this section, such Party shall be considered in default of this Amended IGA and accordingly shall forfeit its entire contribution to the Shelter. Upon default, the defaulting Party shall forfeit all privileges and property that such Party obtained as a result of its membership in this Shelter. Should a defaulting Party, at some later date, seek readmission to the membership of the Shelter, such Party shall be required to meet the requirements and contributions of any new Party seeking membership pursuant to the terms of this Amended IGA.

E. POWERS OF SHELTER UPON TERMINATION BY TWO-THIRDS. Upon termination by mutual agreement of two-thirds of the Parties, the powers granted to the Shelter under this Amended IGA shall continue to the extent necessary to make an effective disposition of the property, equipment, and animals under this Amended IGA. If the Amended IGA is terminated the Shelter and the County shall cause the Lease Agreement with the County to be terminated.

F. STATUS OF LEASED PREMISES UPON TERMINATION BY TWO-THIRDS/PAYMENT OF SHELTER LIABILITIES. Upon termination of this Amended IGA by mutual agreement of two-thirds of the Parties, the Lease Agreement shall terminate in accordance with its terms and improvements thereon located in Jefferson County shall revert to Jefferson County for its use and ownership. Any cost for liabilities incurred by the Shelter during the termination of this Amended IGA and as an expense of termination shall be borne by each Party to the Amended IGA in the same proportion as it is required to contribute to the Total Annual Contribution in Part 1 Section VII, whether such assessments have terminated or not except, if the debt service on the COPs is not fully paid, the County shall not pay any part of the remaining Shelter liability and the proportion of each City shall be adjusted to pay the full amount of the

Shelter liability without the County participation.

G. **TERMINATION FOR REASON OTHER THAN NONAPPROPRIATION.** Termination of the Amended IGA for any reason other than nonappropriation of funds shall not relieve the terminating Party of the obligation to make its Annual Contribution as provided in Part 1 or pay the Party's assessment to the County as provided in Part 3.

H. **DISBURSEMENT OF FUND UPON TERMINATION.** If this Amended IGA is terminated, the Shelter shall pay any funds it holds beyond its expenses incurred prior to the termination of this Amended IGA to the County to cover any remaining cost of the debt service on the COPs. This provision and the provisions of Part 2, Article I, Section G; Part 1, Article VII; Part 3; and Part 4, Article I and Article II, shall survive termination of this Amended IGA.

III. AMENDMENT

This Amended IGA may be amended at any time in writing by agreement of all the Parties to this Amended IGA.

IV. SEVERABILITY CLAUSE

If any provisions of this Amended IGA or the application thereof to any Party or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Amended IGA which can be given effect without the invalid provision or application, and to this end, the provisions of the Amended IGA are declared to be severable.

V. COUNTERPARTS

This Amended IGA may be signed in counterparts, and each counterpart shall be deemed an original, and all the counterparts taken as a whole shall constitute one and the same instrument. The Amended IGA shall not be effective until executed by all Parties.

VI. NO THIRD PARTY BENEFICIARIES

Except as otherwise stated herein, this Amended IGA is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not named as Parties, limit in any way governmental immunity and other limited liability statutes for the protection of the Parties, nor limit the powers and responsibilities of any other entity not a Party hereto. Nothing contained herein shall be deemed to create a partnership or joint venture between the Parties with respect to the subject matter hereof.

VII. SUPERSEDES AND TERMINATES PRIOR AGREEMENTS

This Amended IGA supersedes and replaces all prior agreements dealing with formation of the Shelter including, but not limited to, the Dog Licensing IGA, Facility Funding IGA, and

the 2012 Facility IGA, and any amendments to those IGAs.

VIII. NONDISCRIMINATORY POLICY

The Shelter shall make its services, facilities, and programs available to all persons regardless of race, color, age, creed, national origin, sex, or disability.

IX. NO GENERAL OBLIGATION INDEBTEDNESS

Because this Amended IGA will extend beyond the current fiscal year, the Parties understand and intend that the obligation of the Parties to pay any costs hereunder constitutes a current expense of the Parties payable exclusively from the Parties' funds and shall not in any way be construed to be a general obligation indebtedness of the Parties within the meaning of any provision of Article XI of the Colorado Constitution, or any other constitutional or statutory indebtedness. None of the Parties have pledged the full faith and credit of the state, or the Parties to the payment of the charges hereunder, and this Amended IGA shall not directly or contingently obligate the Parties to apply money from, or levy or pledge any form of taxation to, the payment of any costs.

X. NO ASSUMPTION OF LIABILITIES

By entering into and performing under this Amended IGA no Party is assuming any liability for the acts or omissions of any other Party or third parties.

XI. ELECTRONIC SIGNATURES

The Parties approve the use of electronic signatures for execution of this Amended IGA. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §24-71.3-101 through §24-71.3-121.

IN WITNESS WHEREOF, the Parties have executed this Amended IGA.

ATTEST:

COUNTY OF JEFFERSON,
STATE OF COLORADO

Deputy Clerk and Recorder

By _____
Lesley Dahlkemper, Chair
Board of County Commissioners
Date: _____

APPROVED AS TO FORM:

Steven L. Snyder
Senior Assistant County Attorney

ATTEST:

CITY OF ARVADA,
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

CITY OF LAKEWOOD
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

CITY OF GOLDEN
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

CITY OF WHEAT RIDGE
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

CITY OF WESTMINSTER
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

CITY OF EDGEWATER
STATE OF COLORADO

City Clerk

By _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

Office of the City Attorney

EXHIBIT A

Annual Assessment Calculations

(See Attached)

2021 Assessment Calculation

2021 Assessment/Licensing Calc	Total Households - 2019 (1)	Est Dog Pop (2)	Dogs per HH (2)	Est Dog Pop	% of total est dog population	Total Contribution
Jefferson County	81,093	0.47	1.6	60,982	29.79%	\$476,569
Arvada	49,297	0.47	1.6	37,071	18.11%	\$289,710
Edgewater	2,469	0.47	1.6	1,857	0.91%	\$14,510
Golden	8,133	0.47	1.6	6,116	2.99%	\$47,796
Lakewood	71,436	0.47	1.6	53,720	26.24%	\$419,817
Westminster	44,727	0.47	1.6	33,635	16.43%	\$262,853
Wheat Ridge	15,101	0.47	1.6	11,356	5.55%	\$88,746
	272,256			204,737	100.00%	\$1,600,000

1. 2019 State Demography Office
 2. 2018 US Pet Ownership demographic source book
 3. From FAS Pet Licensing Annual Report July 1 2019-June 30 2020
- Calculations follow 2019 City/County Manager agreed upon methodology.
Data updated to reflect current year (most recent year) information.

	Total Contribution	Actual Licensing Revenue July 2019-June 2020 (3)	2021 Assessment
Jefferson County	\$476,569	\$270,135	\$206,434
Arvada	\$289,710	\$126,710	\$163,000
Edgewater	\$14,510	\$2,160	\$12,350
Golden	\$47,796	\$22,275	\$25,521
Lakewood	\$419,817	\$185,360	\$234,457
Westminster	\$262,853	\$106,130	\$156,723
Wheat Ridge	\$88,746	\$32,060	\$56,686
	\$1,600,000	\$744,830	\$855,170

NOTE: This exhibit contains the assessment calculation for 2021 and will be recalculated each year through the Shelter's budget adoption.

EXHIBIT B

Facility Debt Service Schedule

(See Attached)

Jefferson County
Refunding Certificates of Participation Series 2019
Foothills Animal Shelter
3,400,753
(Balance at Refunding 2019)

Debt Service Schedule

	Principal	Coupon Rate	Interest	Total Disbursements	Annual Disbursements
	-----	-----	-----	-----	-----
01-Jun-20			85,018.83	85,018.83	
01-Dec-20	\$287,588	5.000%	85,018.83	372,606.83	\$457,625.66
01-Jun-21			77,829.13	77,829.13	
01-Dec-21	\$297,187	5.000%	77,829.13	375,016.13	\$452,845.26
01-Jun-22			70,399.45	70,399.45	
01-Dec-22	\$307,554	5.000%	70,399.45	377,953.45	448,352.90
01-Jun-23			62,710.60	62,710.60	
01-Dec-23	\$318,689	5.000%	62,710.60	381,399.60	444,110.20
01-Jun-24			54,743.38	54,743.38	
01-Dec-24	\$330,591	5.000%	54,743.38	385,334.38	440,077.76
01-Jun-25			46,478.60	46,478.60	
01-Dec-25	\$343,262	5.000%	46,478.60	389,740.60	436,219.20
01-Jun-26			37,897.05	37,897.05	
01-Dec-26	\$356,701	5.000%	37,897.05	394,598.05	432,495.10
01-Jun-27			28,979.53	28,979.53	
01-Dec-27	\$370,907	5.000%	28,979.53	399,886.53	428,866.06
01-Jun-28			19,706.85	19,706.85	
01-Dec-28	\$386,266	5.000%	19,706.85	405,972.85	425,679.70
01-Jun-29			10,050.20	10,050.20	
01-Dec-29	\$402,008	5.000%	10,050.20	412,058.20	422,108.40
	-----		-----	-----	-----
	\$3,400,753		\$987,627.24	\$4,388,380.24	\$4,388,380.24
	=====		=====	=====	=====



REPORT TO CITY COUNCIL OTHER

AGENDA ITEM
9.A.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: Ratification of Arvada Economic Development Association (AEDA) Board Members

Report in Brief

The Arvada Economic Development Association bylaws provide for the nomination of certain directors by the AEDA Board of Directors, who then are subject to City Council approval. This is a proposal for the Arvada City Council to formally ratify the appointment of the following:

Re-appointment of the following AEDA Board Members to serve another three-year term:

Mark Inboden

Mr. Inboden currently serves the AEDA Board as the Technology/Research & Development Representative. Mr. Inboden is the President and CEO of Utility Control and Equipment Company in Arvada, and has served on the AEDA Board since 2019. Prior to his service on the AEDA Board, he also served on the AEDA Retention Committee for six years.

Scott Marcum

Mr. Marcum currently serves the AEDA Board as the Real Estate Representative. Mr. Marcum is the owner of Marcum Commercial Advisors, a commercial real estate brokerage firm, and has served on the AEDA Board since 2016. In addition to representing commercial sales, purchases and leases around the Metro Denver area over the last 15 years, he also lives in Arvada and is highly involved in the community.

Appointment of the following AEDA Board Member candidates to serve a three-year term:

Gillian McCarron

Mrs. McCarron is being recommended by the AEDA Board to serve as the Professional Services or Warehousing Representative. Mrs. McCarron is the Vice President of Lakeside Insurance Center, LLC in Arvada, and has served on the AEDA Retention Committees since 2020. Currently and for many years, she has been highly engaged in service to the Arvada community through several Boards and Committees, including the Arvada Vitality Alliance Board of Directors, Professional Independent Insurance Agents of Colorado Board of Directors, and Chairman of the Arvada Wheat Ridge Service Ambassadors for Youth, among many others.

Financial Impact

There is no financial impact.

Background

Per the Arvada Economic Development Association (AEDA) bylaws, the organization may have 17 directors. With existing vacancies and expiring terms, the AEDA Board of Directors will have three vacancies for 2022. The Board assembled its Nominating Committee to review director candidates and make recommendations to the Board at its November Board meeting for three-year terms beginning in 2022.

Discussion

At its Board meeting on November 9, 2021, AEDA unanimously approved a motion to nominate three candidates for three-year terms of service on the AEDA Board of Directors, including Mark Inboden, Scott Marcum and Gillian McCarron to City Council for approval and ratification.

Public Contact

Posting of the City Council Agenda

Commission Recommendation

N/A

Strategic Alignment

This action aligns with the City Council Strategic Plan Priority area of Community and Economic Development.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that the nominations of Mr. Inboden, Mr. Marcum and Mrs. McCarron to the AEDA Board of Directors be approved and ratified.

Suggested Motion:

I move that Mark Inboden be reappointed to a three-year term on the AEDA Board, ending December 31st, 2024.

I move that Scott Marcum be reappointed to a three-year term on the AEDA Board, ending December 31st, 2024.

I move that Gillian McCarron be appointed to a three-year term on the AEDA Board, ending December 31st, 2024.

Prepared by:
Daniel Ryley, Director of Economic Development

Reviewed by:

Approved by:

Daniel Ryley, Director of Economic Development	11/15/2021
Ryan Stachelski, Director of Community and Economic Development	11/15/2021
Gail Walker, Legal Specialist-Contracts	11/17/2021

Rachel Morris, City Attorney

11/19/2021

Lorie Gillis, Deputy City Manager

11/23/2021

Mark Deven, City Manager

11/23/2021

Enclosure, exhibits & attachments required to support the report



REPORT TO CITY COUNCIL PUBLIC HEARING

AGENDA ITEM
10.A.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: CB21-040 An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2021
(Ordinance No. 4787)

Report in Brief

The attached ordinance is the final process to ensure that all Funds will end the year within their legally approved limits. The original budget of \$247,918,870 was approved by the City Council in October 2020. The carryover ordinance approved by City Council in April 2021 increased the total appropriation by \$41,750,220, bringing the current budget to \$289,669,090. This ordinance requests that the City Council approve a final clean-up ordinance that will add an additional \$28,866,506 to the budget, bringing the total appropriation to \$318,535,596.

The Arvada team recommends that the City Council approve CB21-040, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2021 on final reading, numbered 4787 and ordered published by title only.

Financial Impact

The overall increase in the 2021 appropriation is \$28,866,506 and will bring the total appropriation to \$318,535,596. Increased revenues or sufficient reserves exist to cover each of the budgeted items. The final modification to the budget will ensure each fund does not exceed its legally adopted appropriation.

Background

The budget is an ongoing process throughout the year. It begins eight months prior to the beginning of the fiscal year. Throughout any given budget year, many things can change. Most of these changes can be accommodated within the appropriation that the City Council adopts. Other changes, such as grants and extraordinary expenditures, require City Council approval.

At the beginning of the year, there may be items that were not contemplated in the prior year and must be re-appropriated. This is referred to as the "Carry-Forward" ordinance. This usually comes to the City Council in the first quarter of the year and increases the total budget. Throughout the year, the City Council also adopts resolutions approving the acceptance of grants and other types of arrangements. Resolutions inform the City Council of changes. However, the budget may only be legally increased through the adoption of an ordinance. The final way to modify the budget is to adopt a final ordinance near the end of the year. This ordinance is often referred to as the "Clean-Up" ordinance.

Discussion

This ordinance will increase the appropriation in 13 funds.

The attached table provides a summary of the history of the adjustments made to each fund in 2021. The following information summarizes the adjustments by Fund:

General Fund - \$3,548,749

An increase of \$2,167,010 is needed for an additional transfer to the Capital Improvement Projects Fund to comply with section

98-101 of the Sales and Use Tax Code requiring 60% of the first cent of sales tax to be used for capital projects or debt that finance capital projects. The increase in the transfer is due to increased sales tax receipts.

An increase of \$800,000 is needed for salaries to reinstate steps and market rate adjustments that were eliminated in the 2021 budget.

An increase of \$500,000 is needed for an increase to salaries and wages for the hazard pay that was paid out to employees that were required to work in-person during specified times during the pandemic. The total amount allocated to hazard pay was \$1.3 million; \$800,000 of the hazard pay amount will be paid with American Rescue Plan (ARP) funds. The \$500,000 amount allocated from the General Fund represents the portion that was not allowed to be charged the ARP funds based on Federal Treasury rules.

An increase of \$40,244 is needed for the purchase of two license plate readers. The purchase of these readers is funded through a grant from the Colorado Auto Theft Prevention Authority.

An increase of \$23,495 is needed for the completion of landscape work at Prestige preschool. This work was funded by a letter of credit taken out by the developer.

An increase of \$10,000 is needed for temporary wages in Human Resources to assist with the hiring of additional positions for the programming of the athletic fields.

An increase of \$8,000 is needed for the early replacement of an Information Technology vehicle.

The requests in the General fund will be funded with grants, reimbursements and from additional sales tax revenues.

Emergency Fund - \$5,537,909

An increase of \$5,537,909 is needed for Council approved Resolution R21-117 authorizing the fourth budget amendment to the budget for funds received from the American Rescue Plan Act. The Olde Town Street closure project and the hazard pay are two items that have been approved by City Council. Additional items will be presented to the City Council for their approval.

Community Development Fund - \$2,181,995

An increase of \$775,525 is needed for Council approved Ordinance CB21-025 authorizing an additional appropriation for Federal COVID relief grant funding to assist Arvada residents impacted by COVID-19.

An increase of \$1,406,470 is needed for Council approved Ordinance CB21-031 authorizing additional appropriation for Federal COVID relief grant funding to assist Arvada residents impacted by COVID-19.

Housing Authority Fund - \$951,709

An increase of \$418,709 is needed for additional Section 8 Housing and Urban Development grant funds for rental assistance.

An increase of \$425,000 is needed for additional Housing Assistance Payment grant funding to provide rental subsidies.

An increase of \$108,000 is needed for temporary wages and supplies.

The requests in the Housing fund will be funded from Housing and Urban Development grants.

Parks Fund - \$350,535

An increase of \$128,000 is needed for a transfer to the Vehicle Fund for the purchase of a vehicle and equipment for the maintenance of the athletic fields that the City will be taking over from APEX.

An increase of \$120,000 is needed for the purchase of athletic programming software to schedule the field activities.

An increase of \$50,000 is needed for maintenance materials for the athletic fields.

An increase of \$12,535 is needed for computers and office equipment for the new employees that will be hired for the athletic fields.

An increase of \$40,000 is needed for salaries to reinstate steps and market rate adjustments that were eliminated in the 2021 budget.

The requests in the Parks fund will be funded from fund balance reserves.

Tax Increment Fund .21 - \$111,000

An increase of \$111,000 is needed for salaries to reinstate steps and market rate adjustments that were eliminated in the 2021 budget.

The request for the Tax Increment fund will be funded by additional sales tax revenues.

Tax Increment Fund .22 - \$270,000

An increase of \$270,000 is needed for salaries to reinstate steps and market rate adjustments that were eliminated in the 2021 budget.

The request for the Tax Increment fund will be funded from additional sales tax revenues.

Capital Improvement Projects Fund - \$10,054,502

An increase of \$950,000 is needed for Council approved Ordinance CB21-002 authorizing the first amendment to the budget for a grant from the Colorado Department of Transportation for the signal replacement at W. 58th Avenue and Independence Street and W 86th Parkway and Kipling Street.

An increase of \$1,650,000 is needed for Council approved Ordinance CB21-007 authorizing the second amendment to the budget for a grant from the Colorado Department of Transportation for the signal replacement project at W. 64th Avenue & Simms Street and W. 80th Avenue & Vance Drive.

An increase of \$450,000 is needed for Council approved Ordinance CB21-008 authorizing the third amendment to the budget for a grant from the Colorado Department of Transportation for the signal replacement at W. 58th Avenue and Kipling Street.

An increase of \$237,060 is needed for a server upgrade, replacement of the control room and capital maintenance items for KATV. These items will be funded with accumulated PEG fee revenues.

An increase of \$460,000 is needed for the construction of the park that will display the restored .04 Trolley. This project is funded by a transfer from the Arvada Urban Renewal Authority.

An increase of \$1,500,000 is needed for the Arvada Fiber Optic Network (AFON) . This project will be funded by American Rescue Plan Act grants funds.

An increase of \$1,500,000 is needed for the Olde Town Street closure project. This project will be refunded by American Rescue Plan Act grant funds.

An increase of \$169,969 is needed for construction cost overruns for Wadsworth turn lanes (68th to 72nd). The construction overrun will be reimbursed by the Colorado Department of Transportation.

An increase of \$46,924 is needed for an increase to the W. 82nd Avenue paving project from Leyden to Indiana. The increase to this project will be funded by a transfer from the Streets fund.

An increase of \$115,000 is needed for additional utility work for Ralston Road Phase II. The increase for this work will be funded by a transfer from the Water Fund.

An increase of \$508,022 is needed for the Safe Routes to School grant that will fund the Pierce Street project.

An increase of \$300,517 is needed for the Jeffco Open Space Trails grant that will fund the Standley Lake Library Trail head project.

An increase of \$2,167,010 is needed for additional projects that include a new fire panel, a new gate for Indiana Shops, a transportation master plan, funding for the bridge program, guardrails and the Rocky Mountain Greenway trailhead to be completed in the Capital Improvement Projects Fund. These projects are funded by a transfer from the General Fund resulting from the additional 98-101 funding.

Water Fund - \$3,741,535

An increase of \$3,611,535 is needed for the Council approved Resolution authorizing the construction of a pump station for Canyon Pines Metropolitan District. This project will be funded by a reimbursement from the District.

An increase of \$130,000 is needed for salaries to reinstate steps and market rate adjustments that were eliminated in the 2021 budget. This request will be funded by fund balance reserves.

Wastewater Fund - \$149,790

An increase of \$89,790 is needed for the design of the Alkire Lift Station. The design and construction of this project will be reimbursed by the developer.

An increase of \$60,000 is needed for salaries to reinstate steps and market rate adjustments that were eliminated in the 2021 budget. This request will be funded by fund balance reserves.

Golf Course - \$266,800

An increase of \$116,800 is needed for the write-off of an uncollectible accounts receivable invoice to Xcel Energy for charges relating to the WestWoods Golf Course remodel.

An increase of \$75,000 is needed for temporary wages that were reduced for the 2021 budget.

An increase of \$75,000 is needed for salaries to reinstate steps and market rate adjustments that were eliminated in the 2021 budget.

These requests will be funded from additional revenue received in 2021.

Computer Fund - \$686,136

An increase of \$205,000 is needed for increases in the monthly Verizon broadband service charges.

An increase of \$81,657 is needed for additional SQL server licenses for security patching.

An increase of \$80,000 is needed for additional security services for a cyber threat related to a police incident.

An increase of \$67,896 is needed for additional Windows and Zoom licenses for additional laptops and remote work stations.

An increase of \$66,000 is needed for the services incurred prior to the cancellation of the municipal court Journal Tech contract and charges made to the municipal court audio system due to COVID health and safety concerns.

An increase of \$48,000 is needed for the increase in the annual police radio system maintenance costs and the purchase of printers for the Brazos police system.

An increase of \$32,000 is needed for the replacement of battery back-up equipment in case of a power failure.

An increase of \$30,000 is needed for the replacement of phones and other devices related to the phone system as the system is more than ten years old.

An increase of \$25,000 is needed for the equipment and services for the hybrid conference rooms.

An increase of \$24,250 is needed for professional services incurred to move Oracle support services to another consulting firm.

An increase of \$15,000 is needed for the replacement of computers and docking stations that were outside of the warranty period.

An increase of \$11,333 is needed for structural study for the construction of a radio tower.

The requests in the Computer fund will be funded by fund balance reserves.

Vehicle Fund - \$1,015,846

An increase of \$513,703 is needed for the purchase of a patch, paver and paint truck. These trucks will be funded by transfers from the Streets, Water and Capital Improvement Projects funds.

An increase of \$75,000 is needed to repair the fuel system. This project will be funded by a transfer from the general fund in 2022, but was started in 2021 due to regulatory compliance issues that the current system does not meet.

An increase of \$128,000 is needed for the purchase of a vehicle and equipment to maintain the athletic fields. This will be funded by a transfer from the Parks fund.

An increase of \$120,000 is needed for the increased cost of parts and supplies. The cost of parts and supplies has been increasing 3-5% each quarter.

An increase of \$81,143 is needed to repair the pump system and upgrade the oil system to repair electrical issues and prevent oil loss.

An increase of \$44,000 is needed to renovate the soils lab to a break room for health and safety concerns.

An increase of \$40,000 is needed for salaries to reinstate steps and market rate adjustments that were eliminated in the 2021 budget.

An increase of \$14,000 is needed to construct new work stations for each employee for COVID health and safety concerns.

The first three items will be covered by transfers from other funds. The remaining \$299,143 will be funded with fund balance reserves.

Public Contact

Posting of the City Council agenda.

Commission Recommendation

N/A

Strategic Alignment

The Ordinance supports the following principle within the Organizational and Service Effectiveness Priority area within the City Council Strategic Plan.

"Provides a well-managed, fiscally responsible government that operates effectively and efficiently while identifying revenue requirements to sustain current service levels and achieve future requested levels of service".

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that the City Council approve CB21-040, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2021 on final reading, numbered 4787 and ordered published by title only.

Suggested Motion:

I move that CB21-040, An Ordinance Authorizing an Additional Appropriation for Fiscal Year 2021, be (approved on final reading, numbered 4787 and ordered published by title only) (rejected).

Prepared by:

Lisa Yagi, Assistant Finance Director

Reviewed by:

Approved by:

Jenna Belec, Executive Assistant	11/12/2021
Bryan Archer, Director of Finance	11/17/2021
Gail Walker, Legal Specialist-Contracts	11/18/2021
Kylie Justus, Assistant City Attorney	11/18/2021
Rachel Morris, City Attorney	11/19/2021
Lorie Gillis, Deputy City Manager	11/23/2021
Mark Deven, City Manager	11/23/2021

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. 21-040
ORDINANCE NO. 4787

AN ORDINANCE AUTHORIZING AN ADDITIONAL APPROPRIATION
FOR FISCAL YEAR 2021

WHEREAS, the City Council of the City of Arvada adopted Ordinance No. 4745 (Council Bill No. 20-028), which authorized the annual appropriation for Fiscal Year 2021; and

WHEREAS, Section 10.8(a) of the Arvada Home Rule Charter provides that City Council may make additional appropriations by Ordinance during the fiscal year for unanticipated expenditures required of the City; and

WHEREAS, the City Council of the City of Arvada finds that an additional appropriation is necessary in order for the City to meet unanticipated expenditures; and

WHEREAS, the City Council of the City of Arvada further finds that such additional expenses and budgeted expenses do not exceed budgeted revenues and reserves for Fiscal Year 2021.

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

Section 1. The following sums of money as may be needed or deemed necessary to defray the expenses and liabilities of the City of Arvada are hereby appropriated for Fiscal Year 2021.

City of Arvada Final Appropriation

Fund	Final Budget
General Fund	\$98,719,261
Conservation Trust Fund	\$1,165,000
Streets Fund	\$10,409,668
Emergency Fund	\$5,537,909
Community Development Fund	\$3,224,097
Housing Authority Fund	\$6,722,099
Parks Fund	\$10,294,027
Police Seizure	\$778,423
COP Series 2005 Debt Fund	\$2,135,749
Police Tax Increment Fund .21	\$5,775,132
Police Tax Increment Fund .25	\$6,087,722
Debt Service Fund	\$5,364,532
Capital Improvement Projects Fund	\$19,855,568

Water Fund	\$83,530,592
Wastewater Fund	\$21,262,121
Golf Course Fund	\$6,683,263
Stormwater Fund	\$7,824,760
Food Service Fund	\$502,939
Solid Waste Fund	\$6,321,260
Insurance Fund	\$2,438,889
Computer Replacement Fund	\$3,112,442
Print Shop	\$363,398
Vehicle Fund	\$8,794,675
Building Fund	\$1,632,070
Total Appropriation	\$318,535,596

Section 2. This Ordinance shall take effect five days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 15th day of November, 2021.

PASSED, ADOPTED, AND APPROVED this 6th day of December , 2021.

Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

Publication Dates: November 18, 2021
 December 9, 2021

City of Arvada 2021 Final Appropriation

Fund	Original Budget	Carryover Ordinance	Clean-Up Ordinance	Final Budget
General Fund	\$ 91,118,633.00	\$ 4,051,879	\$ 3,548,749	\$ 98,719,261
Conservation Trust Fund	\$ 1,165,000.00	\$ -	\$ -	\$ 1,165,000
Streets Fund	\$ 10,079,063.00	\$ 330,605	\$ -	\$ 10,409,668
Emergency Fund	\$ -	\$ -	\$ 5,537,909	\$ 5,537,909
Community Development Fund	\$ 1,042,102.00	\$ -	\$ 2,181,995	\$ 3,224,097
Housing Authority Fund	\$ 5,770,390.00	\$ -	\$ 951,709	\$ 6,722,099
Parks Fund	\$ 9,918,237.00	\$ 25,255	\$ 350,535	\$ 10,294,027
Police Seizure	\$ 29,423.00	\$ 749,000	\$ -	\$ 778,423
COP Series 2005 Debt Fund	\$ 2,135,749.00	\$ -	\$ -	\$ 2,135,749
Police Tax Increment Fund .21	\$ 5,664,132.00	\$ -	\$ 111,000	\$ 5,775,132
Police Tax Increment Fund .25	\$ 5,817,722.00	\$ -	\$ 270,000	\$ 6,087,722
Debt Service Fund	\$ 5,364,532.00	\$ -	\$ -	\$ 5,364,532
Capital Improvement Projects Fund	\$ 6,419,792.00	\$ 3,381,274	\$ 10,054,502	\$ 19,855,568
Water Fund	\$ 58,385,269.00	\$ 21,403,788	\$ 3,741,535	\$ 83,530,592
Wastewater Fund	\$ 17,515,431.00	\$ 3,596,900	\$ 149,790	\$ 21,262,121
Golf Course Fund	\$ 6,412,663.00	\$ 3,800	\$ 266,800	\$ 6,683,263
Stormwater Fund	\$ 4,489,154.00	\$ 3,335,606	\$ -	\$ 7,824,760
Food Service Fund	\$ 502,939.00	\$ -	\$ -	\$ 502,939
Solid Waste Fund	\$ 6,321,260.00	\$ -	\$ -	\$ 6,321,260
Insurance Fund	\$ 2,289,215.00	\$ 149,674	\$ -	\$ 2,438,889
Computer Replacement Fund	\$ 1,842,004.00	\$ 584,302	\$ 686,136	\$ 3,112,442
Print Shop	\$ 355,698.00	\$ 7,700	\$ -	\$ 363,398
Vehicle Fund	\$ 4,880,933.00	\$ 2,897,896	\$ 1,015,846	\$ 8,794,675
Building Fund	\$ 399,529.00	\$ 1,232,541	\$ -	\$ 1,632,070
Total	\$ 247,918,870.00	\$ 41,750,220	\$ 28,866,506	\$ 318,535,596

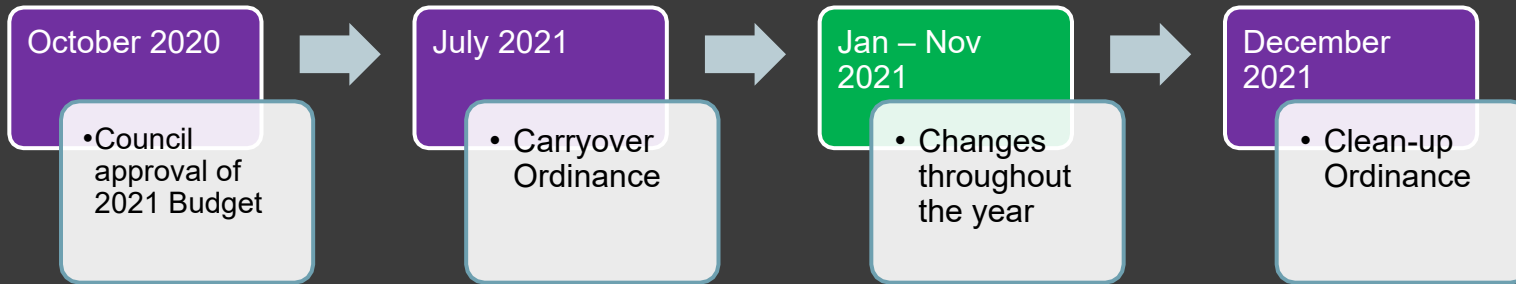
2021 SUPPLEMENTAL APPROPRIATION



City Council
December 6, 2021



Annual Budget Process



Ordinances

*

Resolutions



Original Budget	\$ 247,918,870
Carryover Ordinance	41,750,220
Current Budget	\$ 289,669,090
General	\$ 3,548,749
Emergency Fund (ARPA)	5,537,909
Community Development	2,181,995
Parks	350,535
Housing	951,709
Police Tax Increment Funds	381,000
Capital Improvement Fund	10,054,502
Water Fund	3,741,535
Wastewater Fund	149,790
Golf Course Fund	266,800
Computer Replacement Fund	686,136
Vehicle Fund	1,015,846
Supplemental	\$ 28,866,506
Final Revised Budget	\$ 318,535,596

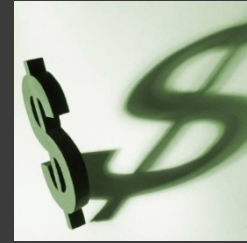
Additional Appropriation

- All requests have equivalent revenue sources (grants, revenues over budget, etc.) to offset
 - *OR*
- There are sufficient reserves to cover the expenditures



General Fund

- \$3,548,749 in expenditures
- All increases are being funded by additional revenue (grants, reimbursements and sales tax)



General Fund

- \$2,167,010 for an additional transfer to CIP, required by code section 98-101 due to increased sales tax revenues
- \$800,000 for the reinstatement of steps and MRAs
- \$500,000 for hazard pay
- \$81,739 various operating expenditures



Emergency Fund (ARPA)

- \$5,537,909 for the first half of the American Rescue Plan Act (ARPA) funds received in 2021 (offset by grant funds)



Community Development Fund

- \$775,525 Federal COVID relief grant funding first allocation (offset by grant funds)
- \$1,406,470 Federal COVID relief grant funding second allocation (offset by grant funds)



Housing Authority Fund



- \$418,709 for additional Section 8 Housing grant funds for rental assistance (offset by grant funds)
- \$425,000 for additional Housing Assistance Payment grant funds for rental assistance (offset by grant funds)
- \$108,000 for temporary wages and additional supplies (offset by grant funds)

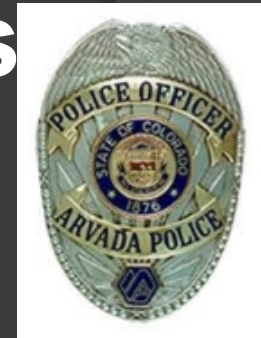
Parks Fund

- \$128,000 for the purchase of a vehicle and equipment for the maintenance of athletic fields (fund balance reserves)
- \$120,000 for the purchase of athletic field programming software (fund balance reserves)
- \$62,535 for athletic field supplies, computers and office equipment (fund balance reserves)
- \$40,000 for the reinstatement of steps and MRAs (fund balance reserves)



Police Tax Increment Funds

- \$381,000 for the reinstatement of steps and MRAs (additional sales tax revenues)



Capital Improvement Fund

- \$3,050,000 for various signal replacements (offset by grant revenues)
- \$237,060 for improvements related to KATV (funded by PEG fees)
- \$460,000 for construction of park for .04 Trolley (funded by AURA)
- \$1,500,000 for completion of the Arvada Fiber Optic Network (funded by ARPA)
- \$1,500,000 for Olde Town Street Closure (funded by ARPA)
- \$216,893 Wadsworth turn lanes (offset by grants)
- \$508,022 for the Pierce Street safe routes to schools project (offset by grants)
- \$300,517 for the Stanley Lake Library Trail Head project (offset by grants)
- \$2,282,010 for miscellaneous CIP projects (98-101 funds)



Water Fund



- \$3,611,535 for the construction of a pump station for Canyon Pines (offset by grant funds)
- \$130,000 for the reinstatement of steps and MRAs (fund balance reserves)

Wastewater Fund

- \$89,790 for the design of the Alkire Lift Station (fund balance reserves)
- \$60,000 for the reinstatement of steps and MRAs (fund balance reserves)



Golf Course Fund

- \$116,800 for the write-off of an uncollectible receivable (additional fee revenues)
- \$75,000 for additional temporary wages (additional fee revenues)
- \$75,000 for the reinstatement of steps and MRAs (additional fee revenues)



Computer Fund

- \$205,000 for increases in Verizon broadband services (offset by fund balance reserves)
- \$81,657 for additional SQL server licenses (offset by fund balance reserves)
- \$80,000 for additional security services (offset by fund balance reserves)
- \$67,896 for additional Windows and Zoom licenses (offset by fund balance reserves)
- \$251,583 for additional operating expenditures (offset by fund balance reserves)

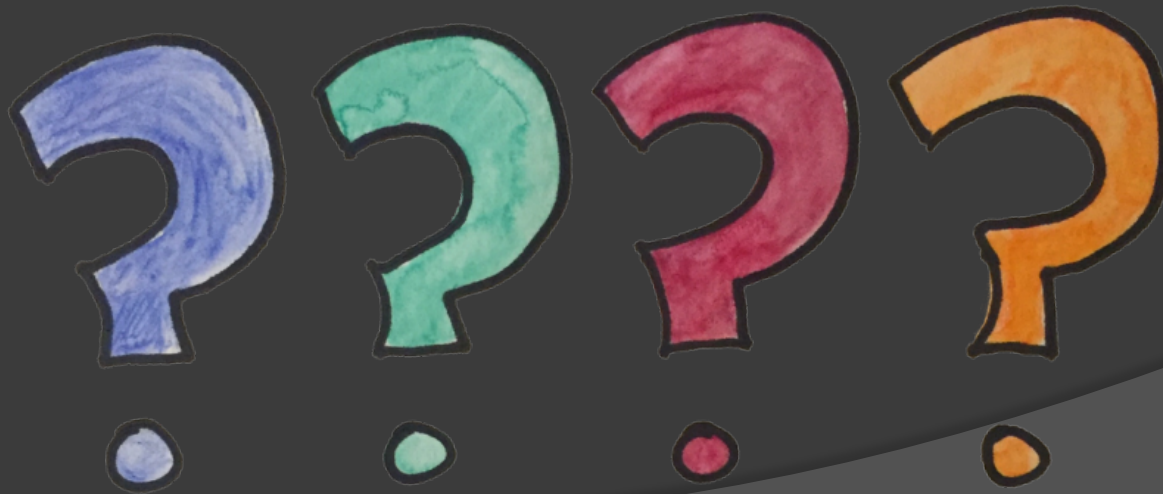


Vehicle Fund



- \$513,703 for the purchase of patch, paver and paint trucks (funded by transfers from Streets, Water and CIP Funds)
- \$75,000 to repair fuel system (offset by fund balance reserves)
- \$128,000 for the purchase of a vehicle and equipment for the maintenance of athletic fields (funded by transfer from Parks)
- \$178,000 for increased supply and operating costs (offset by fund balance reserves)
- \$81,143 for repairs to pump system and upgrades to the oil system (offset by fund balance reserves)
- \$40,000 for the reinstatement of steps and MRAs







REPORT TO CITY COUNCIL PUBLIC HEARING

**AGENDA ITEM
10.B.**

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: CB21-041 An Ordinance Amending and Restating Plan Documents and Adoption Agreements for the Executive Defined Contribution Retirement Plan, City Manager Retirement Plan, City Attorney Retirement Plan, and Municipal Judge Retirement Plan (Ordinance No. 4788)

Report in Brief

The executive retirement plan board is requesting the City Council to approve the proposed plan documents in order to bring them into compliance with the Pension Protection Act of 2006. The restatement will be effective as of January 1, 2020.

The Arvada team recommends that the City Council approve CB21-041, An Ordinance Amending and Restating Plan Documents and Adoption Agreements for the Executive Defined Contribution Retirement Plan, City Manager Retirement Plan, City Attorney Retirement Plan, and Municipal Judge Retirement Plan on final reading, numbered 4788 and ordered published by title only.

Financial Impact

There is no financial impact.

Background

With the recent updates to pension law, the executive board and legal team, with help from outside legal counsel, have updated the various plans. These updates will allow the plans to fully comply with the Pension Protection Act of 2006 and will incorporate the ability for plan participants to take out loans. These updates are required to bring the plans up to current best business practices.

Discussion

The proposed plans are in an amended and restated format, meaning that although they are generally the same in content as the prior version, they have been restated in their entirety to update the plans to comply with legal changes, make the language in the plans more understandable, and to put the plans in a more user friendly format.

Public Contact

Posting of the City Council agenda

Commission Recommendation

N/A

Strategic Alignment

This resolution supports the following Principle within the Organizational and Service Effectiveness Priority Area of the City Council Strategic Plan:

SUBJECT: CB21-041 An Ordinance Amending and Restating Plan Documents and Adoption Agreements for the Executive Defined Contribution Retirement Plan, City Manager Retirement Plan, City Attorney Retirement Plan, and Municipal Judge Retirement Plan (Ordinance No. 4788)

PAGE: 2
ITEM: 10.B.

Provides legal services to the City Council, Boards and Commissions, and all work systems, so they can enforce the law, avoid, or mitigate risks associated with City operations and protect the legal interests of the City.

Alternative Courses of Action

N/A.

Recommendation for Action

The Arvada team recommends that the City Council approve CB21-041, An Ordinance Amending and Restating Plan Documents and Adoption Agreements for the Executive Defined Contribution Retirement Plan, City Manager Retirement Plan, City Attorney Retirement Plan, and Municipal Judge Retirement Plan on final reading, numbered 4788 and ordered published by title only.

Suggested Motion:

I move that CB21-041, An Ordinance Amending and Restating Plan Documents and Adoption Agreements for the Executive Defined Contribution Retirement Plan, City Manager Retirement Plan, City Attorney Retirement Plan, and Municipal Judge Retirement Plan, be (approved on final reading, numbered 4788 and ordered published by title only) (rejected).

Prepared by:
Chris Koch, CCO Admin

Reviewed by:

Approved by:

Jenna Belec, Executive Assistant	11/12/2021
Bryan Archer, Director of Finance	11/17/2021
Gail Walker, Legal Specialist-Contracts	11/18/2021
Kylie Justus, Assistant City Attorney	11/18/2021
Rachel Morris, City Attorney	11/19/2021
Lorie Gillis, Deputy City Manager	11/23/2021
Mark Deven, City Manager	11/23/2021

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. CB21-041
ORDINANCE NO. 4788

AN ORDINANCE AMENDING AND RESTATING PLAN DOCUMENTS AND ADOPTION AGREEMENTS FOR THE EXECUTIVE DEFINED CONTRIBUTION RETIREMENT PLAN, CITY MANAGER RETIREMENT PLAN, CITY ATTORNEY RETIREMENT PLAN, AND MUNICIPAL JUDGE RETIREMENT PLAN

WHEREAS, on April 20, 2009, City Council established the City of Arvada Executive Defined Contribution Retirement Plan, the City Manager Retirement Plan, and City Attorney Retirement Plan pursuant to Council Bill 09-011, Ordinance 4162 and established the Municipal Judge Retirement Plan pursuant to Council Bill 11-068, Ordinance 4314 on December 19, 2011 (“the Plans”); and

WHEREAS the Plans are qualified governmental retirement plans under the applicable rules and regulations of the Internal Revenue Code and Treasury Regulations; and

WHEREAS, City Council desires to amend and restate the Plans in order to comply with the Pension Protection Act of 2006 and other legislative and regulatory changes.

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

Section 1. The Plans and corresponding Adoption Agreements, which are in substantially the same form as that attached hereto, are hereby amended and restated.

Section 2. The Plans and corresponding Adoption Agreements set forth herein shall be retroactively effective from January 1, 2020.

Section 3. This Ordinance shall be effective five days after publication following final passage.

Section 4. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each part or parts thereof irrespective of the fact that any part or parts be declared unconstitutional or invalid.

INTRODUCED, READ, AND ORDERED PUBLISHED this 15th day of November, 2021.

PASSED, ADOPTED, AND APPROVED this 6th day of December, 2021.

Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

Publication Dates: November 18, 2021
 December 9, 2021

Governmental Defined Contribution Volume Submitter Plan

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**ARTICLE I
DEFINITIONS**

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

1.1 "Account" means any separate notational account established and maintained by the Administrator for each Participant under the Plan. To the extent applicable, a Participant may have any (or all) of the following notational Accounts:

- (a) "Combined Account" means the account representing the Participant's total interest under the Plan resulting from Employer contributions. In addition, Forfeitures are part of the Combined Account to the extent they are reallocated.
- (b) "Mandatory Contribution Account" means the account established hereunder to which mandatory Employee contributions made pursuant to Section 4.8 are allocated, to the extent such contributions are not picked-up by the Employer pursuant to Code §414(h). A Participant's Mandatory Contribution Account shall be fully Vested at all times.
- (c) "Rollover Account" means the account established hereunder to which amounts transferred from a qualified plan or individual retirement account in accordance with Section 4.6 are allocated.
- (d) "Transfer Account" means the account established hereunder to which amounts transferred to this Plan from a direct plan-to-plan transfer in accordance with Section 4.7 are allocated.
- (e) "Voluntary Contribution Account" means the account established hereunder to which after-tax voluntary Employee contributions made pursuant to Section 4.9 are allocated.

1.2 "Administrator" means the Employer unless another person or entity has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer.

1.3 "Adoption Agreement" means the separate agreement which is executed by the Employer and sets forth the elective provisions of this Plan and Trust as specified by the Employer.

1.4 "Affiliated Employer" means any entity required to be aggregated with the Employer pursuant to Code §414.

1.5 "Alternate Payee" means an alternate payee pursuant to a qualified domestic relations order that meets the requirements of Code §414(p).

1.6 "Anniversary Date" means the last day of the Plan Year.

1.7 "Annuity Starting Date" means, with respect to any Participant, the first day of the first period for which an amount is paid as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.

1.8 "Beneficiary" means the person (or entity) to whom all or a portion of a deceased Participant's interest in the Plan is payable, subject to the restrictions of Sections 6.2 and 6.6.

1.9 "Code" means the Internal Revenue Code of 1986, as it may be amended from time to time.

1.10 "Compensation" means, with respect to any Participant, the amount determined in accordance with the following provisions, except as otherwise provided in the Adoption Agreement.

- (a) **Base definition.** One of the following, as elected in the Adoption Agreement:
 - (1) Information required to be reported under Code §§6041, 6051 and 6052 (Wages, tips and other compensation as reported on Form W-2). Compensation means wages, within the meaning of Code §3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code §§6041(d), 6051(a)(3) and 6052. Compensation must be determined without regard to any rules under Code §3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).
 - (2) Code §3401(a) Wages. Compensation means an Employee's wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(3) 415 safe harbor compensation. Compensation means wages, salaries, for Plan Years beginning after December 31, 2008, Military Differential Pay, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Regulation §1.62-2(c))), and excluding the following:

- (i) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are excludable from the Employee's gross income, or any distributions from a plan of deferred compensation;
- (ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
- (iv) Other amounts which receive special tax benefits, or contributions made by the Employer (whether or not under a salary deferral agreement) towards the purchase of an annuity contract described in Code §403(b) (whether or not the contributions are actually excludable from the gross income of the Employee).

(b) **Paid during "determination period."** Compensation shall include only that Compensation which is actually paid to the Participant during the "determination period". Except as otherwise provided in this Plan, the "determination period" is the period elected by the Employer in the Adoption Agreement. If the Employer makes no election, the "determination period" shall be the Plan Year.

(c) **Inclusion of deferrals.** Notwithstanding the above, unless otherwise elected in the Adoption Agreement, Compensation shall include all of the following types of elective contributions and all of the following types of deferred compensation:

(1) Elective contributions that are made by the Employer on behalf of a Participant that are not includible in gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) and 403(b). If specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), amounts under Code §125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(2) Compensation deferred under an eligible deferred compensation plan within the meaning of Code §457(b).

(3) Employee contributions described in Code §414(h)(2) that are picked-up by the employing unit and thus are treated as Employer contributions.

(d) **Post-severance compensation – Code §415 Regulations.** The Administrator shall adjust Compensation, for Plan Years beginning on or after July 1, 2007 (or such other date as the Employer specifies in the Compensation Section of the Adoption Agreement), for amounts that would otherwise be included in the definition of Compensation but are paid by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Plan Year that includes the date of the Participant's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered Compensation, even if payment is made within the time period specified above.

(1) **Regular pay.** Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of Compensation) if:

- (i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
- (ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(2) **Leave cash-outs.** Compensation shall include leave cash-outs if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred compensation.** Compensation shall include deferred compensation if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid if the Participant had continued in employment with the Employer and only to the extent the payment is includible in the Participant's gross income.

(4) **Military Differential Pay.** Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** Compensation shall include compensation paid to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled.

(e) **Dollar limitation.** Compensation in excess of \$200,000 shall be disregarded for all. Such amount shall be adjusted by the Commissioner for increases in the cost-of-living in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any "determination period" beginning with or within such calendar year. If a "determination period" consists of fewer than twelve (12) months, the \$200,000 annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the "determination period," and the denominator of which is twelve (12). In applying any Plan limitation on the amount of matching contributions, where such limits are expressed as a percentage of Compensation, the Administrator may apply the Compensation limit under this Section annually, even if the matching contribution formula is applied on any time interval which is less than the full Plan Year or the Administrator may pro rate the Compensation limit.

In the case of an "eligible Participant," the dollar limitation under Code §401(a)(17) shall not apply to the extent the amount under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993. For purposes of this provision, an "eligible Participant" is an individual who first became a Participant before the first Plan Year beginning after the earlier of (i) the Plan Year in which the Plan was amended to reflect Code §401(a)(17), or (ii) December 31, 1995.

(f) **Non-eligible Employee.** If, in the Adoption Agreement, the Employer elects to exclude a class of Employees from the Plan, then Compensation for any Employee who becomes eligible or ceases to be eligible to participate during a "determination period" shall only include Compensation while the Employee is an Eligible Employee.

(g) **Amendment.** If, in connection with the adoption of any amendment, the definition of Compensation has been modified, then, except as otherwise provided herein, for Plan Years prior to the Plan Year which includes the adoption date of such amendment, Compensation means compensation determined pursuant to the terms of the Plan then in effect.

1.11 "Contract" or "Policy" means any life insurance policy, retirement income policy, or annuity contract (group or individual) issued by the Insurer. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

1.12 "Custodian" means a person or entity that has custody of all or any portion of the Plan assets.

1.13 "Directed Trustee" means a Trustee who, with respect to the investment of Plan assets, is subject to the direction of the Administrator, the Employer, a properly appointed Investment Manager, or Plan Participant. To the extent the Trustee is a Directed Trustee, the Trustee does not have any discretionary authority with respect to the investment of Plan assets. In addition, the Trustee is not responsible for the propriety of any directed investment made pursuant to this Section and shall not be required to consult or advise the Employer regarding the investment quality of any directed investment held under the Plan.

1.14 "Discretionary Trustee" means a Trustee who has the authority and discretion to invest, manage or control any portion of the Plan assets.

1.15 "Early Retirement Date" means the date specified in the Adoption Agreement on which a Participant has satisfied the requirements specified in the Adoption Agreement (Early Retirement Age). If elected in the Adoption Agreement, a Participant shall become fully Vested upon satisfying such requirements if the Participant is still employed at the Early Retirement Age.

A Participant who severs from employment after satisfying any service requirement but before satisfying the age requirement for Early Retirement Age and who thereafter reaches the age requirement contained herein shall be entitled to receive benefits under this Plan

(other than any accelerated vesting and allocations of Employer contributions) as though the requirements for Early Retirement Age had been satisfied.

1.16 "Effective Date" means the date this Plan, including any restatement or amendment of this Plan, is effective. Where the Plan is restated or amended, a reference to Effective Date is the effective date of the restatement or amendment, except where the context indicates a reference to an earlier Effective Date. If any provision of this Plan is retroactively effective, the provisions of this Plan generally control. However, if the provision of this Plan is different from the provision of the Employer's prior plan document and, after the retroactive Effective Date of this Plan, the Employer operated in compliance with the provisions of the prior plan, then the provision of such prior plan is incorporated into this Plan for purposes of determining whether the Employer operated the Plan in compliance with its terms, provided operation in compliance with the terms of the prior plan do not violate any qualification requirements under the Code, Regulations, or other IRS guidance.

The Employer may designate special effective dates for individual provisions under the Plan where provided in the Adoption Agreement or under Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). If one or more qualified retirement plans have been merged into this Plan, the provisions of the merging plan(s) will remain in full force and effect until the effective date of the plan merger(s).

1.17 "Eligible Employee" means any Eligible Employee as elected in the Adoption Agreement and as provided herein. An individual shall not be an Eligible Employee if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records and out-sourced workers, are not Eligible Employees and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors. Furthermore, Employees of an Affiliated Employer will not be treated as Eligible Employees prior to the date the Affiliated Employer adopts the Plan as a Participating Employer.

If, in the Adoption Agreement, the Employer elects to exclude union employees, then Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining, shall not be eligible to participate in this Plan to the extent of employment covered by such agreement, unless the agreement provides for coverage in the Plan (see Section 4.1(d)). For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then the Participant's Hours of Service in each respective category are treated separately.

If, in the Adoption Agreement, the Employer elects to exclude nonresident aliens, then Employees who are nonresident aliens (within the meaning of Code §7701(b)(1)(B)) who received no earned income (within the meaning of Code §911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code §861(a)(3)) shall not be eligible to participate in this Plan. In addition, this paragraph shall also apply to exclude from participation in the Plan an Employee who is a nonresident alien (within the meaning of Code §7701(b)(1)(B)) but who receives earned income (within the meaning of Code §911(d)(2)) from the Employer that constitutes income from sources within the United States (within the meaning of Code §861(a)(3)), if all of the Employee's earned income from the Employer from sources within the United States is exempt from United States income tax under an applicable income tax convention. The preceding sentence will apply only if all Employees described in the preceding sentence are excluded from the Plan.

If, in the Adoption Agreement, the Employer elects to exclude Part-Time/Temporary/Seasonal Employees, then notwithstanding any such exclusion, if any such excluded Employee actually completes or completed a Year of Service, then such Employee will cease to be within this particular excluded class.

1.18 "Employee" means any person who is employed by the Employer. The term "Employee" shall also include any person who is an employee of an Affiliated Employer and any Leased Employee deemed to be an Employee as provided in Code §414(n) or (o).

1.19 "Employer" means the governmental entity specified in the Adoption Agreement, any successor which shall maintain this Plan and any predecessor which has maintained this Plan. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan. This plan may only be adopted a state or local governmental entity, or agency thereof, including an Indian tribal government, and may not be adopted by any other entity, including a federal government and any agency or instrumentality thereof.

1.20 "Fiscal Year" means the Employer's accounting year.

1.21 "Forfeiture" means that portion of a Participant's Account that is not Vested and is disposed of in accordance with the provisions of the Plan.

A Forfeiture will occur on the earlier of:

- (a) The last day of the Plan Year in which a Participant incurs five (5) consecutive 1-Year Breaks in Service, or
- (b) The distribution of the entire Vested portion of the Participant's Account of a Participant who has severed employment with the Employer. For purposes of this provision, if the Participant has a Vested benefit of zero, then such Participant shall be deemed to

have received a distribution of such Vested benefit as of the year in which the severance of employment occurs. For this purpose, a Participant's Vested benefit shall not include: (i) qualified voluntary employee contributions within the meaning of Code §72(o)(5)(B), and (ii) the Participant's Rollover Account.

Regardless of the preceding, if a Participant is eligible to share in the allocation of Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the first Plan Year for which the Participant is not eligible to share in the allocation of Forfeitures. Furthermore, the term "Forfeiture" shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

1.22 "Former Employee" means an individual who has severed employment with the Employer or an Affiliated Employer.

1.23 "415 Compensation" means, with respect to any Participant, such Participant's (a) Wages, tips and other compensation on Form W-2, (b) Code §3401(a) wages or (c) 415 safe harbor compensation as elected in the Adoption Agreement for purposes of Compensation (and as defined in Subsections 1.18(a)(1)-3 respectively). 415 Compensation shall be based on the full Limitation Year regardless of when participation in the Plan commences. Furthermore, regardless of any election made in the Adoption Agreement, 415 Compensation shall include any elective deferral (as defined in Code §§402(e)(3), 402(k) and 402(h)(1)(B)) and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code §§125, 457, and 132(f)(4). In addition, for years beginning after December 31, 2008 Military Differential Pay is treated as 415 Compensation.

(a) **Deemed 125 compensation.** If elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), amounts under Code §125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(b) **Post-severance compensation.** The Administrator shall adjust 415 Compensation, for Limitation Years beginning on or after July 1, 2007, or such earlier date as the Employer specifies in the Compensation Section of the Adoption Agreement, for amounts that would otherwise be included in the definition of 415 Compensation but are paid by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Participant's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation, even if payment is made within the time period specified above.

(1) **Regular pay.** 415 Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of 415 Compensation) if:

- (i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
- (ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(2) **Leave cash-outs.** 415 Compensation shall include leave cash-outs if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred compensation.** 415 Compensation shall include deferred compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid if the Participant had continued in employment with the Employer and only to the extent the payment is includible in the Participant's gross income.

(4) **Military Differential Pay.** 415 Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** 415 Compensation shall include compensation paid to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable

period, or the Participant was not a highly compensated employee (within the meaning of Code §414(q)) immediately before becoming disabled.

(c) **Inclusion of certain nonqualified deferred compensation amounts.** If this is a PPA restatement and prior to the restatement Compensation included all items includible in compensation under Regulation §1.415(c)-2(b) (Regulation §1.415-2(d)(2) under the Regulations in effect for Limitation Years beginning prior to July 1, 2007) then 415 Compensation for Limitation Years prior to the adoption of this restatement shall include amounts that are includible in the gross income of a Participant under the rules of Code §409A or Code §457(f)(1)(A) or because the amounts are constructively received by the Participant. For Plan Years beginning on and after the Plan Year in which this restatement is adopted, the Plan does not provide for a definition of 415 Compensation including all items in Regulation §1.415(c)-2(b).

(d) **Back pay.** Back pay, within the meaning of Regulations §1.415(c)-2(g)(8), shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(e) **Dollar limitation.** 415 Compensation will be limited to the same dollar limitations set forth in Section 1.10(e) adjusted in such manner as permitted under Code §415(d).

(f) **Amendment.** Except as otherwise provided herein, if, in connection with the adoption of any amendment, the definition of 415 Compensation has been modified, then for Plan Years prior to the Plan Year which includes the adoption date of such amendment, 415 Compensation means compensation determined pursuant to the terms of the Plan then in effect.

1.24 "Hour of Service" means (a) each hour for which an Employee is directly or indirectly compensated or entitled to Compensation by the Employer for the performance of duties during the applicable computation period (these hours will be credited to the Employee for the computation period in which the duties are performed); (b) each hour for which an Employee is directly or indirectly compensated or entitled to Compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, incapacity (including disability), jury duty, lay-off, military duty or leave of absence) during the applicable computation period; (c) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (a) or (b), as the case may be, and under (c).

Notwithstanding (b) above, (1) no more than 501 Hours of Service will be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (2) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, or unemployment compensation or disability insurance laws; and (3) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. Furthermore, for purposes of (b) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

Hours of Service will be credited for employment with all Affiliated Employers and for any individual considered to be a Leased Employee pursuant to Code §414(n) or 414(o) and the Regulations thereunder.

Hours of Service will be determined using the actual hours method unless one of the methods below is elected in the Adoption Agreement. If the **actual hours** method is used to determine Hours of Service, an Employee is credited with the actual Hours of Service the Employee completes with the Employer or the number of Hours of Service for which the Employee is paid (or entitled to payment).

If the **days worked** method is elected, an Employee will be credited with ten (10) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the day.

If the **weeks worked** method is elected, an Employee will be credited with forty-five (45) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the week.

If the **semi-monthly payroll periods worked** method is elected, an Employee will be credited with ninety-five (95) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the semi-monthly payroll period.

If the **months worked** method is elected, an Employee will be credited with one hundred ninety (190) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the month.

If the **bi-weekly payroll periods worked** method is elected, an Employee will be credited with ninety (90) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the bi-weekly payroll period.

1.25 "Insurer" means any legal reserve insurance company which has issued or shall issue one or more Contracts or Policies under the Plan.

1.26 "Investment Manager" means a person or entity which renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or property of the Plan and which is appointed in accordance with Section 2.1(b).

1.27 "Late Retirement Date" means the date of, or the first day of the month or the Anniversary Date coinciding with or next following, whichever corresponds to the election in the Adoption Agreement for the Normal Retirement Date, a Participant's actual retirement after having reached the Normal Retirement Date.

1.28 "Leased Employee" means any person (other than an Employee of the recipient Employer) who, pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code §414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include compensation from the leasing organization that is attributable to services performed for the recipient Employer.

A Leased Employee shall not be considered an employee of the recipient Employer if: (a) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code §415(c)(3), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than twenty percent (20%) of the recipient Employer's nonhighly compensated workforce.

1.29 "Limitation Year" means the "determination period" used to determine Compensation. However, the Employer may elect a different Limitation Year in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). All qualified plans maintained by the Employer must use the same Limitation Year. Furthermore, unless there is a change to a new Limitation Year, the Limitation Year will be a twelve (12) consecutive month period. In the case of an initial Limitation Year, the Limitation Year will be the twelve (12) consecutive month period ending on the last day of the period specified in the Adoption Agreement. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new "Limitation Year" must begin on a date within the "Limitation Year" in which the amendment is made. For Limitation Years beginning on and after July 1, 2007, the Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year.

1.30 "Military Differential Pay" means, for any Plan or Limitation Year beginning after June 30, 2007, any differential wage payments made to an individual that represents an amount which, when added to the individual's military pay, approximates the amount of Compensation that was paid to the individual while working for the Employer. Notwithstanding the preceding sentence, for Compensation "determination periods" beginning after December 31, 2008, an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an Employee of the Employer making the payment.

1.31 "Nonelective Contribution" means the Employer's contributions to the Plan.

1.32 "Normal Retirement Age" means the age elected in the Adoption Agreement at which time a Participant's Account shall be nonforfeitable (if the Participant is employed by the Employer on or after that date). For money purchase pension plans, if the employer enforces a mandatory retirement age, then the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.

1.33 "Normal Retirement Date" means the date elected in the Adoption Agreement.

1.34 "1-Year Break in Service" means, if the Hour of Service method is used, the applicable computation period that is used to determine a Year of Service during which an Employee or Former Employee has not completed more than 500 Hours of Service. However, if the Employer selected, in the Service Crediting Method Section of the Adoption Agreement, to define a Year of Service as less than 1,000 Hours of Service, then the 500 Hours of Service in this definition of 1-Year Break in Service shall be proportionately reduced. Further, solely for the purpose of determining whether an Employee has incurred a 1-Year Break in Service, Hours of Service shall be recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence." For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1-Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

"Authorized leave of absence" means an unpaid, temporary cessation from active employment with the Employer pursuant to an established policy, whether occasioned by illness, military service, or any other reason.

A "maternity or paternity leave of absence" means an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement.

If the elapsed time method is elected in the Service Crediting Method Section of the Adoption Agreement, then a "1-Year Break in Service" means a twelve (12) consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date; provided, however, that the Employee or Former Employee does not perform an Hour of Service for the Employer during such twelve (12) consecutive month period.

1.35 "Participant" means any Employee or Former Employee who has satisfied the requirements of Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term "Participant" also includes any individual who was a Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (e.g., because the individual has an Account balance in the Plan).

1.36 "Participant Directed Account" means that portion of a Participant's interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedures.

1.37 "Participant Direction Procedures" means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.10 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

1.38 "Participating Employer" means an Employer which, with the consent of the "lead Employer" adopts the Plan pursuant to Section 10.1 or Article XI. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan.

1.39 "Period of Service" means the aggregate of all periods of service commencing with an Employee's first day of employment or reemployment with the Employer or an Affiliated Employer and ending on the first day of a Period of Severance, or for benefit accrual purposes, ending on the severance from service date. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee who incurs a Period of Severance of twelve (12) months or less will also receive service-spanning credit by treating any such period as a Period of Service for purposes of eligibility and vesting (but not benefit accrual). For purposes of benefit accrual, a Participant's whole year Periods of Service is equal to the sum of all full and partial periods of service, whether or not such service is continuous or contiguous, expressed in the number of whole years represented by such sum. For this purpose, fractional periods of a year will be expressed in terms of days.

Periods of Service with any Affiliated Employer shall be recognized. Furthermore, Periods of Service with any predecessor employer that maintained this Plan shall be recognized. Periods of Service with any other predecessor employer shall be recognized as elected in the Adoption Agreement.

In determining Periods of Service for purposes of vesting under the Plan, Periods of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

In the event the method of crediting service is amended from the Hour of Service method to the elapsed time method, an Employee will receive credit for a Period of Service consisting of:

- (a) A number of years equal to the number of Years of Service credited to the Employee before the computation period during which the amendment occurs; and
- (b) The greater of (1) the Periods of Service that would be credited to the Employee under the elapsed time method for service during the entire computation period in which the transfer occurs or (2) the service taken into account under the Hour of Service method as of the date of the amendment.

In addition, the Employee will receive credit for service subsequent to the amendment commencing on the day after the last day of the computation period in which the transfer occurs.

1.40 "Period of Severance" means a continuous period of time during which an Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

In the case of an individual who is absent from work for "maternity or paternity" reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a one year Period of Severance. For purposes of this paragraph, an absence from work for "maternity or paternity" reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the

adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

1.41 "Plan" means this instrument (hereinafter referred to as FIS Business Systems LLC Governmental Defined Contribution Plan Basic Plan Document #09) and the Adoption Agreement as adopted by the Employer, including all amendments thereto and any appendix which is specifically permitted pursuant to the terms of the Plan.

1.42 "Plan Year" means the Plan's accounting year as specified in the Adoption Agreement. Unless there is a Short Plan Year, the Plan Year will be a twelve-consecutive month period.

1.43 "Qualified Convertible Hours" means the amount of sick and vacation pay plan hours eligible to be converted into Employer contributions.

1.44 "Regulation" means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.45 "Retirement Date" means the date as of which a Participant retires for reasons other than Total and Permanent Disability, regardless of whether such retirement occurs on a Participant's Normal Retirement Date, Early Retirement Date or Late Retirement Date (see Section 6.1).

1.46 "Short Plan Year" means, if specified in the Adoption Agreement or as the result of an amendment, a Plan Year of less than a twelve (12) month period. If there is a Short Plan Year, the following rules shall apply in the administration of this Plan. In determining whether an Employee has completed a Year of Service (or Period of Service if the elapsed time method is used) for benefit accrual purposes in the Short Plan Year, the number of the Hours of Service (or months of service if the elapsed time method is used) required shall be proportionately reduced based on the number of days (or months) in the Short Plan Year.

1.47 "Spouse" means, a spouse as determined under federal tax law. In addition, with respect to benefits or rights not mandated by law, Spouse also includes a spouse as elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

1.48 "Terminated Participant" means a person who has been a Participant, but whose employment has been terminated with the Employer (including an Affiliated Employer) or applicable Participating Employer, other than by death, Total and Permanent Disability or retirement.

1.49 "Total and Permanent Disability" means, unless otherwise specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The disability of a Participant shall be determined by a licensed physician. However, if the condition constitutes total disability under the federal Social Security Acts, the Administrator may rely upon such determination that the Participant is Totally and Permanently Disabled for the purposes of this Plan. The determination shall be applied uniformly to all Participants.

1.50 "Trustee" means any person or entity that is named in the Adoption Agreement or has otherwise agreed to serve as Trustee, or any successors thereto. In addition, unless the context means, or the Plan provides, otherwise, the term "Trustee" shall mean the Insurer if the Plan is fully insured.

1.51 "Trust Fund" means, if the Plan is funded with a trust, the assets of the Plan and Trust as the same shall exist from time to time.

1.52 "Valuation Date" means the date or dates specified in the Adoption Agreement. Regardless of any election to the contrary, for purposes of the determination and allocation of earnings and losses, the Valuation Date shall include the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of Participants' Accounts during the Plan Year, which may include any day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, or any stock exchange used by such agent, are open for business.

1.53 "Vested" means the nonforfeitable portion of any Account maintained on behalf of a Participant.

1.54 "Year of Service" means the computation period of twelve (12) consecutive months, herein set forth, and during which an Employee has completed at least 1,000 Hours of Service (unless a different number of Hours of Service is specified in the Adoption Agreement).

For purposes of eligibility for participation, the initial computation period shall begin with the date on which the Employee first performs an Hour of Service (employment commencement date). Unless otherwise elected in the Service Crediting Method Section of the Adoption Agreement, the succeeding computation periods shall begin on the anniversary of the Employee's employment commencement date. However, unless otherwise elected in the Adoption Agreement, if one (1) Year of Service or less is required as a condition of eligibility, then the computation period after the initial computation period shall shift to the current Plan Year which includes the

anniversary of the date on which the Employee first performed an Hour of Service, and subsequent computation periods shall be the Plan Year. If there is a shift to the Plan Year, an Employee who is credited with the number of Hours of Service to be credited with a Year of Service in both the initial eligibility computation period and the first Plan Year which commences prior to the first anniversary of the Employee's initial eligibility computation period will be credited with two (2) Years of Service for purposes of eligibility to participate.

If two (2) (or more) Years of Service are required as a condition of eligibility, a Participant will only have completed two (2) (or more) Years of Service for eligibility purposes upon completing two (2) or more consecutive Years of Service without an intervening 1-Year Break in Service.

For vesting purposes, and all other purposes not specifically addressed in this Section, the computation period shall be the period elected in the Service Crediting Method Section of the Adoption Agreement. If no election is made in the Service Crediting Method Section of the Adoption Agreement, then the computation period shall be the Plan Year.

In determining Years of Service for purposes of vesting under the Plan, Years of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

Years of Service and 1-Year Breaks in Service for eligibility purposes will be measured on the same eligibility computation period. Years of Service and 1-Year Breaks in Service for vesting purposes will be measured on the same vesting computation period.

Years of Service with any Affiliated Employer shall be recognized. Furthermore, Years of Service with any predecessor employer that maintained this Plan shall be recognized. Years of Service with any other employer shall be recognized as elected in the Adoption Agreement.

In the event the method of crediting service is amended from the elapsed time method to the Hour of Service method, an Employee will receive credit for Years of Service equal to:

- (a) The number of Years of Service equal to the number of 1-year Periods of Service credited to the Employee as of the date of the amendment; and
- (b) In the computation period which includes the date of the amendment, a number of Hours of Service (using the Hours of Service equivalency method, if any, elected in the Adoption Agreement) to any fractional part of a year credited to the Employee under this Section as of the date of the amendment.

ARTICLE II ADMINISTRATION

2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) **Appointment of Trustee (or Insurer) and Administrator.** In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove one or more Trustees (or Insurers) and Administrators from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) **Appointment of Investment Manager.** The Employer may appoint, at its option, one or more Investment Managers, investment advisers, or other agents to provide investment direction to the Trustee (or Insurer) with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee (or Insurer) and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have the authority to direct the investment.

2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Employer may appoint one or more Administrators. If the Employer does not appoint an Administrator, the Employer will be the Administrator. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. Upon the resignation or removal of an Administrator, the Employer may designate in writing a successor to this position.

2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Administrator, then the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. If no such delegation is made by the Employer, then the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee (or Insurer) in writing of such action and specify the responsibilities of each Administrator. The Trustee (or Insurer) thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee (or Insurer) a written revocation of such designation.

2.4 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done based upon uniform principles consistently applied and shall be consistent with the intent that the Plan continue to be deemed a qualified plan under the terms of Code §401(a). The Administrator shall have all powers necessary or appropriate to accomplish its duties under this Plan.

The Administrator shall be charged with the duties of the general administration of the Plan and the powers necessary to carry out such duties as set forth under the terms of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of an Employee to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;
- (c) to compute, certify, and direct agents of the Plan respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;
- (d) to authorize and direct the Trustee (or Insurer) with respect to all discretionary or otherwise directed disbursements from the Trust Fund;
- (e) to maintain all necessary records for the administration of the Plan;
- (f) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan that are consistent with the terms hereof;
- (g) to determine the size and type of any Contract to be purchased from any Insurer, and to designate the Insurer from which such Contract shall be purchased;
- (h) to compute and certify to the Employer and to the Trustee (or Insurer) from time to time the sums of money necessary or desirable to be contributed to the Plan;
- (i) to consult with the Employer and agents of the Plan regarding the short and long-term liquidity needs of the Plan;
- (j) to assist Participants regarding their rights, benefits, or elections available under the Plan; and
- (k) to determine the validity of, and take appropriate action with respect to, any "qualified domestic relations order" received by it.

2.5 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by applicable law.

2.6 APPOINTMENT OF ADVISERS

The Administrator may appoint counsel, specialists, advisers, agents (including nonfiduciary agents such as third party administrative services providers and recordkeepers) and other persons as the Administrator deems necessary or desirable in connection

with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and, if applicable, to Plan Participants.

2.7 INFORMATION FROM EMPLOYER

The Employer shall supply full and timely information to the Administrator on all pertinent facts as the Administrator may require in order to perform its functions hereunder and the Administrator shall advise appropriate agents of the Plan of such of the foregoing facts as may be pertinent to the agent's duties to the Plan. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

2.8 PAYMENT OF EXPENSES

All reasonable expenses of administration may be paid out of the Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any named fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including nonfiduciary agents such as third party administrative services providers and recordkeepers) appointed for the purpose of assisting the Administrator or Trustee (or Insurer) in carrying out the instructions of Participants as to the directed investment of their Accounts (if permitted) and other specialists and their agents and other costs of administering the Plan. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account of an individual Participant a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or Alternate Payee. If liquid assets of the Plan are insufficient to cover the fees of the Trustee (or Insurer) or the Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund.

2.9 MAJORITY ACTIONS

Except where there has been an allocation and delegation of administrative authority pursuant to Section 2.3, if there is more than one Administrator, then they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf.

2.10 CLAIMS PROCEDURES

Any person who believes that he or she is entitled to a benefit under the Plan shall file with the Administrator a written notice of claim for such benefit within 45 days of such right accruing or shall forever waive entitlement to such benefit. Within 120 days after its receipt of such written notice of claim, the Administrator shall either grant or deny such claim provided, however, any delay on the part of the Administrator in arriving at a decision shall not adversely affect benefits payable under a granted claim. The Administrator may, however, implement alternative claims procedures in lieu of those provided in this Plan. The implementation of such procedures shall not be considered a Plan amendment that affects an Employer's reliance on this volume submitter plan.

The Administrator and all persons determining or reviewing claims have full discretion to determine benefit claims under the Plan. Any interpretation, determination or other action of such persons shall be subject to review only if it is arbitrary or capricious or otherwise an abuse of discretion. Any review of a final decision or action of the persons reviewing a claim shall be based only on such evidence presented to or considered by such persons at the time they made the decision that is the subject of review.

ARTICLE III ELIGIBILITY

3.1 CONDITIONS OF ELIGIBILITY

An Eligible Employee shall be eligible to participate hereunder on the date such Employee has satisfied the conditions of eligibility, if any, elected in the Adoption Agreement.

3.2 EFFECTIVE DATE OF PARTICIPATION

(a) **General rule.** An Eligible Employee who has satisfied the conditions of eligibility pursuant to Section 3.1 shall become a Participant effective as of the date elected in the Adoption Agreement. Regardless of any election in the Adoption Agreement to the contrary, an Eligible Employee who has satisfied the maximum age (26) and service requirements (one (1) Year (or Period) of Service (or more than one (1) year if full and immediate vesting)) and who is otherwise entitled to participate, will become a Participant no later than the earlier of (1) six (6) months after such requirements are satisfied, or (2) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

(b) **Rehired Employee.** If an Eligible Employee is not employed on the date determined pursuant to (a) above, but is reemployed before a 1-Year Break in Service has occurred, then such Eligible Employee shall become a Participant on the date of reemployment or, if later, the date that the Employee would have otherwise entered the Plan had the Employee not terminated

employment. If such Employee incurs a 1-Year Break in Service, then eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5.

(c) **Recognition of predecessor service.** Unless specifically provided otherwise in the Adoption Agreement, an Eligible Employee who satisfies the Plan's eligibility requirement conditions by reason of recognition of service with a predecessor employer will become a Participant as of the day the Plan credits service with a predecessor employer or, if later, the date the Employee would have otherwise entered the Plan had the service with the predecessor employer been service with the Employer.

(d) **Noneligible to eligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant, shall go from a classification of a noneligible Employee to an Eligible Employee, such Employee shall become a Participant on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

(e) **Eligible to noneligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant, shall go from a classification of an Eligible Employee to a noneligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee. However, if such Employee incurs a 1-Year Break in Service, eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5.

3.3 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan.

3.4 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such Participant shall continue to vest in the Plan for each Year of Service (or Period of Service, if the elapsed time method is used) completed while an ineligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund in the same manner as Participants.

3.5 REHIRED EMPLOYEES AND 1-YEAR BREAKS IN SERVICE

(a) **Rehired Participant/immediate re-entry.** If any Former Employee who had been a Participant is reemployed by the Employer, then the Employee shall become a Participant as of the reemployment date, unless the Employee is not an Eligible Employee, the Employee does not satisfy the eligibility conditions taking into account prior service to the extent such prior service is not disregarded pursuant to Section 3.5(d) below. If such prior service is disregarded, then the rehired Eligible Employee shall be treated as a new hire.

(b) **Rehired Eligible Employee who satisfied eligibility.** If any Eligible Employee had satisfied the Plan's eligibility requirements but, due to a severance of employment, did not become a Participant, then such Eligible Employee shall become a Participant as of the later of (1) the entry date on which he or she would have entered the Plan had there been no severance of employment, or (2) the date of his or her re-employment. Notwithstanding the preceding, if the rehired Eligible Employee's prior service is disregarded pursuant to Section 3.5(d) below, then the rehired Eligible Employee shall be treated as a new hire.

(c) **Rehired Eligible Employee who had not satisfied eligibility.** If any Eligible Employee who had not satisfied the Plan's eligibility requirements is rehired after severance from employment, then such Eligible Employee shall become a Participant in the Plan in accordance with the eligibility requirements set forth in the Adoption Agreement and the Plan. However, in applying any shift in an eligibility computation period, the Eligible Employee is not treated as a new hire unless prior service is disregarded in accordance with Section 3.5(d) below.

(d) **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions).** If the Employer elects in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to apply the "rule of parity" provisions, then if any Employee is reemployed after five (5) 1-Year Breaks in Service has occurred, Years of Service (or Periods of Service if the elapsed time method is being used) shall include Years of Service (or Periods of Service if the elapsed time method is being used) prior to the 5-Year Break in Service subject to the rules set forth below. The Employer may elect in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to make the provisions of this paragraph applicable for purposes of eligibility and/or vesting.

(1) In the case of a Former Employee who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions, Years of Service (or Periods of Service) before a period of 1-Year Breaks in Service will not be taken into account if the number of consecutive 1-Year Breaks in Service equals or exceeds the greater of (i) five (5) or (ii) the aggregate number of pre-break Years of Service (or Periods of Service). Such aggregate number of Years of Service (or Periods of Service) will not include any Years of Service (or Periods of Service) disregarded under the preceding sentence by reason of prior 1-Year Breaks in Service;

(2) A Former Employee who has not had Years of Service (or Periods of Service) before a 1-Year Break in Service disregarded pursuant to (1) above, shall participate in the Plan as of the date of reemployment, or if later, as of the date the Former Employee would otherwise enter the Plan pursuant to Sections 3.1 and 3.2 taking into account all service not disregarded.

(e) **Vesting after five (5) 1-Year Breaks in Service.** If a Participant incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of such Participant's Account attributable to pre-break service shall not be increased as a result of post-break service. In such case, separate accounts will be maintained as follows:

(1) one account for nonforfeitable benefits attributable to pre-break service; and

(2) one account representing the Participant's Employer-derived Account balance in the Plan attributable to post-break service.

(f) **Waiver of allocation or contribution conditions.** If the Employer elects in the Adoption Agreement to waive allocations or contributions due to retirement (early or normal retirement), then a Participant shall only be entitled to one such waiver. Accordingly, if a Participant retires and allocation or contribution conditions are waived, then the Plan will not waive the allocation or contribution conditions if the Participant is rehired and then retires again.

3.6 OMISSION OF ELIGIBLE EMPLOYEE; INCLUSION OF INELIGIBLE EMPLOYEE

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, or any person who should not have been included as a Participant in the Plan is erroneously included, then the Employer may take corrective actions consistent with, the IRS Employee Plans Compliance Resolution System (i.e., Rev. Proc. 2013-12 or any subsequent guidance).

ARTICLE IV CONTRIBUTION AND ALLOCATION

4.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) **For a Money Purchase Plan.** All contributions made by the Employer will be made in cash. For each Plan Year, the Employer will contribute to the Plan the following:

(1) The amount of any mandatory Employee contributions and after-tax voluntary Employee contributions made by Participants; plus

(2) On behalf of each Participant eligible to share in allocations, for each year of such Participant's participation in this Plan, the Employer will contribute the amount specified in the Adoption Agreement; plus

(3) If elected in the Adoption Agreement, a matching contribution equal to the amount specified in the Adoption Agreement of each Participant eligible to share in the allocations of the matching contribution, which amount shall be deemed an Employer matching contribution.

(b) **For a 401(a) Plan.** For each Plan Year, the Employer will (or may with respect to any discretionary contributions) contribute to the Plan:

(1) The amount of any mandatory Employee contributions and after-tax voluntary Employee contributions; plus

(2) If elected in the Adoption Agreement, a matching contribution equal to the amount specified in the Adoption Agreement of each Participant eligible to share in the allocations of the matching contribution, which amount shall be deemed an Employer matching contribution; plus

(3) If elected in the Adoption Agreement, an Employer contribution equal to a specified contribution or a discretionary amount determined each year by the Employer.

(c) **Frozen Plans.** The Employer may designate that the Plan is a frozen Plan at the Contribution Types Section of the Adoption Agreement. As a frozen Plan, the Employer will not make any Employer contributions with respect to Compensation earned after the date the Plan is frozen. In addition, once a Plan is frozen, no additional Employees shall become Participants.

(d) **Union Employees.** Regardless of any provision in this Plan to the contrary, Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining shall be eligible to participate in this Plan to the extent of employment covered by such agreement provided the agreement provides for coverage in the Plan. The benefits, including but not limited to, contributions, allocations and

vesting, under this Plan shall be those set forth in the collective bargaining agreement, which is hereby incorporated by reference and attached as an addendum to the Adoption Agreement. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then the Participant's Hours of Service and Compensation in each respective category are treated separately for purposes of the Plan.

(d) **Social Security Replacement Plan.** The Employer may elect under the Adoption Agreement to indicate its intention to qualify this Plan as a Social Security Replacement Plan under Code §3121(b)(7)(F). If the Employer makes the election to qualify the Plan as a Social Security Replacement Plan, the Plan will allocate a minimum contribution amount (Employer and Employee Contributions) of seven and one-half percent (7.5%) of Compensation. The Plan will consider each Participant a member of a retirement system that provides benefits comparable to the benefits he or she would have received under Social Security. In the case of part-time, seasonal and temporary Employees, the benefit will be nonforfeitable.

4.2 TIME OF PAYMENT OF EMPLOYER'S CONTRIBUTION

Unless otherwise provided by contract or law, the Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution.

4.3 ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS

(a) **Separate accounting.** The Administrator shall establish and maintain an Account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) **Allocation of contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution, if any, for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate any contributions as follows:

(1) **Money Purchase Pension Plan.** For a Money Purchase Plan:

(i) The Employer's contribution shall be allocated to each Participant's Account in the manner set forth in Section 4.1 herein and as specified in the Adoption Agreement.

(ii) Notwithstanding the preceding provisions, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement are satisfied.

(2) **401(a) Plan.** For a 401(a) Plan (which is a profit sharing plan within the meaning of Code §401(a)):

(i) The Employer's contribution shall be allocated to each Participant's Account in accordance with the allocation method below that corresponds to the elections in the Adoption Agreement. The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the allocation shall be made in accordance with the provisions below.

(ii) Notwithstanding the preceding provision, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement are satisfied.

(c) **Gains or losses.** Except as otherwise elected in the Adoption Agreement or as provided in Section 4.10 with respect to Participant Directed Accounts, as of each Valuation Date, before allocation of any Employer contributions and Forfeitures, any earnings or losses (net appreciation or net depreciation) of the Trust Fund (exclusive of assets segregated for distribution) shall be allocated in the same proportion that each Participant's nonsegregated accounts bear to the total of all Participants' nonsegregated accounts as of such date. Unless otherwise specified in the Adoption Agreement, the nonsegregated account will be reduced by any distributions made prior to the Valuation Date.

(d) **Contracts.** Participants' Accounts shall be debited for any insurance or annuity premiums paid, if any, and credited with any dividends or interest received on Contracts.

(e) **Forfeitures.** Forfeitures must be disposed of no later than the last day of the Plan Year following the Plan Year in which the Forfeiture occurs. The Employer must direct the Administrator to use Forfeitures to satisfy any contribution that may be required pursuant to Section 6.10 or to pay any Plan expenses. With respect to a Money Purchase Plan, any remaining Forfeitures will be disposed of in accordance with the elections in the Adoption Agreement. With respect to all other plans, the Employer must direct

the Administrator to use any remaining Forfeitures in accordance with any combination of the following methods, including a different method based on the source of such Forfeitures. Forfeitures may be:

- (1) Added to any Employer discretionary contribution and allocated in the same manner
- (2) Used to reduce any Employer contribution
- (3) Added to any Employer matching contribution and allocated as an additional matching contribution
- (4) Allocated to all Participants in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year

If Forfeitures are allocated to Participants (rather than used to reduce Employer contributions) then the Employer must also direct the Administrator as to which Participants are eligible to share in such allocation. The maximum allocation conditions the Employer may require are that Participants complete one (1) Year of Service (or Period of Service) and be employed on the last day of the Plan Year in order to share in the allocation of Forfeitures for such Plan Year.

(f) **Delay in processing transactions.** Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

4.4 MAXIMUM ANNUAL ADDITIONS

(a) **Calculation of "annual additions."**

(1) If a Participant does not participate in, and has never participated in another qualified plan maintained by the "employer," or a welfare benefit fund (as defined in Code §419(e)) maintained by the "employer," or an individual medical benefit account (as defined in Code §415(l)(2)) maintained by the "employer," or a simplified employee pension (as defined in Code §408(k)) maintained by the "employer" which provides "annual additions," the amount of "annual additions" which may be credited to the Participant's Accounts for any Limitation Year shall not exceed the lesser of the "maximum permissible amount" or any other limitation contained in this Plan. If the "employer" contribution that would otherwise be contributed or allocated to the Participant's Accounts would cause the "annual additions" for the Limitation Year to exceed the "maximum permissible amount," the amount contributed or allocated will be reduced so that the "annual additions" for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year the "maximum permissible amount" for such Limitation Year shall be determined on the basis of the Participant's actual 415 Compensation for such Limitation Year.

(b) **"Annual additions" if a Participant is in more than one plan.**

(1) Except as provided in Subsection (c) below, this Subsection applies if, in addition to this Plan, a Participant is covered under another "employer" maintained qualified defined contribution plan, welfare benefit fund (as defined in Code §419(e)), individual medical benefit account (as defined in Code §415(l)(2)), or simplified employee pension (as defined in Code §408(k)), which provides "annual additions," during any Limitation Year. The "annual additions" which may be credited to a Participant's Accounts under this Plan for any such Limitation Year shall not exceed the "maximum permissible amount" reduced by the "annual additions" credited to a Participant's Accounts under the other plans and welfare benefit funds, individual medical benefit accounts, and simplified employee pensions for the same Limitation Year. If the "annual additions" with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the "employer" are less than the "maximum permissible amount" and the "employer" contribution that would otherwise be contributed or allocated to the Participant's Accounts under this Plan would cause the "annual additions" for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the "annual additions" under all such plans and welfare benefit funds for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants. If the "annual additions" with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical benefit accounts and simplified employee pensions in the aggregate are equal to or greater than the

"maximum permissible amount," no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year, the "maximum permissible amount" for the Limitation Year will be determined on the basis of the Participant's actual 415 Compensation for the Limitation Year.

(4) If, pursuant to Section 4.4(b)(2), a Participant's "annual additions" under this Plan and such other plans would result in an "excess amount" for a Limitation Year, the "excess amount" will be deemed to consist of the "annual additions" last allocated, except that "annual additions" attributable to a simplified employee pension will be deemed to have been allocated first, followed by "annual additions" to a welfare benefit fund or individual medical benefit account, and then by "annual additions" to a plan subject to Code §412, regardless of the actual allocation date.

(5) If an "excess amount" was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the "excess amount" attributed to this Plan will be the product of:

- (i) the total "excess amount" allocated as of such date, times
- (ii) the ratio of (A) the "annual additions" allocated to the Participant for the Limitation Year as of such date under this Plan to (B) the total "annual additions" allocated to the Participant for the Limitation Year as of such date under this and all the other qualified defined contribution plans.

(c) **Coverage under another plan.** If the Participant is covered under another qualified defined contribution plan maintained by the "employer," "annual additions" which may be credited to the Participant's Accounts under this Plan for any Limitation Year will be limited in accordance with Section 4.4(b), unless the "employer" provides other limitations in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

(d) **Time when "annual additions" credited.** An "annual addition" is credited to the Account of a Participant for a particular Limitation Year if it is allocated to the Participant's Account under the Plan as of any date within that Limitation Year. However, an amount is not deemed allocated as of any date within a Limitation Year if such allocation is dependent upon participation in the Plan as of any date subsequent to such date.

For purposes of this subparagraph, "employer" contributions are treated as credited to a Participant's Account for a particular Limitation Year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or Fiscal Year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(e) **Definitions.** For purposes of this Section, the following terms shall be defined as follows:

(1) **"Annual additions"** means the sum credited to a Participant's Accounts for any Limitation Year of (a) "employer" contributions, (b) Employee contributions (except as provided below), (c) Forfeitures, (d) amounts allocated to an individual medical benefit account, as defined in Code §415(l)(2), which is part of a pension or annuity plan maintained by the "employer," (e) amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)) under a welfare benefit fund (as defined in Code §419(c)) maintained by the "employer" and (f) allocations under a simplified employee pension. Except, however, the Compensation percentage limitation referred to in paragraph (e)(5)(ii) below shall not apply to: (1) any contribution for medical benefits (within the meaning of Code §419A(f)(2)) after separation from service which is otherwise treated as an "annual addition," or (2) any amount otherwise treated as an "annual addition" under Code §415(l)(1).

(i) **Restorative payments.** "Annual additions" for purposes of Code §415 and this Section shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the Plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that are considered "annual additions."

(ii) **Other amounts.** "Annual additions" for purposes of Code §415 and this Section shall not include: (A) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (B) Rollover contributions (as described

in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (C) Repayments of loans made to a Participant from the Plan; and (D) Repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

- (2) **"Defined contribution dollar limitation"** means \$40,000 as adjusted under Code §415(d).
- (3) **"Employer"** means, for purposes of this Section, the Employer that adopts this Plan and all Affiliated Employers.
- (4) **"Excess amount"** means the excess of the Participant's "annual additions" for the Limitation Year over the "maximum permissible amount."
- (5) **"Maximum permissible amount"** means, except to the extent permitted under this Plan and Code §414(v), the maximum "annual addition" that may be contributed or allocated to a Participant's Accounts under the Plan for any Limitation Year, which shall not exceed the lesser of:
 - (i) the "defined contribution dollar limitation," or
 - (ii) one hundred percent (100%) of the Participant's 415 Compensation for the Limitation Year.

The 415 Compensation Limitation referred to in (ii) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code §§401(h) or 419A(f)(2)) which is otherwise treated as an "annual addition."

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the "maximum permissible amount" will not exceed the "defined contribution dollar limitation" multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12).

(f) **Special rules.**

(1) **Aggregation of plans.** For purposes of applying the limitations of Code §415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the "employer" (or a "predecessor employer") under which the Participant receives "annual additions" are treated as one defined contribution plan. For purposes of this Section:

- (i) A former "employer" is a "predecessor employer" with respect to a participant in a plan maintained by an "employer" if the "employer" maintains a plan under which the participant had accrued a benefit while performing services for the former "employer", but only if that benefit is provided under the plan maintained by the "employer". For this purpose, the "formerly affiliated plan" rules in Regulation §1.415(f)-1(b)(2) apply as if the "employer" and "predecessor employer" constituted a single employer under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately prior to the "cessation of affiliation" (and as if they constituted two, unrelated employers under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately after the "cessation of affiliation") and "cessation of affiliation" was the event that gives rise to the "predecessor employer" relationship, such as a transfer of benefits or plan sponsorship.
- (ii) With respect to an "employer" of a Participant, a former entity that antedates the "employer" is a "predecessor employer" with respect to the Participant if, under the facts and circumstances, the "employer" constitutes a continuation of all or a portion of the trade or business of the former entity.

(2) **Break-up of an affiliated employer or an affiliated service group.** For purposes of aggregating plans for Code §415, a "formerly affiliated plan" of an "employer" is taken into account for purposes of applying the Code §415 limitations to the "employer," but the "formerly affiliated plan" is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an "employer" is a plan that, immediately prior to the "cessation of affiliation," was actually maintained by one or more of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)), and immediately after the "cessation of affiliation," is not actually maintained by any of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single "employer" under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the "employer" under the employer affiliation rules of Regulation §1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(3) **Mid-year aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code §415(f) and the Regulations thereunder as of the first day of a Limitation Year do not fail to satisfy the requirements of Code §415 with respect to a Participant for the Limitation Year merely because they are aggregated later in that Limitation Year, provided that no "annual additions" are credited to the Participant's Account after the date on which the plans are required to be aggregated.

4.5 ADJUSTMENT FOR EXCESS ANNUAL ADDITIONS

Notwithstanding any provision of the Plan to the contrary, if the "annual additions" (as defined in Section 4.4) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2013-12 or any superseding guidance.

4.6 ROLLOVERS

(a) **Acceptance of "rollovers" into the Plan.** If elected in the Adoption Agreement and with the consent of the Administrator, the Plan may accept a "rollover," provided the "rollover" will not jeopardize the tax-exempt status of the Plan or create adverse tax consequences for the Employer. The amounts rolled over shall be separately accounted for in a "Participant's Rollover Account." A Participant's Rollover Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees. In addition, for purposes of this Section the term Participant shall also include Former Employees if the Employer and Administrator consent to accept "rollovers" of distributions made to Former Employees from any plan of the Employer.

(b) **Treatment of "rollovers" under the Plan.** Amounts in a Participant's Rollover Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and Subsection (c) below. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan.

(c) **Distribution of "rollovers."** At such time as the conditions set forth in the Adoption Agreement have been satisfied, the Administrator, at the election of the Participant, shall direct the distribution of up to the entire amount credited to the Rollover Account maintained on behalf of such Participant. Any distribution of amounts held in a Participant's Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6. Furthermore, unless otherwise elected in the Adoption Agreement, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(d) **"Rollovers" maintained in a separate account.** The Administrator may direct that "rollovers" made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

(e) **Limits on accepting "rollovers."** Prior to accepting any "rollovers" to which this Section applies, the Administrator may require the Employee to establish (by providing opinion of counsel or otherwise) that the amounts to be rolled over to this Plan meet the requirements of this Section. The Employer may instruct the Administrator, operationally, to limit the source of "rollover" contributions that may be accepted by the Plan.

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

(1) A "rollover" means: (i) amounts transferred to this Plan directly from another "eligible retirement plan;" (ii) distributions received by an Employee from other "eligible retirement plans" which are eligible for tax-free rollover to an "eligible retirement plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; and (iii) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code or any other federally enacted legislation.

(2) An "eligible retirement plan" means an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b) (other than an endowment contract), a qualified trust (an employees' trust described in Code §401(a) which is exempt from tax under Code §501(a)), an annuity plan described in Code §403(a), an eligible deferred compensation plan described in Code §457(b) which is maintained by an eligible employer described in Code §457(e)(1)(A), and an annuity contract described in Code §403(b).

4.7 PLAN-TO-PLAN TRANSFERS FROM QUALIFIED PLANS

(a) **Transfers into this Plan.** With the consent of the Administrator, amounts may be transferred (within the meaning of Code §414(l)) to this Plan from other tax qualified plans under Code §401(a), provided the plan from which such funds are transferred permits the transfer to be made and the transfer will not jeopardize the tax-exempt status of the Plan or Trust or create

adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require an opinion of counsel that the amounts to be transferred meet the requirements of this Section. The amounts transferred shall be set up in a separate account herein referred to as a "Participant's Transfer Account." Furthermore, for vesting purposes, the Participant's Transfer Account shall be treated as a separate "Participant's Account."

(b) **Accounting of transfers.** Amounts in a Participant's Transfer Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and Subsection (d) below, provided the restrictions of Subsection (c) below and Section 6.16 are satisfied. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan. Notwithstanding anything in this Section to the contrary, transferred amounts are not required to be separately accounted for and may be combined with the corresponding Account maintained in this Plan provided all rights, benefits and features and other attributes are identical with respect to each account, or are identical after the combination.

(c) **Distribution of plan-to-plan transfer amounts.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Participant's Transfer Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distribution of amounts held in a Participant's Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6. Furthermore, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(d) **Segregation.** The Administrator may direct that Employee transfers made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

4.8 MANDATORY EMPLOYEE CONTRIBUTIONS

(a) **Mandatory Employee contributions.** An Employer may elect in the Adoption Agreement to provide for mandatory Employee contribution. If the Employer elects to provide for such contributions, each Participant, as a condition of employment, will make a mandatory Employee contribution in the amount elected in the Adoption Agreement. Alternatively, the Employer may elect to provide a range of mandatory Employee contribution percentages from which the Participant may choose to contribute. Under this option, the Employee, as a condition of employment, must make an irrevocable election to contribute a percentage of his or her Compensation no later than his or her effective date of participation. During the period of the Participant's participation in the Plan, the Participant may not revoke the election and receive cash in lieu of the contribution, nor may the Participant change the amount of the mandatory Employee contribution. Amounts attributable to mandatory Employee contributions shall be fully Vested.

(b) **Employer pick-up contribution.** If elected in the Adoption Agreement, the Employer will "pick-up" the mandatory Employee contribution and will pay the mandatory Employee contribution to the Plan as an Employer contribution. This provision is effective only after the Employer provides for the treatment of the Employee contributions as described in this paragraph, through a person authorized to take such action, and evidenced in writing by minutes of a meeting, resolution, ordinance, or other formal action by the Employer, which will effectuate the "pick-up" provision. Furthermore, as of the date of the "pick-up," Participants are not permitted to opt-out of the "pick-up" or to receive the mandatory Employee contributions directly instead of having them paid to the Plan. Mandatory Employee contributions that are "picked-up" by the Employer are excludible from the Employee's gross income.

4.9 AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) **After-tax voluntary Employee contributions.** If elected in the Adoption Agreement, each Participant may, in accordance with procedures established by the Administrator, elect to make after-tax voluntary Employee contributions to this Plan. Such contributions must generally be paid to the Trustee (or Insurer) within a reasonable period of time after being received by the Employer. An after-tax voluntary Employee contribution is any contribution made to the Plan by or on behalf of a Participant that is included in the Participant's gross income in the year in which made and that is separately accounted for under the Plan.

(b) **Full vesting.** The balance in each Participant's Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(c) **Distribution at any time.** A Participant may elect at any time to withdraw after-tax voluntary Employee contributions from such Participant's Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.5. If the Administrator maintains sub-accounts with respect to after-tax voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be permitted to designate which sub-account shall be the source for the withdrawal. Forfeitures of Employer contributions shall not occur solely as a result of an Employee's withdrawal of after-tax voluntary Employee contributions.

In the event a Participant has received a hardship distribution under the safe harbor hardship provisions of the Code §401(k) Regulations from any plan maintained by the Employer, then the Participant shall be barred from making any after-tax voluntary

Employee contributions for a period of six (6) months after receipt of the hardship distribution. Any prior elections to make after-tax voluntary Employee contributions will become void upon the receipt of the hardship distribution that triggers the suspension period of this paragraph.

(d) **Used to provide benefits.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary is entitled to receive benefits, the Participant's Voluntary Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

4.10 PARTICIPANT DIRECTED INVESTMENTS

(a) **Directed investment options allowed.** If permitted under Participant Direction Procedures, all Participants may direct the Trustee (or Insurer) as to the investment of all or a portion of their individual Account balances as set forth in such procedures. Participants may direct the Trustee (or Insurer), in writing (or in such other form which is acceptable to the Trustee (or Insurer)), to invest their accounts in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the Account of any Participant that is subject to investment direction of such Participant will be considered a Participant Directed Account.

(b) **Establishment of Participant Direction Procedures.** The Administrator will establish Participant Direction Procedures, to be applied in a uniform manner, setting forth the permissible investment options under this Section, how often changes between investments may be made, and any other limitations and provisions that the Administrator may impose on a Participant's right to direct investments.

(c) **Administrative discretion.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

(d) **Allocation of gains or losses.** As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

- (1) to the extent the assets in a Participant Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Account shall be based upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and
- (2) to the extent the assets in a Participant Directed Account are accounted for as segregated assets, the allocation of earnings, gains on and losses from such assets shall be made on a separate and distinct basis.

(e) **Plan will follow investment directions.** Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee (or Insurer) that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding the processing time of an investment direction. Notwithstanding any other provision of the Plan, the Employer, Administrator or Discretionary Trustee (or Insurer) reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, Administrator or Discretionary Trustee (or Insurer). Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider) or force majeure. The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable Valuation Date for an investment transaction.

(f) **Other documents required by directed investments.** Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to Participants in one or more documents (or in any other form, including, but not limited to, electronic media) which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan.

4.11 QUALIFIED MILITARY SERVICE

(a) **USERRA.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code §414(u). Furthermore, loan repayments may be suspended under this Plan as permitted under Code §414(u)(4).

(b) **Benefit accrual.** If the Employer elects in the Adoption Agreement to apply this Subsection, then effective as of the date specified in the Adoption Agreement but no earlier than the first day of the 2007 Plan Year, for benefit accrual purposes, the Plan treats an individual who becomes Totally and Permanently disabled while performing "qualified military service" (as defined in Code §414(u)) with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), on

the day preceding Total and Permanent Disability and terminated employment on the actual date of death or Total and Permanent Disability.

The Plan will determine the amount of after-tax voluntary Employee contributions of an individual treated as reemployed under this Section for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual after-tax voluntary Employee contributions for the lesser of: (1) the 12-month period of service with the Employer immediately prior to "qualified military service" (as defined in Code §414(u)); or (2) the actual length of continuous service with the Employer.

(c) **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing "qualified military service" (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of "qualified military service" but including vesting credit for such period and any other ancillary life insurance or other survivor benefits) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's "qualified military service" as service for vesting purposes, as though the Participant had resumed employment under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA) immediately prior to the Participant's death.

ARTICLE V VALUATIONS

5.1 VALUATION OF THE TRUST FUND

The Administrator shall direct the Trustee (or Insurer), as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee (or Insurer) shall value the assets comprising the Trust Fund at their fair market value as of the Valuation Date and may deduct all expenses for which the Trustee (or Insurer) has not yet been paid by the Employer or the Trust Fund. The Trustee (or Insurer), when determining the net worth of the assets, may update the value of any shares held in a Participant Directed Account by reference to the number of shares held on behalf of the Participant, priced at the market value as of the Valuation Date.

5.2 METHOD OF VALUATION

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee (or Insurer) to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee, the Administrator (if the Trustee is a directed Trustee), or Insurer may appraise such assets itself (assuming it has the appropriate expertise), or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

ARTICLE VI DETERMINATION AND DISTRIBUTION OF BENEFITS

6.1 DETERMINATION OF BENEFITS UPON RETIREMENT

Every Participant may terminate employment with the Employer and retire for purposes hereof on the Participant's Normal Retirement Date or Early Retirement Date. However, a Participant may postpone the severance of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.3, shall continue until such Participant's Retirement Date. Upon a Participant's Retirement Date, or if elected in the Adoption Agreement, the attainment of Normal Retirement Date without severance of employment with the Employer (subject to Section 6.11), or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant, of the Participant's entire Vested interest in the Plan in accordance with Section 6.5.

6.2 DETERMINATION OF BENEFITS UPON DEATH

(a) **100% vesting on death.** Upon the death of a Participant before the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. The Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of the deceased Participant's Vested accounts to the Participant's Beneficiary.

(b) **Distribution upon death.** Upon the death of a Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of any remaining Vested amounts credited to the accounts of such deceased Participant to such Participant's Beneficiary.

(c) **Determination of death benefit by Administrator.** The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(d) **Beneficiary designation.** Each Participant must designate a Beneficiary on a form and in such manner as provided by the Administrator.

(e) **Beneficiary if no Beneficiary elected by Participant.** In the event no valid designation of Beneficiary exists, or if the Beneficiary with respect to a portion of a Participant's death benefit is not alive at the time of the Participant's death and no contingent Beneficiary has been designated, then such portion of the death benefit will be paid in the following order of priority, unless the Employer specifies a different order of priority in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), to:

- (1) The Participant's surviving Spouse;
- (2) The Participant's issue, per stirpes;
- (3) The Participant's surviving parents, in equal shares; or
- (4) The Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's "designated Beneficiary" (or if there is no "designated Beneficiary," to the Beneficiary's estate). For purposes of these provisions, and with respect to any Beneficiary designations, adopted children shall be treated as children.

(f) **Divorce revokes spousal Beneficiary designation.** Notwithstanding anything in this Section to the contrary, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), if a Participant has designated the Spouse as a Beneficiary, then a divorce decree that relates to such Spouse shall revoke the Participant's designation of the Spouse as a Beneficiary unless the decree or a "qualified domestic relations order" (within the meaning of Code §414(p)) provides otherwise or a subsequent Beneficiary designation is made.

(g) **Simultaneous death of Participant and Beneficiary.** If a Participant and his or her Beneficiary should die simultaneously, or under circumstances that render it difficult or impossible to determine who predeceased the other, then unless the Participant's Beneficiary designation otherwise specifies, the Administrator will presume conclusively that the Beneficiary predeceased the Participant.

(h) **Slayer statute.** The Administrator may apply slayer statutes, or similar rules which prohibit inheritance by a person who murders someone from whom he or she stands to inherit, under applicable state laws.

(i) **Insured death benefit.** If the Plan provides an insured death benefit and a Participant dies before any insurance coverage to which the Participant is entitled under the Plan is effected, the death benefit from such insurance coverage shall be limited to the premium which was or otherwise would have been used for such purpose.

(j) **Plan terms control.** In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

6.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. In the event of a Participant's Total and Permanent Disability, the Participant's entire Vested interest in the Plan will be distributable and may be distributed in accordance with the provisions of Sections 6.5 and 6.7.

6.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) **Payment on severance of employment.** If a Participant's employment with the Employer and any Affiliated Employer is severed for any reason other than death, Total and Permanent Disability, or attainment of the Participant's Retirement Date, then such Participant shall be entitled to such benefits as are provided herein.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, Early or Normal Retirement). However, at the election of the Participant, the Administrator shall direct that the entire Vested portion of the Terminated Participant's Combined Account be payable to such Terminated Participant provided the

conditions, if any, set forth in the Adoption Agreement have been satisfied. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5.

Regardless of whether distributions in kind are permitted, in the event the amount of the Vested portion of the Terminated Participant's Combined Account equals or exceeds the fair market value of any insurance Contracts, the Trustee (or Insurer), when so directed by the Administrator and agreed to by the Terminated Participant, shall assign, transfer, and set over to such Terminated Participant all Contracts on such Terminated Participant's life in such form or with such endorsements, so that the settlement options and forms of payment are consistent with the provisions of Section 6.5. In the event that the Terminated Participant's Vested portion does not at least equal the fair market value of the Contracts, if any, the Terminated Participant may pay over to the Trustee (or Insurer) the sum needed to make the distribution equal to the value of the Contracts being assigned or transferred, or the Trustee (or Insurer), pursuant to the Participant's election, may borrow the cash value of the Contracts from the Insurer so that the value of the Contracts is equal to the Vested portion of the Terminated Participant's Combined Account and then assign the Contracts to the Terminated Participant.

Notwithstanding the above, unless otherwise elected in the Adoption Agreement, if the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$5,000 (or such lower amount as elected in the Adoption Agreement), the Administrator shall direct that the entire Vested benefit be paid to such Participant in a single lump-sum as soon as practical without regard to the consent of the Participant, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. A Participant's Vested benefit shall not include (1) qualified voluntary employee contributions within the meaning of Code §72(o)(5)(B) and (2) if selected in the Conditions for Distributions Upon Severance of Employment Section of the Adoption Agreement, the Participant's Rollover Account. If a mandatory distribution is made pursuant to this paragraph and such distribution is greater than \$1,000 and the Participant does not elect to have such distribution paid directly to an "eligible retirement plan" specified by the Participant in a "direct rollover" in accordance with Section 6.14 or to receive the distribution directly, then the Administrator shall transfer such amount to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) designated by the Administrator. However, if the Participant elects to receive or make a "direct rollover" of such amount, then the Administrator shall direct the Trustee (or Insurer) to cause the entire Vested benefit to be paid to such Participant in a single lump sum, or make a "direct rollover" pursuant to Section 6.14, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. The Administrator may establish a procedure as to whether a Participant who fails to make an affirmative election with respect to a mandatory distribution of \$1,000 or less is treated as having made or not made a "direct rollover" election. For purposes of determining whether the \$1,000 threshold set forth in this paragraph is met, the mandatory distribution includes amounts in a Participant's Rollover Account. For purposes of determining whether the \$5,000 threshold in this paragraph is met, a Participant's Rollover Account is taken into account unless otherwise elected in the Adoption Agreement.

(b) **Vesting schedule.** The Vested portion of any Participant's Account shall be a percentage of such Participant's Account determined on the basis of the Participant's number of Years of Service (or Periods of Service if the elapsed time method is elected) according to the vesting schedule specified in the Adoption Agreement. However, a Participant's entire interest in the Plan shall be non-forfeitable upon the Participant's Normal Retirement Age (if the Participant is employed by the Employer on or after such date). In addition, Employee contributions (voluntary and mandatory) and contributions for sick leave/vacation leave conversions shall be fully Vested.

6.5 DISTRIBUTION OF BENEFITS

(a) **Forms of distributions.** The Administrator, pursuant to the election of the Participant, shall direct the distribution to a Participant or Beneficiary any amount to which the Participant or Beneficiary is entitled under the Plan in one or more of the following methods which are permitted pursuant to the Adoption Agreement.

- (1) One lump-sum payment in cash or in property, provided that if a distribution of property is permitted, it shall be limited to property that is specifically allocated and identifiable with respect to such Participant.
- (2) Partial withdrawals.
- (3) Payments over a period certain in monthly, quarterly, semi-annual, or annual cash installments. The period over which such payment is to be made shall not extend beyond the earlier of the Participant's life expectancy (or the joint life expectancy of the Participant and the Participant's designated Beneficiary). Once payments have begun, a Participant may elect to accelerate the payments (reduce the term and increase payments).
- (4) Purchase of or providing an annuity. However, such annuity may not be in any form that will provide for payments over a period extending beyond either the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(b) **Consent to distributions.** Benefits may not be paid without a Participant's consent if the value of the Participant's Accounts exceed the dollar threshold specified in the Adoption Agreement. If the value of the Participant's Accounts does not exceed such threshold, then the Administrator will distribute such benefit in a lump-sum. For purposes of this Subsection, the Participant's

Accounts shall not include, if selected in the Conditions for Distributions Upon Severance of Employment Section of the Adoption Agreement, the Participant's Rollover Account.

(c) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits, whether under the Plan or through the purchase of an annuity Contract, shall be made in accordance with the requirements of Section 6.8.

(d) **Annuity Contracts.** All annuity Contracts under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or Spouse shall comply with all of the requirements of this Plan.

(e) **TEFRA 242(b)(2) election.** The provisions of this Section shall not apply to distributions made in accordance with Plan Section 6.8(a)(4).

6.6 DISTRIBUTION OF BENEFITS UPON DEATH

(a) **Consent.** If the value of the death benefit derived from Employer and Employee contributions does not exceed \$5,000, the Administrator shall direct the distribution of such amount to the Participant's Beneficiary in a single lump-sum as soon as practicable. If the value exceeds \$5,000, an immediate distribution of the entire amount may be made to the Beneficiary, provided such Beneficiary consents to the distribution.

(b) **Forms of distribution.** Death benefits may be paid to a Participant's Beneficiary in one of the following optional forms of benefits subject to the rules specified in Section 6.8 and the elections made in the Adoption Agreement. Such optional forms of distributions may be elected by the Participant. However, if no optional form of distribution was elected by the Participant prior to death, then the Participant's Beneficiary may elect the form of distribution.

(1) One lump-sum payment in cash or in property that is allocated to the Accounts of the Participant at the time of the distribution.

(2) Partial withdrawals.

(3) Payment in monthly, quarterly, semi-annual, or annual cash installments over a period to be determined by the Participant or the Participant's Beneficiary. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchase a nontransferable annuity Contract for a term certain (with no life contingencies) providing for such payment. After periodic installments commence, the Beneficiary shall have the right to reduce the period over which such periodic installments shall be made, and the cash amount of such periodic installments shall be adjusted accordingly.

(4) In the form of an annuity over the life expectancy of the Beneficiary.

(c) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall comply with the requirements of Section 6.8.

(d) **Payment to a child.** For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving Spouse if the amount becomes payable to the surviving Spouse when the child reaches the age of majority.

(e) **Voluntary Contribution Account.** In the event that less than one hundred percent (100%) of a Participant's interest in the Plan is distributed to such Participant's Spouse, the portion of the distribution attributable to the Participant's Voluntary Contribution Account shall be in the same proportion that the Participant's Voluntary Contribution Account bears to the Participant's total interest in the Plan.

(f) **TEFRA 242(b)(2) election.** The provisions of this Section shall not apply to distributions made in accordance with Section 6.8(a)(4).

6.7 TIME OF DISTRIBUTION

Except as limited by Section 6.8, whenever a distribution is to be made, or a series of payments are to commence, the distribution or series of payments may be made or begun as soon as practicable. Notwithstanding anything in the Plan to the contrary, unless a Participant otherwise elects, payments of benefits under the Plan will be begun not later than the later of the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer. The failure of a Participant to request a distribution shall be deemed to be an election to defer the commencement of payment of any benefit until the time otherwise permitted under the Plan.

6.8 REQUIRED MINIMUM DISTRIBUTIONS

(a) General rules

- (1) **Effective Date.** Subject to the good faith interpretation standard, the requirements of this Section shall apply to any distribution of a Participant's interest in the Plan and will take precedence over any inconsistent provisions of this Plan.
- (2) **Requirements of Treasury Regulations incorporated.** All distributions required under this Section will be determined and made in accordance with the Regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G).
- (3) **Limits on distribution periods.** As of the first "distribution calendar year," distributions to a Participant may only be made in accordance with the selections made in the Form of Distributions Section of the Adoption Agreement. If such distributions are not made in a single-sum, then they may only be made over one of the following periods: (i) the life of the Participant, (ii) the joint lives of the Participant and a "designated Beneficiary," (iii) a period certain not extending beyond the "life expectancy" of the Participant, or (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a "designated Beneficiary."
- (4) **TEFRA Section 242(b)(2) elections.**
 - (i) Notwithstanding the other provisions of this Section, other than the Spouse's right of consent afforded under the Plan, distributions may be made on behalf of any Participant, including a five percent (5%) owner, who has made a designation in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and in accordance with all of the following requirements (regardless of when such distribution commences):
 - (A) The distribution by the Plan is one which would not have disqualified such Plan under Code §401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
 - (B) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.
 - (C) Such designation was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.
 - (D) The Participant had accrued a benefit under the Plan as of December 31, 1983.
 - (E) The method of distribution designated by the Participant or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.
 - (ii) A distribution upon death will not be covered by the transitional rule of this Subsection unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.
 - (iii) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (i)(A) and (i)(E) of this Subsection.
 - (iv) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code §401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code §401(a)(9) and the Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).
 - (v) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulation §1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.
- (5) **Good faith interpretation standard.** In applying any provision of this section, the Plan will apply a reasonable good faith interpretation of Code §401(a)(9).

(b) **Time and manner of distribution**

(1) **Required beginning date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "required beginning date."

(2) **Death of Participant before distributions begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows as elected in the Distributions Upon Death Section of the Adoption Agreement (or if no election is made, then the Beneficiary may elect either the lifetime method or the five-year method):

(i) **Lifetime method (Spouse).** If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," then, except as otherwise provided herein, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(ii) **Lifetime method (non-Spouse).** If the Participant's surviving Spouse is not the Participant's sole "designated Beneficiary," then, except as provided in Section 6.8(b)(3) below, distributions to the "designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) **Five-year method.** If there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death or if otherwise elected pursuant to the Adoption Agreement with respect to a "designated Beneficiary," the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) **Death of Spouse.** If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary" and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 6.8(b)(2), other than Section 6.8(b)(2)(i), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 6.8(b)(2) and Section 6.8(b)(3), unless Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the Participant's "required beginning date." If Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's "required beginning date" (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms of distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the "required beginning date," as of the first "distribution calendar year" distributions will be made in accordance with Sections 6.8(c) and 6.8(d) and only in a form of distribution provided in Section 6.5 or 6.6, as applicable. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the Regulations thereunder.

(c) **Required minimum distributions during Participant's lifetime**

(1) **Amount of required minimum distribution for each "distribution calendar year."** During the Participant's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of the following, as elected in the Form of Distributions Section of the Adoption Agreement:

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

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

(2) **Lifetime required minimum distributions continue through year of Participant's death.** Required minimum distributions will be determined under this Section 6.8(c) beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death.

(d) **Required minimum distributions after Participant's death**

(1) **Death on or after date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** If the Participant dies on or after the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as follows:

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

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

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

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

(2) **Death before date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** Except as provided in Section 6.8(b)(3), if the Participant dies before the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as provided in Section 6.8(d)(1).

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

(iii) **Death of surviving Spouse before distributions to surviving Spouse are required to begin.** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i), this Section 6.8(d)(2) will apply as if the surviving Spouse were the Participant.

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

(1) "Designated Beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the "designated Beneficiary" under Code §401(a)(9) and Regulation §1.401(a)(9)-4.

(2) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year immediately preceding the calendar year which contains the Participant's "required beginning date." For distributions beginning after the Participant's death, the first "distribution calendar year" is the calendar year in which distributions are required to begin under Section 6.8(b). The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's "required beginning date." The required minimum distribution for other "distribution calendar years," including the required minimum distribution for the "distribution calendar year" in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that "distribution calendar year."

(3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation §1.401(a)(9)-9.

(4) "Participant's account balance" means the Participant's account balance as of the last Valuation Date in the calendar year immediately preceding the "distribution calendar year" (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the account balance as of the dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. For this purpose, the Administrator may exclude contributions that are allocated to the account balance as of dates in the valuation calendar year after the Valuation Date, but that are not actually made during the valuation calendar year. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

(5) "Required beginning date" means, except as otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), with respect to any Participant, April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires.

(f) Waiver of 2009 required distributions

(1) **Suspension of RMDs unless otherwise elected by Participant.** This paragraph does not apply if the Employer elected options a., b., or c. at the WRERA – RMD Waivers for 2009 Section of the Adoption Agreement. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the "2009 RMDs" or (ii) one or more payments in a series of substantially equal distributions (that include the "2009 RMDs") made at least annually and expected to last for the life (or "life expectancy") of the Participant, the joint lives (or joint "life expectancy") of the Participant and the Participant's "designated Beneficiary," or for a period of at least 10 years ("Extended 2009 RMDs"), did not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence were given the opportunity to elect to receive the distributions described in the preceding sentence.

(2) **Continuation of RMDs unless otherwise elected by Participant.** This paragraph applies if the Employer elected option b. at the WRERA – RMD Waivers for 2009 Section of the Adoption Agreement. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the "2009 RMDs" or (ii) one or more payments in a series of substantially equal distributions (that include the "2009 RMDs") made at least annually and expected to last for the life (or "life expectancy") of the Participant, the joint lives (or joint "life expectancy") of the Participant and the Participant's "designated Beneficiary," or for a period of at least 10 years ("Extended 2009 RMDs"), did not receive those distributions for 2009 unless the Participant or Beneficiary choose not to receive such distributions. Participants and Beneficiaries described in the preceding sentence were given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

(3) **Direct rollovers.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009, as elected by the Employer in the WRERA – RMD Waivers for 2009 Section of the Adoption Agreement, were treated as eligible rollover distributions. If no election was made by the Employer in the Adoption Agreement, then a direct rollover was offered only for distributions that would have been eligible rollover distributions without regard to Code §401(a)(9)(H).

6.9 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL

If, in the opinion of the Administrator, a Participant or Beneficiary entitled to a distribution is not able to care for his her affairs because of a mental condition, a physical condition, or by reason of age, Administrator shall direct the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his or her attorney-in-fact or to other legal representative, upon furnishing evidence of such status satisfactory to the Administrator. The Administrator and the Trustee (or Insurer) do not have any liability with respect to payments so made and neither the Administrator nor the Trustee (or Insurer) has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

6.10 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture or be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). In addition, if the Plan provides for mandatory distributions and the amount to be distributed to a Participant or Beneficiary does not exceed \$1,000, then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, or be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first

from Forfeitures, if any, and then from an additional Employer contribution if necessary. Upon Plan termination, the portion of the distributable amount that is an "eligible rollover distribution" as defined in Section 6.14(b)(1) may be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

6.11 IN-SERVICE DISTRIBUTION

If elected in the Adoption Agreement, at such time as the conditions set forth in the Adoption Agreement have been satisfied, then the Administrator, at the election of a Participant who has not severed employment with the Employer, shall direct the distribution of up to the entire Vested amount then credited to the Accounts as elected in the Adoption Agreement maintained on behalf of such Participant. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be made in a manner consistent with Section 6.5. Furthermore, if an in-service distribution is permitted from more than one account type, the Administrator may determine any ordering of a Participant's in-service distribution from such accounts.

6.12 ADVANCE DISTRIBUTION FOR HARDSHIP

(a) **Hardship events.** For 401(a) Plans, if elected in the Adoption Agreement, the Administrator, at the election of the Participant, shall direct the distribution to any Participant in any one Plan Year up to the lesser of 100% of the Vested interest of the Accounts selected in the Adoption Agreement, valued as of the last Valuation Date or the amount necessary to satisfy the immediate and heavy financial need of the Participant. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Account from which the distribution is made shall be reduced accordingly. Withdrawal under this Section shall be authorized only if the distribution is for an immediate and heavy financial need. The Administrator will determine whether there is an immediate and heavy financial need based on the facts and circumstances. An immediate and heavy financial need includes, but is not limited to, a distribution for one of the following:

- (1) Expenses for (or necessary to obtain) medical care (as defined in Code §213(d));
- (2) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) Payments for burial or funeral expenses for the Participant's deceased parent, Spouse, children or dependents (as defined in Code §152, and without regard to Code §152(d)(1)(B));
- (4) Payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Participant, the Participant's Spouse, children, or dependents (as defined in Code §152, and without regard to Code §§152(b)(1), (b)(2), and (d)(1)(B));
- (5) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; or
- (6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) **Beneficiary-based distribution.** If elected in the Adoption Agreement, then effective as of the date specified in the Adoption Agreement, but no earlier than August 17, 2006, a Participant's hardship event includes an immediate and heavy financial need of the Participant's "primary Beneficiary under the Plan," that would constitute a hardship event if it occurred with respect to the Participant's Spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Section, a Participant's "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan (by the Participant or pursuant to Section 6.2(d)) and has an unconditional right to all or a portion of the Participant's Account balance under the Plan upon the Participant's death.

(c) **Other limits and conditions.** If elected in the Adoption Agreement, no distribution shall be made pursuant to this Section from the Participant's Account until such Account has become fully Vested. Furthermore, if a hardship distribution is permitted from more than one Account, the Administrator may determine any ordering of a Participant's hardship distribution from such Accounts.

(d) **Distribution rules apply.** Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5.

6.13 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION

All benefits provided to a Participant in this Plan shall be subject to the rights afforded to any Alternate Payee under a "qualified domestic relations order." Furthermore, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) a distribution to an Alternate Payee shall be permitted if such distribution is authorized by a "qualified domestic relations order," even if the affected Participant has not reached the "earliest retirement age." For the purposes of this Section, "qualified domestic relations order" and "earliest retirement age" shall have the meanings set forth under Code §414(p). For purposes of this Section, however, a distribution that is made pursuant to a domestic relations order which meets the requirements of Code §414(p)(1)(A)(i) will be treated as being made pursuant to a "qualified domestic relations order."

Effective as of April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a "qualified domestic relations order" will not fail to be a "qualified domestic relations order": (i) solely because the order is issued after, or revises, another domestic relations order or "qualified domestic relations order"; or (ii) solely because of the time at which the order is issued, including issuance after the Annuity Starting Date or after the Participant's death.

6.14 DIRECT ROLLOVERS

(a) **Right to direct rollover.** 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 Administrator, to have an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover." However, if less than the entire amount of the "eligible rollover distribution" is being paid directly to an "eligible retirement plan," then the Administrator may require that the amount paid directly to such plan be at least \$500.

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

(1) **Eligible rollover distribution.** An "eligible rollover distribution" means any distribution described in Code §402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the "distributee," except that an "eligible rollover distribution" does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the "distributee" or the joint lives (or joint life expectancies) of the "distributee" and the "distributee's" "designated Beneficiary," or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code §401(a)(9); any hardship distribution; the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution reasonably expected to total less than \$200 during a year. For purposes of the \$200 rule, a distribution from a designated Roth account and a distribution from other accounts under the Plan may be treated as made under separate plans. In addition, Section 6.8(f)(2) applies with respect to distributions made in 2009.

Notwithstanding the above, a portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax voluntary Employee contributions which are not includible in gross income. However, such portion may be transferred only to:

(i) a traditional individual retirement account or annuity described in Code §408(a) or (b) (a "traditional IRA")

(ii) for taxable years beginning after December 31, 2006, a Roth individual account or annuity described in Code §408A (a "Roth IRA"), or

(iii) a qualified defined contribution plan or an annuity contract described in Code §401(a) or Code §403(b), respectively, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) **Eligible retirement plan.** An "eligible retirement plan" is a "traditional IRA," for distributions made after December 31, 2007, a "Roth IRA," a qualified trust (an employees' trust) described in Code §401(a) which is exempt from tax under Code §501(a), an annuity plan described in Code §403(a), an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision and which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code §403(b), that accepts the "distributee's" "eligible rollover distribution." The definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is an Alternate Payee. If any portion of an "eligible rollover distribution" is attributable to payments or distributions from a designated Roth account, an "eligible retirement plan" with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual. In the case of a "distributee" who is a non-Spouse designated Beneficiary, (i) the "direct rollover" may be made only to a traditional or Roth individual retirement account or an annuity described in Code §408(b) ("IRA") that is established on behalf of the designated non-Spouse Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11), and (ii) the

determination of any required minimum distribution required under Code §401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18.

(3) **Distributee.** A "distributee" includes an Employee or Former Employee. In addition, the Employee's or Former Employee's surviving Spouse and the Employee's or Former Employee's Spouse or former Spouse who is the Alternate Payee, are "distributees" with regard to the interest of the Spouse or former Spouse.

(4) **Direct rollover.** A "direct rollover" is a payment by the Plan to the "eligible retirement plan" specified by the "distributee."

(c) **Participant notice.** A Participant entitled to an "eligible rollover distribution" must receive a written explanation of the right to a "direct rollover," the tax consequences of not making a "direct rollover," and, if applicable, any available special income tax elections. The notice must be provided no less than thirty (30) days and no more than one-hundred eighty (180) (ninety (90) for Plan Years beginning before January 1, 2007) days before the Annuity Starting Date. The "direct rollover" notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.

(d) **Non-Spouse Beneficiary rollover right.** For distributions after December 31, 2009, and unless otherwise elected in the Adoption Agreement, for distributions after December 31, 2006, a non-Spouse Beneficiary who is a "designated Beneficiary" under Code §401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion an "eligible rollover distribution" to an IRA the Beneficiary establishes for purposes of receiving the distribution.

(1) **Certain requirements not applicable.** Any distribution made prior to January 1, 2010 is not subject to the "direct rollover" requirements of Code §401(a)(31) (including Code §401(a)(31)(B), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c)).

(2) **Trust Beneficiary.** If the Participant's named Beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a "designated Beneficiary."

6.15 RESTRICTIONS ON DISTRIBUTION OF ASSETS TRANSFERRED FROM A MONEY PURCHASE PLAN

Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Employee's retirement, death, Total and Permanent Disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code §414(l), to this Plan from a money purchase pension plan qualified under Code §401(a) (other than any portion of those assets and liabilities attributable to after-tax voluntary Employee contributions or to a direct or indirect rollover contribution). Notwithstanding anything in the Plan to the contrary, effective with respect to Plan Years beginning after June 30, 2008, a Participant may not obtain an in-service distribution with respect to such transferred amounts prior to the earlier of the Participant's Normal Retirement Age or attainment of age 62.

6.16 CORRECTIVE DISTRIBUTIONS

Nothing in this Article shall preclude the Administrator from making a distribution to a Participant, to the extent such distribution is made to correct a qualification defect in accordance with the corrective procedures under the IRS' Employee Plans Compliance Resolution System or any other voluntary compliance programs established by the IRS.

6.17 HEART ACT

(a) **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the Participant'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 Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA) immediately prior to the Participant's death.

(b) **Military Differential Pay.** For years beginning after December 31, 2008: (1) an individual receiving Military Differential Pay is treated as an Employee of the Employer making the payment; (2) the Military Differential Pay is treated as 415 Compensation (and Compensation unless otherwise elected in the Adoption Agreement); and (3) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding Plan provisions) by reason of any contribution or benefit which is based on the Military Differential Pay. The Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any matching contributions, attributable to Military Differential Pay.

(c) **Deemed Severance.** Notwithstanding Subsection (b)(1) above, if elected in the Adoption Agreement, a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the

Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not attributable to Employer contributions to a money purchase pension plan. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder.

6.18 SERVICE CREDIT

The Administrator, upon Participant request, may direct the transfer of all or a portion of the Participant's Account to a governmental defined benefit plan (as defined in Code §414(d)) in which he or she participates for the purchase of permissive service credit (as defined in Code §415(n)(3)(A)).

ARTICLE VII TRUSTEE AND CUSTODIAN

7.1 BASIC RESPONSIBILITIES OF THE TRUSTEE

(a) **Application of Article.** The provisions of this Article, other than Section 7.6, shall not apply to this Plan if a separate trust agreement is being used. Furthermore, the provisions of this Article, other than Sections 7.5 and 7.6, shall not apply if the Plan is fully insured. If the Employer has appointed two or more Trustees to hold Plan assets, then each Trustee shall be the Trustee only with respect to those Plan assets specifically deposited by the Employer in the Trust Fund for which such Trustee is the trustee. References in the Plan to the responsibilities, power or duties of the Trustee and any other provisions in the Plan relating to the Trustee shall be interpreted as applying to each Trustee only with respect to the assets of the Trust Fund for which such Trustee is the Trustee. Each Trustee shall have no responsibility for, or liability with respect to, any of the Plan assets other than the assets for which it serves as Trustee.

(b) **No Duty to collect contributions.** The Trustee is accountable to the Employer for the funds contributed to the Plan by the Employer, but the Trustee does not have any duty to see that the contributions received comply or are deposited in accordance with the provisions of the Plan.

(c) **Reliance on Administrator's directions.** The Trustee will credit and distribute the Trust Fund as directed by the Administrator. The Trustee is not obligated to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or whether the manner of making any payment or distribution is proper. The Trustee is accountable only to the Administrator for any payment or distribution made by it in good faith on the order or direction of the Administrator.

(d) **Directions by others.** In the event that the Trustee shall be directed by a Participant (pursuant to the Participant Direction Procedures if the Plan permits Participant directed investments), the Employer, or an Investment Manager or other agent appointed by the Employer with respect to the investment of any or all Plan assets, the Trustee shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instructions as so directed.

(1) The Trustee shall be entitled to rely fully on the written (or other form acceptable to the Administrator and the Trustee, including but not limited to, voice recorded) instructions of a Participant (pursuant to the Participant Direction Procedures), the Employer, or any fiduciary or nonfiduciary agent of the Employer, in the discharge of such duties, and shall not be liable for any loss or other liability resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.

(2) The Trustee may delegate the duty of executing such instructions to any nonfiduciary agent, which may be an affiliate of the Trustee or any Plan representative.

(3) The Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such direction improper by virtue of applicable law. The Trustee shall not be responsible or liable for any loss or expense that may result from the Trustee's refusal or failure to comply with any direction from the Participant.

(4) Any costs and expenses related to compliance with the Participant's directions shall be borne by the Participant's Directed Account, unless paid by the Employer.

(5) Notwithstanding anything herein above to the contrary, the Trustee shall not invest any portion of a Participant's Directed Account in "collectibles" within the meaning of Code §408(m).

(e) **Records.** The Trustee will maintain records of receipts and disbursements and furnish to the Employer and/or Administrator for each Plan Year a written annual report pursuant to Section 7.9.

(f) **Employment of bank or trust company.** The Trustee may employ a bank or trust company pursuant to the terms of its usual and customary bank agency agreement, under which the duties of such bank or trust company shall be of a custodial, clerical and record-keeping nature.

(g) **Payment of expenses.** The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any such person.

7.2 INVESTMENT POWERS AND DUTIES OF DISCRETIONARY TRUSTEE

(a) **Discretionary authority.** This Section applies if the Employer, in the Adoption Agreement or as otherwise agreed upon by the Employer and the Trustee, designates the Trustee to administer all or a portion of the trust as a Discretionary Trustee. If so designated, then the Trustee has the discretion and authority to invest, manage, and control those Plan assets except, however, with respect to those assets which are subject to the investment direction of a Participant (if Participant directed investments are permitted), or an Investment Manager, the Administrator, or other agent appointed by the Employer. The exercise of any investment discretion hereunder shall be consistent with the "funding policy and method" determined by the Employer.

(b) **Duties.** The Trustee shall, except as otherwise provided in this Plan, invest and reinvest the Trust Fund to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to, common or preferred stocks, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. The Trustee shall at all times in making investments of the Trust Fund consider, among other factors, the short and long-term financial needs of the Plan on the basis of information furnished by the Employer. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code so that at all times this Plan may qualify as a qualified Plan and Trust. The Trustee shall discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(c) **Powers.** The Trustee, in addition to all powers and authorities under common law, statutory authority and other provisions of this Plan, shall have the following powers and authorities to be exercised in the Trustee's sole discretion:

- (1) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;
- (2) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;
- (3) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;
- (4) To cause any securities or other property to be registered in the Trustee's own name, or in the name of a nominee or in a street name provided such securities or other property are held on behalf of the Plan by (i) a bank or trust company, (ii) a broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer, or (iii) a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934;
- (5) To invest in a common, collective, or pooled trust fund (the provisions of which are incorporated herein by reference) maintained by any Trustee (or any affiliate of such Trustee) hereunder pursuant to Revenue Ruling 81-100 (as modified by Rev. Rul. 2011-1 or any subsequent guidance), all or such part of the Trust Fund as the Trustee may deem advisable, and the part of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The name of the trust fund may be specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). The Trustee may withdraw from such common, collective, or pooled trust fund all or such part of the Trust Fund as the Trustee may deem advisable;
- (6) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;
- (7) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;

- (8) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (9) To settle, compromise, or submit to arbitration (provided such arbitration does not apply to qualification issues nor to Participants or Beneficiaries) any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;
- (10) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agents or counsel may or may not be an agent or counsel for the Employer;
- (11) To apply for and procure from the Insurer as an investment of the Trust Fund any annuity or other Contracts (on the life of any Participant, or in the case of a 401(a) Plan, on the life of any person in whom a Participant has an insurable interest, or on the joint lives of a Participant and any person in whom the Participant has an insurable interest) as the Administrator shall deem proper; to exercise, at any time or from time to time, whatever rights and privileges may be granted under such annuity, or other Contracts; to collect, receive, and settle for the proceeds of all such annuity, or other Contracts as and when entitled to do so under the provisions thereof;
- (12) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon, including the specific authority to invest in any type of deposit of the Trustee (or of a financial institution related to the Trustee);
- (13) To invest in Treasury Bills and other forms of United States government obligations;
- (14) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;
- (15) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations including the specific authority to make deposit into any savings accounts or certificates of deposit of the Trustee (or a financial institution related to the Trustee);
- (16) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and Trust and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests; and
- (17) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to carry out the purposes of the Plan.
- (d) **Appointment of Investment Manager or others.** The Trustee may appoint, at its option, an Investment Manager, investment adviser, or other agent to provide direction to the Trustee with respect to the investment of any or all of the Plan assets. Such appointment shall be in writing and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have the authority to direct the investment.

7.3 INVESTMENT POWERS AND DUTIES OF NONDISCRETIONARY TRUSTEE

(a) **No discretionary powers.** This Section applies if the Employer, in the Adoption Agreement or as otherwise agreed upon by the Employer and the Trustee, designates the Trustee to administer all or a portion of the trust as a nondiscretionary Trustee. If so designated, then the Trustee shall have no discretionary authority to invest, manage, or control those Plan assets, but must act solely as a Directed Trustee of those Plan assets. A nondiscretionary Trustee, as Directed Trustee of the Plan funds it holds, is authorized and empowered, by way of limitation, with the powers, rights and duties set forth herein, each of which the nondiscretionary Trustee exercises solely as Directed Trustee in accordance with the direction of the party which has the authority to manage and control the investment of the Plan assets. If no directions are provided to the Trustee, the Employer will provide necessary direction. Furthermore, the Employer and the nondiscretionary Trustee may, in writing, limit the powers of the nondiscretionary Trustee to any combination of powers listed within this Section. The party which has the authority to manage and control the investment of the Plan assets shall discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) **Powers.** The Trustee, in addition to all powers and authorities under common law, statutory authority and other provisions of this Plan, shall have the following powers and authorities:

- (1) To invest the assets, without distinction between principal and income, in securities or property, real or personal, wherever situated, including, but not limited to, common or preferred stocks, open-end or closed-end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code so that at all times this Plan may qualify as a qualified Plan and Trust;
- (2) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;
- (3) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;
- (4) At the direction of the party which has the authority or discretion, to vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate powers, and pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property;
- (5) To cause any securities or other property to be registered in the Trustee's own name, or in the name of a nominee or in a street name provided such securities or other property are held on behalf of the Plan by (i) a bank or trust company, (ii) a broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer, or (iii) a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934;
- (6) To invest in a common, collective, or pooled trust fund (the provisions of which are incorporated herein by reference) maintained by any Trustee (or any affiliate of such Trustee) hereunder pursuant to Revenue Ruling 81-100 (as modified by Rev. Rul. 2011-1 or any subsequent guidance), all or such part of the Trust Fund as the party which has the authority to manage and control the investment of the assets shall deem advisable, and the part of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The name of the trust fund may be specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections);
- (7) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;
- (8) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (9) To settle, compromise, or submit to arbitration (provided such arbitration does not apply to qualification issues nor to Participants or Beneficiaries) any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;
- (10) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agent or counsel may or may not be an agent or counsel for the Employer;
- (11) To apply for and procure from the Insurer as an investment of the Trust Fund any annuity or other Contracts (on the life of any Participant, or in the case of a 401(a) Plan, on the life of any person in whom a Participant has an insurable interest, or on the joint lives of a Participant and any person in whom the Participant has an insurable interest) as the Administrator shall deem proper; to exercise, at the direction of the person with the authority to do so, whatever rights and privileges may be granted under such annuity or other Contracts; to collect, receive, and settle for the proceeds of all such annuity or other Contracts as and when entitled to do so under the provisions thereof;
- (12) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon, including the specific authority to invest in any type of deposit of the Trustee (or of a financial institution related to the Trustee);
- (13) To invest in Treasury Bills and other forms of United States government obligations;

(14) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;

(15) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations including the specific authority to make deposit into any savings accounts or certificates of deposit of the Trustee (or a financial institution related to the Trustee); and

(16) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests.

(c) The Trustee shall have no responsibility to enforce the collection from the Employer of any contribution to the Plan or determine the correctness of the amount or timing any contribution. The Employer is responsible for transmitting contributions to the Trustee at such times and in such manner as is mutually agreed upon by the Employer and the Trustee and as required by the Plan and applicable law.

7.4 POWERS AND DUTIES OF CUSTODIAN

The Employer may appoint a Custodian of the Plan assets. A Custodian has the same powers, rights and duties as a nondiscretionary Trustee. Any reference in the Plan to a Trustee also is a reference to a Custodian unless the context of the Plan indicates otherwise. A limitation of the Trustee's liability by Plan provision also acts as a limitation of the Custodian's liability. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Administrator, the Employer, an Investment Manager, a fiduciary or other third party with authority to provide direction to the Custodian. The resignation or removal of the Custodian shall be made in accordance with Section 7.11 as though the Custodian were a Trustee.

7.5 LIFE INSURANCE

(a) **Permitted insurance.** The Trustee (or Insurer), in accordance with operational procedures of the Administrator, shall ratably apply for, own, and pay all premiums on Contracts on the lives of the Participants or, in the case of a 401(a) Plan, on the life of a member of the Participant's family or on the joint lives of a Participant and a member of the Participant's family. Furthermore, if a Contract is purchased on the joint lives of the Participant and another person and such other person predeceases the Participant, then the Contract may not be maintained under this Plan. Any initial or additional Contract purchased on behalf of a Participant shall have a face amount of not less than \$1,000, an amount set forth in the Administrator's procedures, or the limitation of the Insurer, whichever is greater. If a life insurance Contract is to be purchased for a Participant, then the aggregate premium for ordinary life insurance for each Participant must be less than 50% of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. For purposes of this limitation, ordinary life insurance Contracts are Contracts with both non-decreasing death benefits and non-increasing premiums. If term insurance or universal life insurance is purchased, then the aggregate premium must be 25% or less of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. If both term insurance and ordinary life insurance are purchased, then the premium for term insurance plus one-half of the premium for ordinary life insurance may not in the aggregate exceed 25% of the aggregate Employer contributions and Forfeitures allocated to the Participant's Combined Account. Notwithstanding the preceding, the limitations imposed herein with respect to the purchase of life insurance shall not apply, in the case of a 401(a) Plan, to the portion of the Participant's Account that has accumulated for at least two (2) Plan Years or to the entire Participant's Account if the Participant has been a Participant in the Plan for at least five (5) years. In addition, amounts transferred to this Plan in accordance with Section 4.6(f)(1)(ii) or (iii) and a Participant's Voluntary Contribution Account may be used to purchase Contracts without limitation. Thus, amounts that are not subject to the limitations contained herein may be used to purchase life insurance on any person in whom a Participant has an insurable interest or on the joint lives of a Participant and any person in whom the Participant has an insurable interest, and without regard to the amount of premiums paid to purchase any life insurance hereunder.

(b) **Contract conversion at retirement.** The Trustee (or Insurer) must distribute any Contracts to the Participant or convert the entire value of the Contracts at or before retirement into cash or provide for a periodic income so that no portion of such value may be used to continue life insurance protection beyond the date on which benefits commence.

(c) **Limitations on purchase.** No life insurance Contracts shall be required to be obtained on an individual's life if, for any reason (other than the nonpayment of premiums) the Insurer will not issue a Contract on such individual's life.

(d) **Proceeds payable to plan.** The Trustee (or Insurer) will be the owner of any life insurance Contract purchased under the terms of this Plan. The Contract must provide that the proceeds will be payable to the Trustee (or Insurer); however, the Trustee (or Insurer) shall be required to pay over all proceeds of the Contract to the Participant's "designated Beneficiary" in accordance with the distribution provisions of Article VI. A Participant's Spouse will be the "designated Beneficiary" pursuant to Section 6.2, unless

a qualified election has been made in accordance with Sections 6.5 and 6.6 of the Plan, if applicable. Under no circumstances shall the Trust retain any part of the proceeds that are in excess of the cash surrender value immediately prior to death. However, the Trustee (or Insurer) shall not pay the proceeds in a method that would violate the requirements of the Retirement Equity Act of 1984, as stated in Article VI of the Plan, or Code §401(a)(9) and the Regulations thereunder. In the event of any conflict between the terms of this Plan and the terms of any insurance Contract purchased hereunder, the Plan provisions shall control.

(e) **No responsibility for act of Insurer.** The Employer, the Administrator and the Trustee shall not be responsible for the validity of the provisions under a Contract issued hereunder or for the failure or refusal by the Insurer to provide benefits under such Contract. The Employer, Administrator and the Trustee are also not responsible for any action or failure to act by the Insurer or any other person which results in the delay of a payment under the Contract or which renders the Contract invalid or unenforceable in whole or in part.

7.6 LOANS TO PARTICIPANTS

(a) **Permitted Loans.** The Trustee (or the Administrator if the Trustee is a nondiscretionary Trustee or if loans are treated as Participant directed investments) may, in the Trustee's (or, if applicable, the Administrator's) sole discretion, make loans to Participants. If loans are permitted, then the following shall apply: (1) loans shall be made available to all Participants on a reasonably equivalent basis; (2) loans shall bear a reasonable rate of interest; (3) loans shall be adequately secured; and (4) loans shall provide for periodic repayment over a reasonable period of time. Furthermore, no Participant loan shall exceed the Participant's Vested interest in the Plan. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees.

(b) **Prohibited assignment or pledge.** An assignment or pledge of any portion of a Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance Contract purchased under the Plan, shall be treated as a loan under this Section.

(c) **Loan program.** The Administrator shall be authorized to establish a Participant loan program to provide for loans under the Plan. In order for the Administrator to implement such loan program, a separate written document forming a part of this Plan must be adopted, which document shall specifically include, but need not be limited to, the following:

- (1) the identity of the person or positions authorized to administer the Participant loan program;
- (2) a procedure for applying for loans;
- (3) the basis on which loans will be approved or denied;
- (4) limitations, if any, on the types and amounts of loans offered;
- (5) the procedure under the program for determining a reasonable rate of interest;
- (6) the types of collateral which may secure a Participant loan; and
- (7) the events constituting default and the steps that will be taken to preserve Plan assets in the event such default.

(d) **Loan default.** Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a loan made pursuant to this Section that is secured by the Participant's interest in the Plan, then a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations.

(e) **Loans subject to Plan terms.** Notwithstanding anything in this Section to the contrary, if this is an amendment and restatement of an existing Plan, any loans made prior to the date this amendment and restatement is adopted shall be subject to the terms of the Plan in effect at the time such loan was made.

7.7 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If there is more than one Trustee, then the responsibilities of each Trustee may be specified by the Employer and accepted in writing by each Trustee. If no such delegation is made by the Employer, then the Trustees may allocate the responsibilities among themselves, in which event the Trustees shall notify the Employer and the Administrator in writing of such action and specify the responsibilities of each Trustee. Except where there has been an allocation and delegation of powers, if there shall be more than one Trustee, they shall act by a majority of their number, but may authorize one or more of them to sign papers on their behalf.

7.8 TRUSTEE'S COMPENSATION AND EXPENSES AND TAXES

The Trustee shall be paid such reasonable compensation as set forth in the Trustee's fee schedule (if the Trustee has such a schedule) or as agreed upon in writing by the Employer and the Trustee. However, an individual serving as Trustee who already receives full-time compensation from the Employer shall not receive compensation from this Plan. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by it as Trustee. Such compensation and expenses shall be paid from

the Trust Fund unless paid or advanced by the Employer. All taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

7.9 ANNUAL REPORT OF THE TRUSTEE

(a) **Annual report.** Within a reasonable period of time after the later of the Anniversary Date or receipt of the Employer's contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Employer and Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- (1) the net income, or loss, of the Trust Fund;
- (2) the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;
- (3) the increase, or decrease, in the value of the Trust Fund;
- (4) all payments and distributions made from the Trust Fund; and
- (5) such further information as the Trustee and/or Administrator deems appropriate.

(b) **Employer approval of report.** The Employer, promptly upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee and/or Administrator of its approval or disapproval thereof. Failure by the Employer to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed an approval thereof. The approval by the Employer of any statement of account shall be binding on the Employer and the Trustee as to all matters contained in the statement to the same extent as if the account of the Trustee had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having or claiming an interest in the Plan were parties. However, nothing contained in this Section shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires.

7.10 RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

(a) **Trustee resignation.** Unless otherwise agreed to by both the Trustee and the Employer, a Trustee may resign at any time by delivering to the Employer, at least thirty (30) days before its effective date, a written notice of resignation.

(b) **Trustee removal.** Unless otherwise agreed to by both the Trustee and the Employer, the Employer may remove a Trustee at any time by delivering to the Trustee, at least thirty (30) days before its effective date, a written notice of such Trustee's removal.

(c) **Appointment of successor.** Upon the death, resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Employer; and such successor, upon accepting such appointment in writing and delivering same to the Employer, shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as a Trustee herein. Until such a successor is appointed, any remaining Trustee or Trustees shall have full authority to act under the terms of the Plan.

(d) **Appointment of successor prior to removal of predecessor.** The Employer may designate one or more successors prior to the death, resignation, incapacity, or removal of a Trustee. In the event a successor is so designated by the Employer and accepts such designation, the successor shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as Trustee herein immediately upon the death, resignation, incapacity, or removal of the predecessor.

(e) **Trustee's statement upon cessation of being Trustee.** Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Employer and Administrator a written statement of account with respect to the portion of the Plan Year during which the individual or entity served as Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year required under Section 7.9 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Employer no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 7.9 for the approval by the Employer of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the Employer of any such special statement in the manner provided in Section 7.9 shall have the same effect upon the statement as the Employer's approval of an annual statement of account. No successor to the Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required by Section 7.9 and this subparagraph.

7.11 TRANSFER OF INTEREST

Notwithstanding any other provision contained in this Plan, the Trustee at the direction of the Administrator shall transfer the interest, if any, of a Participant to another trust forming part of a pension, profit sharing, or stock bonus plan that meets the requirements of Code §401(a), provided that the trust to which such transfers are made permits the transfer to be made and further provided that the terms of the transferee plan properly allocates the funds in each account to a transferee account that preserves all the required features and

restrictions applicable to such account under this Plan. However, the transfer of amounts from this Plan to a nonqualified foreign trust is treated as a distribution and the transfer of assets and liabilities from this Plan to a plan that satisfies Section 1165 of the Puerto Rico Code is also treated as distribution from the transferor plan.

7.12 TRUSTEE INDEMNIFICATION

To the extent permitted by the Code, the Employer agrees to indemnify and hold harmless the Trustee against any and all claims, losses, damages, expenses and liabilities the Trustee may incur in the exercise and performance of the Trustee's powers and duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct.

ARTICLE VIII AMENDMENT, TERMINATION AND MERGERS

8.1 AMENDMENT

(a) **General rule on Employer amendment.** The Employer shall have the right at any time to amend this Plan subject to the limitations of this Section. However, any amendment that affects the rights, duties or responsibilities of the Trustee (or Insurer) or Administrator may only be made with the Trustee's (or Insurer's) or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee (or Insurer) shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee (or Insurer) hereunder.

(b) **Permissible amendments.** The Employer may (1) change the choice of options in the Adoption Agreement, (2) add any appendix to the Adoption Agreement that is specifically permitted pursuant to the terms of the Plan (e.g., Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)); (3) amend administrative trust or custodial provisions, (4) add certain sample or model amendments published by the Internal Revenue Service or other required good-faith amendments which specifically provide that their adoption will not cause the Plan to be treated as an individually designed plan, and (5) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan.

(c) **Volume submitter practitioner amendments.** The Employer (and every Participating Employer) expressly delegates authority to the volume submitter practitioner, the right to amend the Plan by submitting a copy of the amendment to each Employer (and Participating Employer) who has adopted this plan, after first having received a ruling or favorable determination from the Internal Revenue Service that the volume submitter Plan as amended qualifies under Code §401(a) (unless a ruling or determination is not required by the IRS).

(d) **Impermissible amendments.** No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

8.2 TERMINATION

(a) **Termination of Plan.** The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee (or Insurer) and Administrator written notice of such termination. Upon any full or partial termination or upon the complete discontinuance of the Employer's Contributions to the Plan (in the case of a Profit Sharing Plan), all amounts credited to the affected Participants' Combined Accounts shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(b) **Distribution of assets.** Upon the full termination of the Plan, the Employer shall direct the distribution of the assets to Participants in a manner that is consistent with and satisfies the provisions of Section 6.5. Distributions to a Participant shall be made in cash (or in property if permitted in the Adoption Agreement) or through the purchase of irrevocable nontransferable deferred commitments from the Insurer.

8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to any other plan only if the benefits which would be received by a Participant of this Plan, in the event of a termination of the plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation.

**ARTICLE IX
MISCELLANEOUS**

9.1 EMPLOYER ADOPTIONS

(a) **Method of adoption.** Any organization may become the Employer hereunder by executing the Adoption Agreement in a form satisfactory to the Trustee (or Insurer), and it shall provide such additional information as the Trustee (or Insurer) may require. The consent of the Trustee (or Insurer) to act as such shall be signified by its execution of the Adoption Agreement or a separate agreement (including, if elected in the Adoption Agreement, a separate trust agreement).

(b) **Separate affiliation.** Except as otherwise provided in this Plan, the affiliation of the Employer and the participation of its Participants shall be separate and apart from that of any other employer and its participants hereunder.

9.2 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

9.3 ALIENATION

(a) **General rule.** Subject to the exceptions provided below and as otherwise permitted by the Code, no benefit which shall be payable to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized except to such extent as may be required by law.

(b) **Exception for loans.** Subsection (a) shall not apply to the extent a Participant or Beneficiary is indebted to the Plan by reason of a loan made pursuant to Section 7.6. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such portion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's interest in the Plan. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Participant's interest in the Plan, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Section 2.10.

(c) **Exception for QDRO.** Subsection (a) shall not apply to a "qualified domestic relations order" defined in Code §414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984.

9.4 PLAN COMMUNICATIONS, INTERPRETATION AND CONSTRUCTION

(a) **Applicable law.** This Plan and Trust shall be construed and enforced according to the Code, and the laws of the state or commonwealth in which the Employer's (or if there is a corporate Trustee, the Trustee's, or if the Plan is fully insured, the Insurer's) principal office is located (unless otherwise designated in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), other than its laws respecting choice of law, to the extent not pre-empted by federal law.

(b) **Administrator's discretion.** The Administrator has total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Administrator makes under the Plan is final and binding upon any affected person. The Administrator must exercise all of its Plan powers and discretion, and perform all of its duties in a uniform manner.

(c) **Communications.** All Participant or Beneficiary notices, designations, elections, consents or waivers must be made in a form the Administrator (or, as applicable, the Trustee or Insurer) specifies or otherwise approves. Any person entitled to notice under the Plan may waive the notice or shorten the notice period unless such actions are contrary to applicable law.

(d) **Evidence.** Anyone, including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Administrator, Trustee and Insurer are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

(e) **Plan terms binding.** The Plan is binding upon all parties, including but not limited to, the Employer, Trustee, Insurer, Administrator, Participants and Beneficiaries.

(f) **Parties to litigation.** Except as otherwise provided by applicable law, a Participant or a Beneficiary is not a necessary party or required to receive notice of process in any court proceeding involving the Plan, the Trust or any fiduciary. Any final judgment (not subject to further appeal) entered in any such proceeding will be binding upon all parties, including the Employer, the Administrator, Trustee, Insurer, Participants and Beneficiaries.

(g) **Fiduciaries not insurers.** The Trustee, Administrator and the Employer in no way guarantee the Plan assets from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Plan. The liability of the Employer, the Administrator and the Trustee to make any distribution from the Trust at any time and all times is limited to the then available assets of the Trust.

(h) **Construction/severability.** The Plan, the Adoption Agreement, the Trust and all other documents to which they refer, will be interpreted consistent with and to preserve tax qualification of the Plan under Code §401(a) and tax exemption of the Trust under Code §501(a) and also consistent with other applicable law. To the extent permissible under applicable law, any provision which a court (or other entity with binding authority to interpret the Plan) determines to be inconsistent with such construction and interpretation, is deemed severed and is of no force or effect, and the remaining Plan terms will remain in full force and effect.

(i) **Uniformity.** All provisions of this Plan shall be interpreted and applied in a uniform manner.

(j) **Headings.** The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

9.5 GENDER, NUMBER AND TENSE

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply; whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply; and whenever any words are used herein in the past or present tense, they shall be construed as though they were also used in the other form in all cases where they would so apply.

9.6 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee (or Insurer), the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee (or Insurer), the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

9.7 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) **General rule.** Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries.

(b) **Mistake of fact.** In the event the Employer shall make a contribution under a mistake of fact, the Employer may demand repayment of such contribution at any time within one (1) year following the time of payment and the Trustee (or Insurer) shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

9.8 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the Insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

9.9 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the Insurer, an Insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The Insurer shall be protected and held harmless in acting in accordance with any written direction of the Administrator or Trustee, and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Administrator or Trustee. Regardless of any provision of this Plan, the Insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the Insurer.

9.10 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee (or Insurer) and the Employer.

9.11 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

9.12 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification is made by the time prescribed by law or such later date as the Secretary of Treasury may prescribe, the Commissioner of the Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code §§401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan, by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee (or Insurer) shall be discharged from all further obligations. If the disqualification relates to a Plan amendment, then the Plan shall operate as if it had not been amended. If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this volume submitter plan and will be considered an individually designed plan.

9.13 PAYMENT OF BENEFITS

Except as otherwise provided in the Plan, benefits under this Plan shall be paid, subject to Sections 6.11 and 6.12, only upon death, Total and Permanent Disability, normal or early retirement, severance of employment, or termination of the Plan.

9.14 ELECTRONIC MEDIA

The Administrator may use any electronic medium to give or receive any Plan notice, communicate any Plan policy, conduct any written Plan communication, satisfy any Plan filing or other compliance requirement and conduct any other Plan transaction to the extent permissible under applicable law. A Participant or a Participant's Spouse, to the extent authorized by the Administrator, may use any electronic medium to make or provide any Beneficiary designation, election, notice, consent or waiver under the Plan, to the extent permissible under applicable law. Any reference in this Plan to a "form," a "notice," an "election," a "consent," a "waiver," a "designation," a "policy" or to any other Plan-related communication includes an electronic version thereof as permitted under applicable law. Notwithstanding the foregoing, any Participant or Beneficiary notices and consent that are required pursuant to the Code must satisfy Regulation §1.401(a)-21.

9.15 PLAN CORRECTION

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code §401(a) or to correct a fiduciary breach under state or local law. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and Employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. Furthermore, the Employer may make corrective contributions pursuant to this Section regardless of whether the Plan otherwise permits such contribution source. In addition, the Plan is authorized to recover benefits from Participants or Beneficiaries that have been improperly distributed.

9.16 NONTRUSTEED PLANS

If the Plan is funded solely with Contracts, then notwithstanding Sections 9.7 and 9.12, no Contract will be purchased under the Plan unless such Contract or a separate definite written agreement between the Employer and the Insurer provides that no value under Contracts providing benefits under the Plan or credits determined by the Insurer (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such Contracts may be paid or returned to the Employer or diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. However, any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

If this Plan is funded by individual Contracts that provide a Participant's benefit under the Plan, such individual Contracts shall constitute the Participant's Account balance. If this Plan is funded by group Contracts, under the group annuity or group insurance Contract, premiums or other consideration received by the Insurer must be allocated to Participants' Accounts under the Plan.

**ARTICLE X
PARTICIPATING EMPLOYERS**

10.1 ELECTION TO BECOME A PARTICIPATING EMPLOYER

Notwithstanding anything herein to the contrary, with the consent of the Employer and Trustee (or Insurer), any Employer may adopt the Employer's Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer (a participation agreement). In the event a Participating Employer is not an Affiliated Employer, then the provisions of Article XII shall apply rather than the provision of this Article XI.

10.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS

(a) **Permissible variations of participation agreement.** The participation agreement must identify the Participating Employer and the covered Employees and provide for the Participating Employer's signature. In addition, in the participation agreement, the Employer shall specify which elections, if any, the Participating Employer can modify, and any restrictions on the modifications. Any such modification shall apply only to the Employees of that Participating Employer. The Participating Employer shall make any such modification by selecting the appropriate option on its participation agreement to the Employer's Adoption Agreement. To the extent that the participation agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election shall have no effect on the Plan and the Participating Employer is bound by the Plan terms as selected by the Employer. If a Participating Employer does not make any permissible participation agreement election modifications, then with regard to any election, the Participating Employer is bound by the Adoption Agreement terms as completed by the "lead Employer."

(b) **Holding and investing assets.** The Trustee (or Insurer) may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof. However, the assets of the Plan shall, on an ongoing basis, be available to pay benefits to all Participants and Beneficiaries under the Plan without regard to the Employer or Participating Employer who contributed such assets.

(c) **Payment of expenses.** Unless the Employer otherwise directs, any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

10.3 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustee (or Insurer) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates otherwise, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

10.4 EMPLOYEE TRANSFERS

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a severance of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

10.5 PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES

Any contribution and/or Forfeiture subject to allocation during each Plan Year shall be determined and allocated separately by each Participating Employer, and shall be allocated only among the Participants eligible to share in the contribution and Forfeiture allocation of the Employer or Participating Employer making the contribution or by which the forfeiting Participant was employed.

On the basis of the information furnished by the Administrator, the Trustee (or Insurer) shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustee (or Insurer) may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustee (or Insurer) thereof.

10.6 AMENDMENT

Any Participating Employer hereby authorizes the Employer to make amendments on its behalf, unless otherwise agreed among all affected parties. If a Participating Employer is not an Affiliated Employer, then amendment of this Plan by the Employer at any time when there shall be a Participating Employer shall, unless otherwise agreed to by the affected parties, only be by the written action of each and every Participating Employer and with the consent of the Trustee (or Insurer) where such consent is necessary in accordance with the terms of this Plan.

10.7 DISCONTINUANCE OF PARTICIPATION

Any Participating Employer that is an Affiliated Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee (or Insurer). The Trustee (or Insurer) shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new trustee (or insurer) or custodian as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees. If no successor is designated, the Trustee (or Insurer) shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be used for or diverted to purposes other than for the exclusive benefit of the Employees of such Participating Employer.

10.8 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

ARTICLE XI MULTIPLE EMPLOYER PROVISIONS

11.1 ELECTION AND OVERRIDING EFFECT

If a Participating Employer that is not an Affiliated Employer adopts this Plan, then the provisions of this Article XI shall apply to each Participating Employer as of the Effective Date specified in its participation agreement and supersede any contrary provisions in the basic Plan document or the Adoption Agreement. If this Article XI applies, then the Plan shall be a multiple employer plan as described in Code §413(c). In this case, the Employer and each Participating Employer acknowledge that the Plan is a multiple employer plan subject to the rules of Code §413(c) and the Regulations thereunder, which are hereby incorporated by reference, and specific annual reporting requirements.

11.2 DEFINITIONS

The following definitions shall apply to this Article XI and shall supersede any conflicting definitions in the Plan:

- (a) **Employee.** "Employee" means any common law employee, Leased Employee or other person the Code treats as an employee of a Participating Employer for purposes of the Participating Employer's qualified plan. Either the Adoption Agreement or a participation agreement to the Adoption Agreement may designate any Employee, or class of Employees, as not eligible to participate in the Plan.
- (b) **Lead Employer.** "Lead Employer" means the signatory Employer to the Adoption Agreement execution page, and does not include any Affiliated Employer or Participating Employer. The "lead Employer" has the same meaning as the Employer for purposes of making Plan amendments and other purposes regardless of whether the "lead Employer" is also a Participating Employer under this Article XI.

11.3 PARTICIPATING EMPLOYER ELECTIONS

The participation agreement must identify the Participating Employer and the covered Employees and provide for the Participating Employer's signature. In addition, in the participation agreement, the "lead Employer" shall specify which elections, if any, the Participating Employer can modify, and any restrictions on the modifications. Any such modification shall apply only to the employees of that Participating Employer. The Participating Employer shall make any such modification by selecting the appropriate option on its participation agreement to the "lead Employer's" Adoption Agreement. To the extent that the Adoption Agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election shall have no effect on the Plan and the Participating Employer is bound by the Plan terms as selected by the "lead Employer." If a Participating Employer does not make any permissible participation agreement election modifications, then with regard to any election, the Participating Employer is bound by the Adoption Agreement terms as completed by the "lead Employer."

11.4 TESTING

The Administrator shall apply the Code §415 limitation in Section 4.4 for the Plan as a whole.

11.5 COMPENSATION

- (a) **Separate determination.** A Participant's Compensation shall be determined separately for each Participating Employer for purposes of allocations under Article IV.
- (b) **Joint status.** For all Plan purposes, including but not limited to determining the Code §415 limits in Section 4.4, Compensation includes all Compensation paid by or for any Participating Employer.

11.6 SERVICE

An Employee's service includes all Hours of Service and Years of Service with any and all Participating Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not separated from service or had a severance from employment.

11.7 COOPERATION AND INDEMNIFICATION

(a) **Cooperation.** Each Participating Employer agrees to timely provide all information the Administrator deems necessary to insure the Plan is operated in accordance with the requirements of the Code and will cooperate fully with the "lead Employer," the Plan, the Plan fiduciaries and other proper representatives in maintaining the qualified status of the Plan. Such cooperation will include payment of such amounts into the Plan, to be allocated to employees of the Participating Employer, which are reasonably required to maintain the tax-qualified status of the Plan.

(b) **Indemnity.** Each Participating Employer will indemnify and hold harmless the Administrator, the "lead Employer" and its subsidiaries; officers, directors, shareholders, employees, and agents of the "lead Employer"; the Plan; the Trustees, Participants and Beneficiaries of the Plan, as well as their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as IRS plan disqualifications, other sanctions or compliance fees and penalties) arising out of or relating to the Participating Employer's noncompliance with any of the Plan's terms or requirements; any intentional or negligent act or omission the Participating Employer commits with regard to the Plan; and any omission or provision of incorrect information with regard to the Plan which causes the Plan to fail to satisfy the requirements of a tax-qualified plan.

11.8 INVOLUNTARY TERMINATION

Unless the "lead Employer" provides otherwise in an addendum hereto, the "lead Employer" shall have the power to terminate the participation of any Participating Employer (hereafter "Terminated Employer") in this Plan. If and when the "lead Employer" wishes to exercise this power, the following shall occur:

(a) **Notice.** The "lead Employer" shall give the "Terminated Employer" a notice of the "lead Employer's" intent to terminate the "Terminated Employer's" status as a Participating Employer of the Plan. The "lead Employer" will provide such notice not less than thirty (30) days prior to the date of termination unless the "lead Employer" determines that the interest of Plan Participants requires earlier termination.

(b) **Spin-off.** The "lead Employer" shall establish a new defined contribution plan, using the provisions of this Plan with any modifications contained in the "Terminated Employer's" participation agreement, as a guide to establish a new defined contribution plan (the "spin-off plan"). The "lead Employer" will direct the Trustee to transfer (in accordance with the rules of Code §414(l) and the provisions of Section 8.3) the Accounts of the Employees of the "Terminated Employer" to the "spin-off plan." The "Terminated Employer" shall be the Employer, Administrator, and sponsor of the "spin-off plan." The Trustee of the "spin-off plan" shall be the person or entity designated by the "Terminated Employer." However, the "lead Employer" shall have the option to designate an appropriate financial institution as Trustee instead if necessary to protect the interest of the Participants. The "lead Employer" shall have the authority to charge the "Terminated Employer" or the Accounts of the Employees of the "Terminated Employer" a reasonable fee to pay the expenses of establishing the "spin-off plan."

(c) **Alternatives.** The "Terminated Employer," in lieu of creation of the "spin-off plan" under (b) above, has the option to elect a transfer alternative in accordance with this Subsection (c).

(1) **Election.** To exercise the option described in this Subsection, the "Terminated Employer" must inform the "lead Employer" of its choice, and must supply any reasonably required documentation as soon as practical. If the "lead Employer" has not received notice of a "Terminated Employer's" exercise of this option within ten (10) days prior to the stated date of termination, the "lead Employer" can choose to disregard the exercise and proceed with the Spin-off.

(2) **Transfer.** If the "Terminated Employer" selects this option, the Administrator shall transfer (in accordance with the rules of Code §414(l) and the provisions of Section 8.3) the Accounts of the Employees of the "Terminated Employer" to a qualified plan the "Terminated Employer" maintains. To exercise this option, the "Terminated Employer" must deliver to the "lead Employer" or Administrator in writing the name and other relevant information of the transferee plan and must provide such assurances that the Administrator shall reasonably require to demonstrate that the transferee plan is a qualified plan.

(d) **Participants.** The Employees of the "Terminated Employer" shall cease to be eligible to accrue additional benefits under the Plan with respect to Compensation paid by the "Terminated Employer," effective as of the date of termination. To the extent that these Employees have accrued but unpaid contributions as of the date of termination, the "Terminated Employer" shall pay such amounts to the Plan or the "spin-off plan" no later than thirty (30) days after the date of termination, unless the "Terminated Employer" effectively selects the Transfer option under Subsection (c)(2) above.

(e) **Consent.** By its signature on the participation agreement, the "Terminated Employer" specifically consents to the provisions of this Article and agrees to perform its responsibilities with regard to the "spin-off plan," if necessary.

11.9 VOLUNTARY TERMINATION

A Participating Employer (hereafter "withdrawing employer") may voluntarily withdraw from participation in this Plan at any time. If and when a "withdrawing employer" wishes to withdraw, the following shall occur:

(a) **Notice.** The "withdrawing employer" shall inform the "lead Employer" and the Administrator of its intention to withdraw from the Plan. The "withdrawing employer" must give the notice not less than thirty (30) days prior to the effective date of its withdrawal.

(b) **Procedure.** The "withdrawing employer" and the "lead Employer" shall agree upon procedures for the orderly withdrawal of the "withdrawing employer" from the plan. Such procedures may include any of the optional spin-off or transfer options described in Section 11.8.

(c) **Costs.** The "withdrawing employer" shall bear all reasonable costs associated with withdrawal and transfer under this Section.

(d) **Participants.** The Employees of the "withdrawing employer" shall cease to be eligible to accrue additional benefits under the Plan as to Compensation paid by the "withdrawing employer," effective as of the effective date of withdrawal. To the extent that such Employees have accrued but unpaid contributions as of the effective date of withdrawal, the "withdrawing employer" shall contribute such amounts to the Plan or the "spin-off plan" promptly after the effective date of withdrawal, unless the accounts are transferred to a qualified plan the "withdrawing employer" maintains.

**ADOPTION AGREEMENT FOR
GOVERNMENTAL VOLUME SUBMITTER MONEY PURCHASE PLAN**

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER, TIN AND FISCAL YEAR

Name: City of Arvada, Colorado

Address: 8101 Ralston Road

Street

Arvada

City

Colorado

State

80001-8101

Zip

Telephone: 720-898-7565

Taxpayer Identification Number (TIN): 84-6000633

Employer's Fiscal Year ends: December 31

2. TYPE OF GOVERNMENTAL ENTITY. This Plan may only be adopted a state or local governmental entity, or agency thereof, including an Indian tribal government and may not be adopted by any other entity, including a federal government and any agency or instrumentality thereof.

- a. ☐ State government or state agency
- b. ☐ County or county agency
- c. ☒ Municipality or municipal agency
- d. ☐ Indian tribal government (see Note below)
- e. ☐ Other: _____

NOTE: An Indian tribal government may only adopt this Plan if such entity is defined under Code §7701(a)(40), is a subdivision of an Indian tribal government as determined in accordance with Code §7871(d), or is an agency or instrumentality of either, and all of the Participants under this Plan employed by such entity substantially perform services as an Employee in essential governmental functions and not in the performance of commercial activities (whether or not an essential government function).

3. PARTICIPATING EMPLOYERS (Plan Section 1.38). Will any other Employers adopt this Plan as Participating Employers?

- a. ☒ No
- b. ☐ Yes

PLAN INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9. through 10.)

4. PLAN NAME:

City of Arvada Executive Defined Contribution Retirement Plan

5. PLAN STATUS

- a. ☐ New Plan
- b. ☒ Amendment and restatement of existing Plan

PPA RESTATEMENT (leave blank if not applicable)

- 1. ☒ This is an amendment and restatement to bring a plan into compliance with the Pension Protection Act of 2006 ("PPA") and other legislative and regulatory changes (i.e., the 6-year pre-approved plan restatement).

6. EFFECTIVE DATE (Plan Section 1.16) (complete a. if new plan; complete a. AND b. if an amendment and restatement)

Initial Effective Date of Plan

- a. May 1, 1984 (enter month day, year) (hereinafter called the "Effective Date" unless 6.b. is entered below)

Restatement Effective Date. If this is an amendment and restatement, the effective date of the restatement (hereinafter called the "Effective Date") is:

- b. January 1, 2022 (enter month day, year; may enter a restatement date that is the first day of the current Plan Year. Plan contains appropriate retroactive effective dates with respect to provisions for appropriate laws.)

Governmental Money Purchase Plan

7. PLAN YEAR (Plan Section 1.42) means, except as otherwise provided in d. below:
- a. ☒ the calendar year
- b. ☐ the twelve-month period ending on _____ (e.g., June 30th)

SHORT PLAN YEAR (Plan Section 1.46). This is a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 14):

- c. ☒ N/A
- d. ☐ beginning on _____ (enter month day, year; e.g., July 1, 2013)
and ending on _____ (enter month day, year).

8. VALUATION DATE (Plan Section 1.52) means:

- a. ☒ every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation)
- b. ☐ the last day of each Plan Year
- c. ☐ the last day of each Plan Year quarter
- d. ☐ other (specify day or days): _____ (must be at least once each Plan Year)

NOTE: The Plan always permits interim valuations.

9. TRUSTEE(S) OR INSURER(S) (Plan Sections 1.25 and 1.50):

- a. ☐ **Insurer.** This Plan is funded exclusively with Contracts and the name of the Insurer(s) is:

(1) _____ (2) _____ (if more than 2,
add names to signature page).

- b. [] **Individual Trustee(s).** Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (add additional Trustees as necessary)

Name(s)

Title(s)

Address and telephone number

1. ☐ Use Employer address and telephone number
2. ☐ Use address and telephone number below:

Address:

Street

City

State

Zip

Telephone:

- c. ☒ **Corporate Trustee(s)** (add additional Trustees as necessary)

Name:

Fidelity Management Trust Company

Address:

245 Summer Street

Street

Boston

City

Massachusetts

State

02210

Zip

Telephone:

Directed/Discretionary Trustee. Unless otherwise specified below, if there is a corporate Trustee, it will serve as a Directed (nondiscretionary) Trustee (Plan Section 1.21) and if there is an individual Trustee, he or she will serve as a Discretionary Trustee (Plan Section 1.22) over all Plan assets (select all that apply; leave blank if defaults apply)

- d. [X] Directed Trustee exceptions (leave blank if no exceptions):

Directed Trustee over specified Plan assets (select all that apply; leave blank if none apply)

1. ☐ The corporate Trustee will serve as Directed Trustee over the following assets: _____
2. ☐ The individual Trustee(s) will serve as Directed Trustee over the following assets: _____

Individual Trustee will serve as Directed Trustee (may not be selected with d.1. or d.2.)

3. [] over all Plan assets

- e. ☐ Discretionary Trustee exceptions (leave blank if no exceptions):
 Discretionary Trustee over specified Plan assets (select all that apply; leave blank if none apply)
 1. ☐ The individual Trustee(s) will serve as Discretionary Trustee over the following assets: _____
 2. ☐ The corporate Trustee will serve as Discretionary Trustee over the following assets: _____
 Corporate Trustee will serve as Discretionary Trustee (may not be selected with e.1. or e.2.)
 3. ☐ over all Plan assets

Separate trust. Will a separate trust agreement that is approved by the IRS for use with this Plan be used?

- f. ☐ No
 g. ☒ Yes

NOTE: If Yes is selected, an executed copy of the trust agreement between the Trustee and the Employer must be attached to this Plan. The Plan and trust agreement will be read and construed together. The responsibilities, rights and powers of the Trustee will be those specified in the trust agreement.

10. ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER

(If none is named, the Employer will be the Administrator (Plan Section 1.2).)

- a. ☐ Employer (use Employer address and telephone number)
 b. ☒ Other:

Name: City of Arvada Executive Defined Contribution Plan Board of Trustees

Address: 8101 Ralston Road Street
Arvada City Colorado State 80001-8101 Zip
 Telephone: 720-898-7565

11. CONTRIBUTION TYPES

The selections made below must correspond with the selections made under the Contributions and Allocations Section of this Adoption Agreement.

FROZEN PLAN OR CONTRIBUTIONS HAVE BEEN SUSPENDED (Plan Section 4.1(c)) (optional)

- a. ☐ This is a frozen Plan (i.e., all contributions cease) (if this is a temporary suspension, select a.2):
 1. ☐ All contributions ceased as of, or prior to, the effective date of this amendment and restatement and the prior Plan provisions are not reflected in this Adoption Agreement (may enter effective date at 3. below and/or select contributions at b. - f. (optional), skip questions 12-18 and 22-29)
 2. ☐ All contributions ceased or were suspended and the prior Plan provisions are reflected in this Adoption Agreement (must enter effective date at 3. below and select contributions at b. - f.)
Effective date
 3. ☐ as of _____ (effective date is optional unless a.2. has been selected above or this is the amendment or restatement to freeze the Plan).

CONTRIBUTIONS

The Plan permits the following contributions (select one or more):

- b. ☒ **Employer contributions other than matching** (Questions 24-25)
 1. ☐ This Plan qualifies as a Social Security Replacement Plan (Question 24.c. must be selected)
 c. ☐ **Employer matching contributions** (Questions 26-28)
 d. ☒ **Mandatory Employee contributions** (Question 31)
 e. ☒ **After-tax voluntary Employee contributions** (Question 32)
 f. ☒ **Rollover contributions** (Question 39)

ELIGIBILITY REQUIREMENTS

12. ELIGIBLE EMPLOYEES (Plan Section 1.17) means all Employees (including Leased Employees) EXCEPT those Employees who are excluded below or elsewhere in the Plan:

- a. ☐ **No excluded Employees.** There are no additional excluded Employees under the Plan (skip to Question 13).
 b. ☒ **Exclusions.** The following Employees are not Eligible Employees for Plan purposes (select one or more):
 1. ☐ Union Employees (as defined in Plan Section 1.17)
 2. ☐ Nonresident aliens (as defined in Plan Section 1.17)
 3. ☐ Leased Employees (Plan Section 1.28)
 4. ☐ Part-time/temporary/seasonal Employees. A part-time, temporary or seasonal Employee is an Employee whose regularly scheduled service is less than _____ Hours of Service in the relevant eligibility computation period (as defined in Plan Section 1.54). However, if any such excluded Employee actually completes a Year of Service, then such Employee will no longer be part of this excluded class.

5. ☒ Other: Eligible employees include only Department Directors not including the Chief of Police; Assistants to the City Manager; the Deputy City Manager, and the Secretary and Executive Director of Arvada Urban Renewal Authority (must be definitely determinable under Regulations §1.401-1(b). Exclusions may be employment title specific but may not be by individual name nor result in only a finite group of individuals (e.g., excluding anyone hired after 12/31/12.)

13. **CONDITIONS OF ELIGIBILITY (Plan Section 3.1)**

- a. ☒ **No age or service required.** No age or service required for all Contribution Types (skip to Question 14).
 b. ☐ **Eligibility.** An Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following (complete c. and d., select e. and f. if applicable):

Eligibility Requirements

c. ☐ **Age Requirement**

1. ☐ No age requirement
2. ☐ Age 20 1/2
3. ☐ Age 21
4. ☐ Age _____ (may not exceed 26)

d. ☐ **Service Requirement**

1. ☐ No service requirement
2. ☐ _____ (not to exceed 60) months of service (elapsed time)
3. ☐ 1 Year of Service
4. ☐ _____ (not to exceed 5) Years of Service
5. ☐ _____ consecutive month period from the Eligible Employee's employment commencement date and during which at least _____ Hours of Service are completed.
6. ☐ _____ consecutive months of employment from the Eligible Employee's employment commencement date.
7. ☐ Other: _____ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must satisfy the Notes below)

NOTE: If c.4. or d.7. is selected, the condition must be an age or service requirement that is definitely determinable and may not exceed age 26 and may not exceed 5 Years of Service.

NOTE: Year of Service means Period of Service if elapsed time method is chosen.

Waiver of conditions. The service and/or age requirements specified above will be waived in accordance with the following (leave blank if there are no waivers of conditions):

- e. ☐ If employed on _____ the following requirements, and the entry date requirement, will be waived. The waiver applies to any Eligible Employee unless 3. selected below. Such Employees will enter the Plan as of such date (select 1. and/or 2. AND 3. if applicable):
1. ☐ service requirement (may let part-time Eligible Employees into the Plan)
 2. ☐ age requirement
 3. ☐ waiver is for: _____

Amendment or restatement to change eligibility requirements

- f. ☐ This amendment or restatement (or a prior amendment and restatement) modified the eligibility requirements and the prior eligibility conditions continue to apply to the Eligible Employees specified below. If this option is NOT selected, then all Eligible Employees must satisfy the eligibility conditions set forth above.
1. ☐ The eligibility conditions above only apply to Eligible Employees who were not Participants as of the effective date of the modification.
 2. ☐ The eligibility conditions above only apply to individuals who were hired on or after the effective date of the modification.

14. **EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)**

An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan as of the:

- a. ☐ date such requirements are met
- b. ☐ first day of the month coinciding with or next following the date on which such requirements are met
- c. ☐ first day of the Plan Year quarter coinciding with or next following the date on which such requirements are met
- d. ☐ earlier of the first day of the Plan Year or the first day of the seventh month of the Plan Year coinciding with or next following the date on which such requirements are met
- e. ☐ first day of the Plan Year coinciding with or next following the date on which such requirements are met (Eligibility must be six months of service (or 1 1/2 Years (or Periods) of Service if 100% immediate vesting is selected) or less and age must be 20 1/2 or less.)
- f. ☐ first day of the Plan Year in which such requirements are met
- g. ☐ first day of the Plan Year in which such requirements are met, if such requirements are met in the first 6 months of the Plan Year, or as of the first day of the next succeeding Plan Year if such requirements are met in the last 6 months of the Plan Year.
- h. ☒ other: the day the individual becomes an Employee of the Employer (must be definitely determinable)

SERVICE

15. **RECOGNITION OF SERVICE WITH OTHER EMPLOYERS** (Plan Sections 1.39 and 1.54)

- a. ☒ No service with other employers is recognized except as otherwise required by law (e.g., the Plan already provides for the recognition of service with Employers who have adopted this Plan as well as service with Affiliated Employers and predecessor Employers who maintained this Plan; skip to Question 16).
- b. ☐ Prior service with the designated employers is recognized as follows (answer c. and select one or more of c.1. - 3.; select d. - f. as applicable) (if more than 3 employers, attach an addendum to the Adoption Agreement or complete option h. under Section B of Appendix A):

Other Employer	Eligibility	Vesting	Contribution Allocation
c. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐
d. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐
e. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐

Limitations

- f. ☐ The following provisions or limitations apply with respect to the recognition of prior service: _____ 1. ☐ 2. ☐ 3. ☐
(e.g., credit service with X only on/following 1/1/13)

NOTE: If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.39 and 1.54 regardless of any selections above.

16. **SERVICE CREDITING METHOD** (Plan Sections 1.39 and 1.54)

NOTE: If no selections are made in this Section, then the provisions set forth in the definition of Year of Service in Plan Section 1.54 will apply, including the following defaults:

1. A Year of Service means completion of at least 1,000 Hours of Service during the applicable computation period.
2. Hours of Service (Plan Section 1.24) will be based on actual Hours of Service.
3. For eligibility purposes, the computation period will be as defined in Plan Section 1.54 (i.e., shift to the Plan Year if the eligibility condition is one (1) Year of Service or less).
4. For vesting and allocation purposes, the computation period will be the Plan Year.

- a. ☐ **Elapsed time method.** (Period of Service applies instead of Year of Service) Instead of Hours of Service, elapsed time will be used for:

1. ☐ all purposes (skip to Question 17)
2. ☐ the following purposes (select one or more):
 - a. ☐ eligibility to participate
 - b. ☐ vesting
 - c. ☐ sharing in allocations or contributions

- b. ☐ **Alternative definitions for the Hours of Service method.** Instead of the defaults, the following alternatives will apply for the Hours of Service method (select one or more):

1. ☐ **Eligibility computation period.** Instead of shifting to the Plan Year, the eligibility computation period after the initial eligibility computation period will be based on each anniversary of the date the Employee first completes an Hour of Service
2. ☐ **Vesting computation period.** Instead of the Plan Year, the vesting computation period will be the date an Employee first performs an Hour of Service and each anniversary thereof.
3. ☐ **Equivalency method.** Instead of using actual Hours of Service, an equivalency method will be used to determine Hours of Service for:
 - a. ☐ all purposes
 - b. ☐ the following purposes (select one or more):
 1. ☐ eligibility to participate
 2. ☐ vesting
 3. ☐ sharing in allocations or contributions

Such method will apply to:

- c. ☐ all Employees
- d. ☐ Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees)
- e. ☐ other: _____ (e.g., per-diem Employees only)

Hours of Service will be determined on the basis of:

- f. ☐ days worked (10 hours per day)
- g. ☐ weeks worked (45 hours per week)
- h. ☐ semi-monthly payroll periods worked (95 hours per semi-monthly pay period)
- i. ☐ months worked (190 hours per month)
- j. ☐ bi-weekly payroll periods worked (90 hours per bi-weekly pay period)
- k. ☐ other: _____ (e.g., option f. is used for per-diem Employees and option g. is used for on-call Employees).

- 4. ☐ **Number of Hours of Service required.** Instead of 1,000 Hours of Service, Year of Service means the applicable computation period during which an Employee has completed at least _____ (not to exceed 1,000) Hours of Service for:
 - a. ☐ all purposes
 - b. ☐ the following purposes (select one or more):
 - 1. ☐ eligibility to participate
 - 2. ☐ vesting
 - 3. ☐ sharing in allocations or contributions

VESTING

17. VESTING OF PARTICIPANT'S INTEREST – EMPLOYER CONTRIBUTIONS (Plan Section 6.4(b))

- a. ☐ N/A (no Employer contributions; skip to Question 19)
- b. ☒ The vesting provisions selected below apply. Section B of Appendix A can be used to specify any exceptions to the provisions below.

NOTE: The Plan provides that contributions for converted sick leave and/or vacation leave are fully Vested.

Vesting for Employer contributions other than matching contributions

- c. ☐ N/A (no Employer contributions (other than matching contributions); skip to f.)
- d. ☒ 100% vesting. Participants are 100% Vested in Employer contributions (other than matching contributions) upon entering Plan.
- e. ☐ The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer contributions (other than matching contributions):
 - 1. ☐ 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 - 2. ☐ 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 - 3. ☐ 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 - 4. ☐ Cliff: 100% vesting after _____ (not to exceed 15) years
 - 5. ☐ Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

Vesting for Employer matching contributions

- f. ☒ N/A (no Employer matching contributions)
- g. ☐ The schedule above will also apply to Employer matching contributions.
- h. ☐ 100% vesting. Participants are 100% Vested in Employer matching contributions upon entering Plan.
- i. ☐ The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer matching contributions:
 - 1. ☐ 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 - 2. ☐ 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 - 3. ☐ 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 - 4. ☐ Cliff: 100% vesting after _____ (not to exceed 15) years
 - 5. ☐ Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

18. VESTING OPTIONS

Excluded vesting service. The following Years of Service will be disregarded for vesting purposes (select all that apply; leave blank if none apply):

- a. ☐ Service prior to the initial Effective Date of the Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))
- b. ☐ Service prior to the computation period in which an Employee has attained age _____.
- c. ☐ Service during a period for which an Employee did not make mandatory Employee contributions.

Vesting for death, Total And Permanent Disability and Early Retirement Date. Regardless of the vesting schedule, a Participant will become fully Vested upon (select all that apply; leave blank if none apply):

- d. ☐ Death
- e. ☐ Total and Permanent Disability
- f. ☐ Early Retirement Date

RETIREMENT AGES

19. NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.32) means:

- a. ☒ **Specific age.** The date a Participant attains age 55 (may not exceed 65)
- b. ☐ **Age/participation.** The later of the date a Participant attains age _____ (may not exceed 65) or the _____ (may not exceed 10th) anniversary of the first day of the Plan Year in which participation in the Plan commenced

NOTE: Effective for Plan Years beginning on or after the later of (1) January 1, 2015, or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three months after the final regulations are published in the Federal Register, Normal Retirement Age of less than age 62 must meet Regulation §1.401(a)-1(b)(2).

Qualified police or firefighters. Normal Retirement Age for qualified public safety employees (as defined in Code §72(t)(1)) (leave blank if not applicable)

- c. ☐ Age _____ (may not be less than 50)

20. NORMAL RETIREMENT DATE (Plan Section 1.33) means, with respect to any Participant, the:

- a. ☐ date on which the Participant attains "NRA"
- b. ☒ first day of the month coinciding with or next following the Participant's "NRA"
- c. ☐ first day of the month nearest the Participant's "NRA"
- d. ☐ Anniversary Date coinciding with or next following the Participant's "NRA"
- e. ☐ Anniversary Date nearest the Participant's "NRA"
- f. ☐ Other: _____ (e.g., first day of the month following the Participant's "NRA").

21. EARLY RETIREMENT DATE (Plan Section 1.15)

- a. ☒ N/A (no early retirement provision provided)
- b. ☐ Early Retirement Date means the:
 - 1. ☐ date on which a Participant satisfies the early retirement requirements
 - 2. ☐ first day of the month coinciding with or next following the date on which a Participant satisfies the early retirement requirements
 - 3. ☐ Anniversary Date coinciding with or next following the date on which a Participant satisfies the early retirement requirements

Early retirement requirements

- 4. ☐ Participant attains age _____
AND, completes.... (leave blank if not applicable)
 - a. ☐ at least _____ Years (or Periods) of Service for vesting purposes
 - b. ☐ at least _____ Years (or Periods) of Service for eligibility purposes
- c. ☐ Early Retirement Date means: _____ (must be definitely determinable)

COMPENSATION

22. COMPENSATION with respect to any Participant is defined as follows (Plan Sections 1.10 and 1.23).

Base definition

- a. ☒ Wages, tips and other compensation on Form W-2
- b. ☐ Code §3401(a) wages (wages for withholding purposes)
- c. ☐ 415 safe harbor compensation

NOTE: Plan Section 1.23(c) provides that the base definition of Compensation includes deferrals that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), 402(h)(1)(B)(SEP), 414(h)(2), & 457(b).

Determination period. Compensation will be based on the following "determination period" (this will also be the Limitation Year unless otherwise elected at option f. under Section B of Appendix A):

- d. ☒ the Plan Year
- e. ☐ the Fiscal Year coinciding with or ending within the Plan Year
- f. ☐ the calendar year coinciding with or ending within the Plan Year

Adjustments to Compensation (for Plan Section 1.10). Compensation will be adjusted by:

- g. ☐ **No adjustments** (skip to i. below)
- h. ☒ **Adjustments.** Compensation will be adjusted by (select all that apply):
 - 1. ☐ excluding salary reductions (401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2) pickup, & 457(b))
 - 2. ☐ excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in 1. above) and welfare benefits.
 - 3. ☒ excluding Compensation paid during the "determination period" while not a Participant in the Plan.
 - 4. ☐ excluding Military Differential Pay
 - 5. ☐ excluding overtime
 - 6. ☒ excluding bonuses
 - 7. ☒ other: excluding severance pay (e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay)).

Military Differential Pay Special Effective Date (leave blank if not applicable)

- i. ☐ If this is a PPA restatement and the provisions above regarding Military Differential Pay (included unless h.4. is selected) have a later effective date than Plan Years beginning after December 31, 2008, then enter the date such provisions were first effective: _____ (may not be earlier than January 1, 2009; for Plan Years beginning prior to January 1, 2009, Military Differential Pay is treated in accordance with the post-severance Compensation provisions in the following Question).

23. POST-SEVERANCE COMPENSATION (415 REGULATIONS)

The following optional provision of the 415 Regulations will apply to Limitation Years beginning on or after July 1, 2007 unless otherwise elected below:

415 Compensation (post-severance compensation adjustments) (select all that apply at a.; leave blank if none apply)

NOTE: Unless otherwise elected under a. below, the following defaults apply: 415 Compensation will **include** (to the extent provided in Plan Section 1.23), post-severance regular pay, leave cash-outs and payments from nonqualified unfunded deferred compensation plans.

- a. ☐ The defaults listed above apply except for the following (select one or more):
 - 1. ☐ Leave cash-outs will be **excluded**
 - 2. ☐ Nonqualified unfunded deferred compensation will be **excluded**
 - 3. ☐ Military Differential Pay will be **included** (Plan automatically includes for Limitation Years beginning after December 31, 2008)
 - 4. ☐ Disability continuation payments will be **included**

Plan Compensation (post-severance compensation adjustments)

- b. ☐ **Defaults apply.** Compensation will **include** (to the extent provided in Plan Section 1.10 and to the extent such amounts would be included in Compensation if paid prior to severance of employment) post-severance regular pay, leave cash-outs, and payments from nonqualified unfunded deferred compensation plans.
- c. ☒ **Exclude all post-severance compensation.** Exclude all post-severance compensation for allocation purposes.
- d. ☐ **Post-severance adjustments.** The defaults listed at b. apply except for the following (select one or more):
 - 1. ☐ Exclude all post-severance compensation
 - 2. ☐ Regular pay will be **excluded**
 - 3. ☐ Leave cash-outs will be **excluded**
 - 4. ☐ Nonqualified unfunded deferred compensation will be **excluded**
 - 5. ☐ Military Differential Pay will be **included**
 - 6. ☐ Disability continuation payments will be **included**

NOTE: The above treatment of Military Differential Pay only applies to Plan Years beginning prior to January 1, 2009. For Plan Years beginning after such date, Military Differential Pay is not considered post-severance compensation and the provisions of Question 22 apply.

Post-severance compensation special effective date (leave blank if not applicable)

- e. ☐ If this is a PPA restatement and the post-severance compensation adjustments above for 415 Compensation or Plan Compensation applied other than the first day of the Plan Year beginning on or after July 1, 2007, then enter the date such provisions were first effective: _____

CONTRIBUTIONS AND ALLOCATIONS

24. **EMPLOYER CONTRIBUTIONS (OTHER THAN MATCHING CONTRIBUTIONS)** (Plan Section 4.1(a)(2)) (skip to Question 26 if Employer contributions are NOT selected at Question 11.b.)

CONTRIBUTION FORMULA (select one or more of the following contribution formulas:)

- a. ☒ **Fixed contribution** equal to (only select one):
1. ☒ 10.02 % of each Participant's Compensation for each:
 - a. ☒ Plan Year
 - b. ☐ calendar quarter
 - c. ☐ month
 - d. ☐ pay period
 - e. ☐ week
 2. ☐ \$ _____ per Participant.
 3. ☐ \$ _____ per Hour of Service worked while an Eligible Employee
 - a. ☐ up to _____ hours (leave blank if no limit)
 4. ☐ other: _____ (the formula described must satisfy the definitely determinable requirement under Regulations §1.401-1(b)).
- b. ☒ **Sick leave/vacation leave conversion.** The Employer will contribute an amount equal to an Employee's current hourly rate of pay multiplied by the Participant's number of unused accumulated sick leave and/or vacation days (as selected below). Only unpaid sick and vacation leave for which the Employee has no right to receive in cash may be included. In no event will the Employer's contribution for the Plan Year exceed the maximum contribution permitted under Code §415(c).

The following may be converted under the Plan: (select one or both):

1. ☒ Sick leave
2. ☒ Vacation leave

Eligible Employees. Only the following Participants shall receive the Employer contribution for sick leave and/or vacation leave (select 3. and/or 4; leave blank if no limitations provided, however, that this Plan may not be used to only provide benefits for terminated Employees)

3. ☐ **Former Employees.** All Employees terminating service with the Employer during the Plan Year and who have satisfied the eligibility requirements based on the terms of the Employer's accumulated benefits plans checked below (select all that apply; leave blank if no exclusions):
 - a. ☐ The Former Employee must be at least age _____ (e.g., 55)
 - b. ☐ The value of the sick and/or vacation leave must be at least \$ _____ (e.g., \$2,000)
 - c. ☐ A contribution will only be made if the total hours is over _____ (e.g., 10) hours
 - d. ☐ A contribution will not be made for hours in excess of _____ (e.g., 40) hours
4. ☐ **Active Employees.** Active Employees who have not terminated service during the Plan Year and who meet the following requirements (select all that apply; leave blank if no exclusions):
 - a. ☐ The Employee must be at least age _____ (e.g., 55)
 - b. ☐ The value of the sick and/or vacation leave must be at least \$ _____ (e.g., \$2,000)
 - c. ☐ A contribution will only be made if the total hours is over _____ (e.g., 10) hours
 - d. ☐ A contribution will not be made for hours in excess of _____ (e.g., 40) hours
- c. ☐ **Social Security Replacement Plan.** An amount equal to 7.5% of the Participant's Compensation for the entire Plan Year, reduced by Employee and Employer contributions to this Plan actually contributed to the Participant's Account during such Plan Year. (may only be selected if Question 11.b.1. has also been selected)
Include only part-time, seasonal and temporary Employees (leave blank if not applicable)
 1. ☐ Regardless of any other provision in this to the contrary, the contribution above will only be made for part-time, seasonal, or temporary Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Regulation §31.3121(b)(7)-2.

25. ALLOCATION CONDITIONS (Plan Section 4.3). If 24.a. is selected above, indicate requirements to share in allocations of Employer contributions (select a. OR b. and all that apply at c. - e.)
- a. ☒ **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 26).
- b. ☐ **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)
- Conditions for Participants NOT employed on the last day of the Plan Year**
1. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service (or _____ (not to exceed 12) months of service if the elapsed time method is selected).
 2. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 3. ☐ Participants will NOT share in the allocations, regardless of service.
 4. ☐ Participants will share in the allocations, regardless of service.
 5. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).
- Conditions for Participants employed on the last day of the Plan Year**
6. ☐ No service requirement.
 7. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 8. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.
 9. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).
- Waiver of conditions for Participants NOT employed on the last day of the Plan Year.** If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):
- c. ☐ Death
 - d. ☐ Total and Permanent Disability
 - e. ☐ Termination of employment on or after Normal Retirement Age
 1. ☐ or Early Retirement Date
26. EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 4.1(a)(3)). (skip to Question 29 if matching contributions are NOT selected at Question 11.c.) The Employer will make the following matching contributions:
- A. **Elective deferrals taken into account.** For purposes of applying the matching contribution provisions below, elective deferrals include elective deferral (pre-tax and Roth) contributions to the following Employer plan(s) (insert name of Plan(s) to which the elective deferral contributions being matched will be made):
- a. ☐ **457 plan(s).** Enter Plan name: _____
 - b. ☐ **403(b) plan(s).** Enter Plan name: _____
- NOTE:** If selected at Question 32, after-tax voluntary Employee contributions are also considered elective deferrals for purposes of matching contributions.
- B. **Matching Formula.** (select one)
- c. ☐ **Fixed - uniform rate/amount.** The Employer will make matching contributions equal to _____% (e.g., 50) of the Participant's elective deferrals
 1. ☐ that do not exceed _____% of a Participant's Compensation (leave blank if no limit)
 - d. ☐ **Fixed - tiered.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's elective deferrals, determined as follows:

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate \$ or %)	Matching Percentage
First _____	_____ %
Next _____	_____ %
Next _____	_____ %
Next _____	_____ %

- e. ☐ **Fixed - Years of Service.** The Employer will make matching contributions equal to a uniform percentage of each Participant's elective deferrals based on the Participant's Years of Service (or Periods of Service if the elapsed time method is selected), determined as follows (add additional tiers if necessary):

Years (or Periods) of Service	Matching Percentage
_____	_____ %
_____	_____ %
_____	_____ %

For purposes of the above matching contribution formula, a Year (or Period) of Service means a Year (or Period) of Service for:

1. ☐ vesting purposes
 2. ☐ eligibility purposes
 f. ☐ Other: _____ (the formula described must satisfy the definitely determinable requirement under Regulations §1.401-1(b))

27. MATCHING CONTRIBUTION PROVISIONS

- A. **Maximum matching contribution.** The total matching contribution made on behalf of any Participant for any Plan Year will not exceed:
- a. ☐ N/A (no Plan specific limit on the amount of matching contribution)
 b. ☐ \$ _____.
 c. ☐ _____ % of Compensation.
- B. **Period of determination.** The matching contribution formula will be applied on the following basis (and elective deferrals and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period):
- d. ☐ the Plan Year
 e. ☐ each payroll period
 f. ☐ each month
 g. ☐ each Plan Year quarter
 h. ☐ each payroll unit (e.g., hour)

28. ALLOCATION CONDITIONS FOR MATCHING CONTRIBUTIONS (Plan Section 4.3). Select a. OR b. and all that apply of c. - h.

- a. ☐ **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 29).
 b. ☐ **Allocation conditions apply** (select one of 1. -5. AND one of 6. - 9. below)
Conditions for Participants NOT employed on the last day of the Plan Year.
 1. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service (or _____ (not to exceed 12) months of service if the elapsed time method is selected).
 2. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 3. ☐ Participants will NOT share in the allocations, regardless of service.
 4. ☐ Participants will share in the allocations, regardless of service.
 5. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

Conditions for Participants employed on the last day of the Plan Year

6. ☐ No service requirement.
 7. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 8. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.
 9. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

- c. ☐ Death
 d. ☐ Total and Permanent Disability
 e. ☐ Termination of employment on or after Normal Retirement Age
 1. ☐ or Early Retirement Date

Conditions based on period other than Plan Year. The allocation conditions above will be applied based on the Plan Year unless otherwise selected below. If selected, the above provisions will be applied by substituting the term Plan Year with the specified period (e.g., if Plan Year quarter is selected below and the allocation condition is 250 Hours of Service per quarter, enter 250 hours (not 1000) at b.8. above).

- f. ☐ The Plan Year quarter.
- g. ☐ Payroll period.
- h. ☐ Other: _____ (must be definitely determinable and not subject to Employer discretion and may not be longer than a twelve month period).

29. **FORFEITURES (Plan Sections 1.21 and 4.3(e))**

Forfeitures of Employer contributions other than matching contributions will be:

- a. ☐ added to the Employer contribution and allocated in the same manner
- b. ☐ used to reduce any Employer contribution
- c. ☐ allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
- d. ☒ other: there are no forfeitures - all contributions are fully vested (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

Forfeitures of Employer matching contributions will be:

- e. ☒ N/A. Same as above or no Employer matching contributions.
- f. ☐ used to reduce the Employer matching contribution.
- g. ☐ used to reduce any Employer contribution.
- h. ☐ other: _____ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

30. **ALLOCATION OF EARNINGS (Plan Section 4.3(c))**

Allocation of earnings with respect to amounts which are not subject to Participant investment direction and which are contributed to the Plan after the previous Valuation Date will be determined:

- a. ☒ N/A. (all assets in the Plan are subject to Participant investment direction)
- b. ☐ by using a weighted average based on the amount of time that has passed between the date a contribution or distribution is made and the prior Valuation Date
- c. ☐ by treating one-half of all such contributions as being a part of the Participant's nonsegregated Account balance as of the previous Valuation Date
- d. ☐ by using the method specified in Plan Section 4.3(c) (balance forward method)
- e. ☐ other: _____ (must be a definite predetermined formula)

31. **MANDATORY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8) (skip if mandatory Employee contributions NOT selected at Question 11.d.)**

- a. ☒ An Eligible Employee must contribute to the Plan 8 % (not to exceed 25%) of Compensation.
- b. ☐ An Eligible Employee must, prior to his or her first Entry Date, make a one-time irrevocable election to contribute to the Plan from _____% (not less than 1%) to _____% (not to exceed 25%) of Compensation.
- c. ☐ Other: _____ (must be definitely determinable)

Employer pick-up contribution. The mandatory Employee contribution is "picked up" by the Employer under Code §414(h)(2) unless elected below.

- d. ☐ The mandatory Employee contribution is not "picked-up" by the Employer.

32. **AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS (Plan Section 4.9) (skip if after-tax voluntary Employee contributions NOT selected at Question 11.e.)**

Matching after-tax voluntary Employee contributions. There are no Employer matching contributions on after-tax voluntary Employee contributions unless elected below.

- a. ☐ After-tax voluntary Employee contributions are considered elective deferrals for purposes of applying any matching contributions under the Plan.

DISTRIBUTIONS

33. **FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)**

Distributions under the Plan may be made in (select all that apply; must select at least one):

- a. ☒ lump-sums
- b. ☒ substantially equal installments
- c. ☐ partial withdrawals, provided the minimum withdrawal is \$ _____ (leave blank if no minimum)

- d. ☐ partial withdrawals or installments are only permitted for Participants or Beneficiaries who must receive required minimum distributions under Code §401(a)(9) except for the following (e.g., partial is not permitted for death benefits; leave blank if no exceptions):
1. ☐ _____
- e. ☐ annuity: _____ (describe the form of annuity or annuities)
- f. ☒ other: partial lump-sum payment of a designated amount, with the balance payable in installments for a period of years; installment payments in specific dollar amounts determined under a tax efficient systematic withdrawal program. (must be definitely determinable and not subject to Employer discretion)

NOTE: Regardless of the above, a Participant is not required to request a withdrawal of his or her total Account for an in-service distribution, a hardship distribution, or a distribution from the Participant's Rollover Account.

Cash or property. Distributions may be made in:

- g. ☒ cash only, except for (select all that apply; leave blank if none apply):
1. ☐ insurance Contracts
2. ☐ annuity Contracts
3. ☐ Participant loans
- h. ☐ cash or property, except that the following limitation(s) apply: (leave blank if there are no limitations on property distributions):
1. ☐ _____ (must be definitely determinable and not subject to Employer discretion)

34. **CONDITIONS FOR DISTRIBUTIONS UPON SEVERANCE OF EMPLOYMENT.** Distributions upon severance of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

A. Accounts in excess of \$5,000

- a. ☒ Distributions may be made as soon as administratively feasible following severance of employment.
- b. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- c. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year quarter coincident with or next following severance of employment.
- d. ☐ Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following severance of employment.
- e. ☐ Distributions may be made as soon as administratively feasible after _____ months have elapsed following severance of employment.
- f. ☐ No distributions may be made until a Participant has reached Early or Normal Retirement Date.
- g. ☐ Other: _____ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

B. Accounts of \$5,000 or less

- h. ☒ Same as above
- i. ☐ Distributions may be made as soon as administratively feasible following severance of employment.
- j. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- k. ☐ Other: _____ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

C. Timing after initial distributable event. If a distribution is not made in accordance with the above provisions upon the occurrence of the distributable event, then a Participant may elect a subsequent distribution at any time after the time the amount was first distributable (assuming the amount is still distributable), unless otherwise selected below (may not be selected with 34.f. and 34.h.):

- l. ☐ Other: _____ (e.g., a subsequent distribution request may only be made in accordance with l. above (i.e., the last day of another Plan Year); must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

D. Participant consent (i.e., involuntary cash-outs). Should Vested Account balances less than a certain dollar threshold be automatically distributed without Participant consent (mandatory distributions)?

NOTE: The Plan provides that distributions of amounts of \$5,000 or less are only paid as lump-sums.

- m. ☐ No, Participant consent is required for all distributions.
- n. ☒ Yes, Participant consent is required only if the distribution is over:
1. ☐ \$5,000
2. ☒ \$1,000
3. ☐ \$_____ (less than \$1,000)

NOTE: If 2. or 3. is selected, rollovers will be included in determining the threshold for Participant consent.

Automatic IRA rollover. With respect to mandatory distributions of amounts that are \$1,000 or less, if a Participant makes no election, the amount will be distributed as a lump-sum unless selected below.

4. ☐ If a Participant makes no election, then the amount will be automatically rolled over to an IRA provided the amount is at least \$_____ (e.g., \$200).

- E. **Rollovers in determination of \$5,000 threshold.** Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be **included** in determining the \$5,000 threshold for timing of distributions, form of distributions, or consent rules.
- o. ☐ Exclude rollovers (rollover contributions will be **excluded** in determining the \$5,000 threshold)

NOTE: Regardless of the above election, if the Participant consent threshold is \$1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

35. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))

Distributions upon the death of a Participant prior to the "required beginning date" will:

- a. ☒ be made pursuant to the election of the Participant or "designated Beneficiary"
- b. ☐ begin within 1 year of death for a "designated Beneficiary" and be payable over the life (or over a period not exceeding the "life expectancy") of such Beneficiary, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2
- c. ☐ be made within 5 (or if lesser _____) years of death for all Beneficiaries
- d. ☐ be made within 5 (or if lesser _____) years of death for all Beneficiaries, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the "life expectancy") of such "surviving Spouse"

NOTE: The elections above must be coordinated with the Form of distributions (e.g., if the Plan only permits lump-sum distributions, then options a., b. and d. would not be applicable).

36. OTHER PERMITTED DISTRIBUTIONS (select all that apply; leave blank if none apply)

A. IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)

In-service distributions will NOT be allowed (except as otherwise permitted under the Plan without regard to this provision) unless selected below (if applicable, answer a. - e.; leave blank if not applicable):

- a. ☐ In-service distributions may be made to a Participant who has not separated from service provided the following has been satisfied:
1. ☐ Age. The Participant has reached:
 - a. ☐ Normal Retirement Age
 - b. ☐ age 62
 - c. ☐ age _____(may not be earlier than age 62)

Special effective date (may be left blank if same as Plan or Restatement Effective Date)

- d. ☐ _____ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than the first day of the Plan Year beginning in 2007)

Account restrictions. In-service distributions are permitted from the following Participant Accounts:

- b. ☐ all Accounts
- c. ☐ only from the following Accounts (select one or more):
1. ☐ Account attributable to Employer matching contributions
 2. ☐ Account attributable to Employer contributions other than matching contributions
 3. ☐ Rollover Account
 4. ☐ Transfer Account
 5. ☐ Other: _____ (specify Account(s) and conditions in a manner that satisfies the definitely determinable requirement under Regulations §1.401-1(b) and is not subject to Employer discretion)

Limitations. The following limitations apply to in-service distributions:

- d. ☐ N/A (no additional limitations)
- e. ☐ Additional limitations (select one or more):
1. ☐ The minimum amount of a distribution is \$_____.
 2. ☐ No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 3. ☐ Distributions may only be made from Accounts which are fully Vested.
 4. ☐ In-service distributions may be made subject to the following provisions: _____ (must satisfy the definitely determinable requirement under Regulations §1.401-1(b) and not be subject to Employer discretion).

37. HEART ACT PROVISIONS (Plan Section 6.17)

Continued benefit accruals.

- a. ☒ Continued benefit accruals will NOT apply
- b. ☐ Continued benefit accruals will apply

Special effective date. If this is a PPA restatement and the provision applied other than as of the first day of the 2007 Plan Year, then enter the date such provision was first effective: (leave blank if not applicable)

c. ☐ _____ (may not be earlier than the first day of the 2007 Plan Year)

Distributions for deemed severance of employment

d. ☒ The Plan does NOT permit distributions for deemed severance of employment

e. ☐ The Plan permits distributions for deemed severance of employment

Special effective date (may be left blank if same as Plan or Restatement Effective Date)

1. ☐ _____ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than January 1, 2007)

MISCELLANEOUS

38. LOANS TO PARTICIPANTS (Plan Section 7.6)

a. ☐ New loans are NOT permitted.

b. ☒ New loans are permitted.

NOTE: Regardless of whether new loans are permitted, if the Plan permits rollovers, then the Administrator may, in a uniform manner, accept rollovers of loans into this Plan.

39. ROLLOVERS (Plan Section 4.6) (skip if rollover contributions are NOT selected at 11.f.)

Eligibility. Rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply; leave blank if not applicable):

a. ☐ Any Eligible Employee, even prior to meeting eligibility conditions to be a Participant

b. ☐ Participants who are Former Employees

Distributions. When may distributions be made from a Participant's Rollover Account?

c. ☒ At any time

d. ☐ Only when the Participant is otherwise entitled to a distribution under the Plan

PPA TRANSITION RULES

The following questions only apply if this is a PPA restatement (i.e., Question 5.b.1. is selected). If this is not a PPA restatement, then this Plan will not be considered an individually designed plan merely because the following questions are deleted from the Adoption Agreement.

NOTE: The following provisions are designed to be left unanswered if the selections do not apply to the Plan.

40. WRERA - RMD WAIVERS FOR 2009 (Plan Section 6.8(f))

Suspension/continuation of RMDs. Unless otherwise elected below, required minimum distributions (RMDs) for 2009 were suspended unless a Participant or Beneficiary elected to receive such distributions:

a. ☐ RMDs for 2009 were suspended for any Participant or Beneficiary who was scheduled to receive his/her first RMD for 2009 or who did not make a continuing election prior to 2009 to receive his/her RMD (unless the Participant or Beneficiary made an election to receive such distribution). RMDs for 2009 were continued for any Participant or Beneficiary who had made a continuing election to receive an RMD prior to 2009 (unless the Participant or Beneficiary made an election to suspend such distribution).

b. ☐ RMDs continued unless otherwise elected by a Participant or Beneficiary.

c. ☐ RMDs continued in accordance with the terms of the Plan (i.e., no election available to Participants or Beneficiaries).

d. ☐ Other: _____

Direct rollovers. The Plan also treated the following as "eligible rollover distributions" in 2009 (If no election is made, then a "direct rollover" was only offered for "2009 RMDs"):

e. ☐ "2009 RMDs" and "Extended 2009 RMDs."

f. ☐ "2009 RMDs" but only if paid with an additional amount that is an "eligible rollover distribution" without regard to Code §401(a)(9)(H).

41. NON-SPOUSAL ROLLOVERS (Plan Section 6.14(d)). Non-spousal rollovers are permitted effective for distributions after December 31, 2006 unless an alternative effective date is selected at a. below:

a. ☐ Non-spousal rollovers are allowed effective _____ (may not be earlier than January 1, 2007 and not later than January 1, 2010; the Plan already provides for non-spousal rollovers effective as of January 1, 2010)

Governmental Money Purchase Plan

The adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Code §401 only to the extent provided in Rev. Proc. 2011-49 or subsequent guidance.

The Employer may not rely on the advisory letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the advisory letter issued with respect to the Plan and in Rev. Proc. 2011-49 or subsequent guidance. In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

This Adoption Agreement may be used only in conjunction with the Volume Submitter basic Plan document #09. This Adoption Agreement and the basic Plan document will together be known as FIS Business Systems LLC Governmental Volume Submitter Money Purchase Plan #09-002.

The adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

FIS Business Systems LLC will notify the Employer of any amendments made to the Plan or of the discontinuance or abandonment of the Plan. Furthermore, in order to be eligible to receive such notification, the Employer agrees to notify FIS Business Systems LLC of any change in address. In addition, this Plan is provided to the Employer either in connection with investment in a product or pursuant to a contract or other arrangement for products and/or services. Upon cessation of such investment in a product or cessation of such contract or arrangement, as applicable, the Employer is no longer considered to be an adopter of this Plan and FIS Business Systems LLC no longer has any obligations to the Employer that relate to the adoption of this Plan.

With regard to any questions regarding the provisions of the Plan, adoption of the Plan, or the effect of an advisory letter from the IRS, call or write (this information must be completed by the sponsor of this Plan or its designated representative):

Name: Rachel Morris, City Attorney

Address: 8101 Ralston Road

Arvada Colorado 80001-8101

Telephone: 720-898-7193

The Employer and Trustee (or Insurer) hereby cause this Plan to be executed on the date(s) specified below:

EMPLOYER: City of Arvada, Colorado

By: _____ DATE SIGNED _____

TRUSTEE (OR INSURER):

☒ The signature of the Trustee or Insurer appears on a separate agreement or Contract,

OR (add additional Trustee signature lines as necessary)

Fidelity Management Trust Company

TRUSTEE OR INSURER

DATE SIGNED

**APPENDIX A
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS**

A. Special effective dates (leave blank if not applicable):

- a. ☐ **Special effective date(s):** _____. For periods prior to the specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law.

B. Other permitted elections (the following elections are optional):

- a. ☐ **No other permitted elections**

The following elections apply (select one or more):

- b. ☐ **Deemed 125 compensation** (Plan Section 1.23). Deemed 125 compensation will be included in Compensation and 415 Compensation.
- c. ☐ **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions)** (Plan Section 3.5(d)). The "rule of parity" provisions in Plan Section 3.5(d) will apply for (select one or both):
 1. ☐ eligibility purposes
 2. ☐ vesting purposes
- d. ☐ **Beneficiary if no beneficiary elected by Participant** (Plan Section 6.2(e)). In the event no valid designation of Beneficiary exists, then in lieu of the order set forth in Plan Section 6.2(e), the following order of priority will be used: _____ (specify an order of beneficiaries; e.g., children per stirpes, parents, and then step-children).
- e. ☐ **Common, collective or pooled trust funds** (Plan Sections 7.2(c)(5) and/or 7.3(b)(6)). The name(s) of the common, collective or pooled trust funds available under the Plan is (are): _____.
- f. ☐ **Limitation Year** (Plan Section 1.29). The Limitation Year for Code §415 purposes will be _____ (must be a consecutive twelve month period) instead of the "determination period" for Compensation.
- g. ☐ **415 Limits when 2 defined contribution plans are maintained** (Plan Section 4.4). If any Participant is covered under another qualified defined contribution plan maintained by the Employer or an Affiliated Employer, or if the Employer or an Affiliated Employer maintains a welfare benefit fund, as defined in Code §419(e), or an individual medical account, as defined in Code §415(l)(2), under which amounts are treated as "annual additions" with respect to any Participant in this Plan, then the provisions of Plan Section 4.4(b) will apply unless otherwise specified below:
 1. ☐ Specify, in a manner that precludes Employer discretion, the method under which the plans will limit total "annual additions" to the "maximum permissible amount" and will properly reduce any "excess amounts": _____.
- h. ☐ **Recognition of Service with other employers** (Plan Sections 1.39 and 1.54). Service with the following employers (in addition to those specified at Question 15) will be recognized as follows (select one or more):

	Eligibility	Vesting	Contribution Allocation
1. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
2. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
3. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
4. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
5. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
6. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐

Limitations

7. ☐ The following provisions or limitations apply with respect to the recognition of prior service: _____
 (e.g., credit service with X only on/following 1/1/13)

- i. ☐ **Other vesting provisions.** The following vesting provisions apply to the Plan (select one or more):
1. ☐ **Special vesting provisions.** The following special provisions apply to the vesting provisions of the Plan: _____ (must be definitely determinable and satisfy the parameters set forth at Question 17)
 2. ☐ **Pre-amendment vesting schedule.** (Plan Section 6.4(b)). If the vesting schedule has been amended and a different vesting schedule other than the schedule at Question 17 applies to any Participants, then the following provisions apply (must select one of a. – d. AND complete e.):

Applicable Participants. The vesting schedules in Question 17 only apply to:

- a. ☐ Participants who are Employees as of _____ (enter date).
- b. ☐ Participants in the Plan who have an Hour of Service on or after _____ (enter date).
- c. ☐ Participants (even if not an Employee) in the Plan on or after _____ (enter date).
- d. ☐ Other: _____ (e.g., Participants in division A)

Vesting schedule

- e. The schedule that applies to Participants not subject to the vesting schedule in Question 17 is:

Years (or Periods) of Service	Percentage
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

- j. ☐ **Minimum distribution transitional rules** (Plan Section 6.8(e)(5))

NOTE: This Section does not apply to (1) a new Plan, (2) an amendment or restatement of an existing Plan that never contained the provisions of Code §401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA), or (3) a Plan where the transition rules below do not affect any current Participants.

The "required beginning date" for a Participant is:

1. ☐ April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (pre-SBJPA rules continue to apply)
2. ☐ April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both; leave blank if both applied effective as of January 1, 1996):
 - a. ☐ A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of _____ (may not be earlier than January 1, 1996) was allowed to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the commencement of distributions, if the Plan permits annuities as a form of distribution then the following apply:
 1. ☐ N/A (annuity distributions are not permitted)
 2. ☐ Upon the commencement of distributions, the original Annuity Starting Date will be retained.
 3. ☐ Upon the commencement of distributions, a new Annuity Starting Date is created.
 - b. ☐ A Participant who had not begun receiving required minimum distributions as of _____ (may not be earlier than January 1, 1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) applies to all such Participants unless selected below:
 1. ☐ The in-service distribution option was eliminated with respect to Participants who attained age 70 1/2 in or after the calendar year that began after the later of (1) December 31, 1998, or (2) the adoption date of the restatement to bring the Plan into compliance with the SBJPA.

- k. ☐ **Other spousal provisions** (select one or more)

1. ☐ **Definition of Spouse.** The term Spouse includes a spouse under federal law as well as the following: _____
2. ☐ **Automatic revocation of spousal designation** (Plan Section 6.2(f)). The automatic revocation of a spousal Beneficiary designation in the case of divorce does not apply.
3. ☐ **Timing of QDRO payment.** A distribution to an Alternate Payee shall not be permitted prior to the time a Participant would be entitled to a distribution.
- l. ☐ **Applicable law.** Instead of using the applicable laws set forth in Plan Section 9.4(a), the Plan will be governed by the laws of: _____
- m. ☐ **Total and Permanent Disability.** Instead of the definition at Plan Section 1.49, Total and Permanent Disability means: _____ (must be definitely determinable).

Governmental Money Purchase Plan

- n. ☐ **Permissible Trust (or Custodian) modifications.** The Employer makes the following modifications to the Trust (or Custodial) provisions as permitted under Rev. Proc. 2011-49 (or subsequent IRS guidance) (select one or more of 1. - 3. below):

NOTE: Any elections below must not: (i) conflict with any Plan provision unrelated to the Trust or Trustee; or (ii) cause the Plan to violate Code §401(a). In addition, this may not be used to substitute all of the Trust provisions in the Plan.

1. ☐ **Investments.** The Employer amends the Trust provisions relating to Trust investments as follows:

2. ☐ **Duties.** The Employer amends the Trust provisions relating to Trustee (or Custodian) duties as follows:

3. ☐ **Other administrative provisions.** The Employer amends the other administrative provisions of the Trust as follows:

ADMINISTRATIVE PROCEDURES

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this Section without a formal Plan amendment. In addition, modifications to these procedures will not affect an Employer's reliance on the Plan.

A. **Loan Limitations.** (complete only if loans to Participants are permitted; leave blank if none apply)

- a. ☒ Limitations (select one or more):
 1. ☒ Loans will be treated as Participant directed investments.
 2. ☐ Loans will only be made for hardship or financial necessity as specified below (select i. or ii.)
 - a. ☐ hardship reasons specified in Plan Section 6.12
 - b. ☐ financial necessity (as defined in the loan program).
 3. ☐ The minimum loan will be \$_____.
 4. ☐ A Participant may only have _____ (e.g., one (1)) loan(s) outstanding at any time.
 5. ☐ All outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution (including a hardship distribution), if applicable).
 6. ☐ **Account restrictions.** Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
 - a. ☐ Account(s) attributable to Employer matching contributions
 - b. ☐ Account attributable to Employer contributions other than matching contributions
 - c. ☐ Rollover Account
 - d. ☐ Transfer Account
 - e. ☐ Other: _____
- AND**, if loans are restricted to certain accounts, the limitations of Code §72(p) will be applied:
- f. ☐ by determining the limits by only considering the restricted accounts.
 - g. ☐ by determining the limits taking into account a Participant's entire interest in the Plan.

Additional Loan Provisions (select all that apply; leave blank if none apply)

- b. ☒ **Loan payments.** Loans are repaid by (if left blank, then payroll deduction applies unless Participant is not subject to payroll (e.g., partner who only has a draw)):
 1. ☒ payroll deduction
 2. ☐ ACH (Automated Clearing House)
 3. ☒ check
 - a. ☐ Only for prepayment
- c. ☒ **Interest rate.** Loans will be granted at the following interest rate (if left blank, then 3. below applies):
 1. ☐ _____ percentage points over the prime interest rate
 2. ☐ _____%
 3. ☒ the Administrator establishes the rate at the time the loan is made
- d. ☒ **Refinancing.** Loan refinancing is allowed.

B. **Life Insurance.** (Plan Section 7.5)

- a. ☒ Life insurance may not be purchased.
- b. ☐ Life insurance may be purchased...
 1. ☐ at the option of the Administrator
 2. ☐ at the option of the Participant

Limitations

3. ☐ N/A (no limitations)
4. ☐ The purchase of initial or additional life insurance will be subject to the following limitations (select one or more):
 - a. ☐ Each initial Contract will have a minimum face amount of \$_____.
 - b. ☐ Each additional Contract will have a minimum face amount of \$_____.
 - c. ☐ The Participant has completed _____ Years (or Periods) of Service.
 - d. ☐ The Participant has completed _____ Years (or Periods) of Service while a Participant in the Plan.
 - e. ☐ The Participant is under age _____ on the Contract issue date.
 - f. ☐ The maximum amount of all Contracts on behalf of a Participant may not exceed \$_____.
 - g. ☐ The maximum face amount of any life insurance Contract will be \$_____.

C. **Plan Expenses.** Will the Plan assess against an individual Participant's Account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan service?

- a. ☒ No
- b. ☐ Yes

D. **Directed investments**

- a. ☐ Participant directed investments are NOT permitted.
- b. ☒ Participant directed investments are permitted from the following Participant Accounts:
 - 1. ☒ all Accounts
 - 2. ☐ only from the following Accounts (select one or more):
 - a. ☐ Account attributable to Employer contributions
 - b. ☐ Rollover Account
 - c. ☐ Transfer Account
 - d. ☐ Other: _____ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

E. **Rollover Limitations.** Will the Plan accept rollover contributions and/or direct rollovers from the sources specified below?

- a. ☐ No, Administrator determines in operation which sources will be accepted.
- b. ☒ Yes

Rollover sources. Indicate the sources of rollovers that will be accepted (select one or more)

- 1. ☒ **Direct Rollovers.** The Plan will accept a direct rollover of an eligible rollover distribution from (select one or more):
 - a. ☒ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions
 - b. ☒ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions
 - c. ☒ a plan described in Code §403(a) (an annuity plan), excluding after-tax employee contributions
 - d. ☒ a plan described in Code §403(a) (an annuity plan), including after-tax employee contributions
 - e. ☒ a plan described in Code §403(b) (a tax-sheltered annuity), excluding after-tax employee contributions
 - f. ☒ a plan described in Code §403(b) (a tax-sheltered annuity), including after-tax employee contributions
 - g. ☒ a plan described in Code §457(b) (eligible deferred compensation plan)

Direct Rollovers of Participant Loan. The Plan will NOT accept a direct rollover of a Participant loan from another plan unless selected below (leave blank if default applies)

- h. ☒ The Plan will accept a direct rollover of a Participant loan
- i. ☐ The Plan will only accept a direct rollover of a Participant loan only in the following situation(s): _____ (e.g., only from Participants who were employees of an acquired organization).

- 2. ☒ **Participant Rollover Contributions from Other Plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution (select one or more):
 - a. ☒ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan)
 - b. ☒ a plan described in Code §403(a) (an annuity plan)
 - c. ☒ a plan described in Code §403(b) (a tax-sheltered annuity)
 - d. ☒ a governmental plan described in Code §457(b) (eligible deferred compensation plan)
- 3. ☒ **Participant Rollover Contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.

FIS BUSINESS SYSTEMS LLC VOLUME SUBMITTER MODIFICATIONS

CITY OF ARVADA EXECUTIVE DEFINED CONTRIBUTION RETIREMENT PLAN

The enclosed Plan is being submitted for expedited review as a Volume Submitter Plan.

No modifications from the approved specimen plan have been made to this Plan.

CITY OF ARVADA EXECUTIVE DEFINED CONTRIBUTION RETIREMENT PLAN

PARTICIPANT LOAN PROGRAM

City of Arvada Executive Defined Contribution Retirement Plan permits loans to be made to Participants and their beneficiaries. However, before any loan is made, the Plan requires that a written loan program be established which sets forth the rules and guidelines for making Participant loans. This document shall serve as the required written loan program. In addition, the Administrator may use this document to serve as, or supplement, any required notice of the loan program to Participants and their beneficiaries. All references to Participants in this loan program shall only include Participants and their Beneficiaries or any alternate payee with respect to the Plan.

The Administrator is authorized to administer the Participant Loan Program. A Participant must apply to the Administrator for a loan in the manner set forth by the Administrator.

1. Loan application. Any Participant may apply for a loan from the Plan. A Participant must apply for each loan with an application which specifies the amount of the loan desired, the requested duration for the loan and the source of security for the loan.

All loan applications will be considered by the Administrator within a reasonable time after the Participant applies for the loan. The Participant will be required to provide any supporting information deemed necessary by the Administrator.

2. Loan limitations and rules. The Administrator will not approve any loan to a Participant in an amount which exceeds 50% of his or her nonforfeitable account balance. The maximum aggregate dollar amount of loans outstanding to any Participant may not exceed \$50,000, reduced by the excess of the Participant's highest outstanding Participant loan balance during the 12-month period ending on the date of the loan over the Participant's current outstanding Participant loan balance on the date of the loan. With regard to any loan made pursuant to this program, the following rule(s) and limitation(s) shall apply, in addition to such other requirements set forth in the Plan:

a. All loans made pursuant to this program will be considered a directed investment from the account(s) of the Participant maintained under the Plan. As such, all payments of principal and interest made by the Participant will be credited only to the account(s) of such Participant. The Plan also will charge that portion of the Participant's account balances with expenses directly related to the origination, maintenance and collection of the note.

b. Loan refinancing is not permitted

3. Account restrictions. Loans may be made from any of the Participant's accounts in the Plan.

4. Evidence and terms of loan. The Administrator will document every loan in the form of a promissory note signed by the Participant for the face amount of the loan, together with a commercially reasonable rate of interest.

Any loan granted or renewed under this program will bear a commercially reasonable rate of interest established by the Administrator. In determining such rate of interest, the Plan will require a rate of return commensurate with the prevailing interest rate charged on similar loans under like circumstances by persons in the business of lending money. Such prevailing interest rate standard will permit the Administrator to consider factors pertaining to the opportunity for gain and risk of loss that a professional lender would consider on a similar arms length transaction, such as the creditworthiness of the Participant and the security given for the loan. Therefore, in establishing the rate of interest, the Administrator will conduct a reasonable and prudent inquiry with professional lenders in the same geographic locale where the Participant and Employer reside to determine such prevailing interest rate for loans under like circumstances. The interest rate will be fixed for the duration of the loan.

The loan must provide at least quarterly payments under a level amortization schedule. Generally, the Administrator will require that the Participant repay the loan by agreeing to payroll deduction while employed by the Employer, or payment by check thereafter.

The Administrator will fix the term for repayment of any loan, however, in no instance may the term of repayment be greater than five years, unless the loan qualifies as a home loan. A "home loan" is a loan used to acquire a dwelling unit which, within a reasonable time, the Participant will use as a principal residence.

A loan, if not otherwise due and payable, is due and payable on termination of the Plan, notwithstanding any contrary provision in the promissory note. Nothing in this loan policy restricts the Employer's right to terminate the Plan at any time.

Participants should note the law treats the amount of any loan (other than a "home loan") not repaid five years after the date of the loan as a taxable distribution on the last day of the five year period or, if sooner, at the time the loan is in default. If a Participant extends a non-home loan having a five year or less repayment term beyond five years, the balance of the loan at the time of the extension is a taxable distribution to the Participant.

5. Security for loan. The Plan will require that adequate security be provided by the Participant before a loan is granted. For this purpose, the Plan will consider a Participant's interest under the Plan to be adequate security. However, in no event will more than 50% of a Participant's vested interest in the Plan (determined immediately after origination of the loan) be used as security for the loan. Generally, it will be the policy of the Plan not to make loans which require security other than the Participant's vested interest in the Plan. However, if additional security is necessary to adequately secure the loan, then the Administrator will require that such security be provided before the loan will be granted.

6. Form of pledge. The pledge and assignment of a Participant's account balances will be in the form prescribed by the Administrator.

7. Military service. If a Participant separates from service (or takes a leave of absence) from the Employer because of service in the military and does not receive a distribution of his or her account balances, the Plan shall suspend loan repayments until the Participant's completion of military service. The Employer will provide the Participant with a written explanation of the effect of the Participant's military service upon his or her Plan loan. While the Participant is on active duty in the United States military, the interest rate on the loan shall not exceed six percent (6%), compounded annually.

8. Leave of absence/suspension of payment. The Administrator will suspend loan repayments for a period not exceeding one year which occurs during an approved leave of absence, either without pay from the Employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. The Administrator will provide the Participant with a written explanation of the effect of the leave of absence upon his or her Plan loan.

9. Payments after leave of absence. When payments resume following a payment suspension in connection with a leave of absence authorized in 7 or 8 above, the Participant shall select one of the following methods to repay the loan, plus accumulated interest:

- a. The Participant shall increase the amount of the required installments to an amount sufficient to amortize the remaining balance of the loan, plus accrued interest, over the remaining term of the loan.
- b. The Participant shall pay a balloon payment of the remaining unpaid principal and interest, at the conclusion of the term of the loan as determined in the promissory note.
- c. The Participant may extend the maturity of the loan and reamortize the payments over the remaining term of the loan. In no event shall the amount of the adjusted installment payment be less than the amount of the installment payment provided under the promissory note. In the case of a leave of absence described in item 8 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above. In the

case of a leave of absence described in item 7 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above, augmented by the time the Participant was actually in United States military service.

10. Default. The Administrator will treat a loan in default if:

- a. any scheduled payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the Participant missed the scheduled payment; or
- b. the Participant makes or furnishes any false representation or statement to the Plan.

The Participant will have the opportunity to repay the loan, resume current status of the loan by paying any missed payment plus interest or, if distribution is available under the Plan, request distribution of the note. If the loan remains in default, the Administrator will offset the Participant's vested account balances by the outstanding balance of the loan to the extent permitted by law. The Administrator will treat the note as repaid to the extent of any permissible offset. Pending final disposition of the note, the Participant remains obligated for any unpaid principal and accrued interest.

* * * * *

ADOPTION OF LOAN PROGRAM

The Administrator of City of Arvada Executive Defined Contribution Retirement Plan adopts this Loan Program on the date specified below.

Date: _____

By: _____
Administrator

CITY OF ARVADA EXECUTIVE DEFINED CONTRIBUTION RETIREMENT PLAN

APPLICATION FOR PARTICIPANT LOAN

Participant Information

Name _____

Address _____

Last 4 digits of Social Security Number _____

I hereby apply for a loan from the Plan. In support of this loan application, I attach such information which the Administrator may require to determine whether I qualify for the loan. I also authorize the Administrator to secure any credit reports to determine my creditworthiness and ability to repay the loan.

1. Loan amount. The amount of the loan is \$ _____ for a period of _____ months (if longer than 60 months, the purpose of the loan must be to acquire your principal residence).

2. Marital status. I am: (check one) ☐ married ☐ not married

3. Representations. I understand the Administrator will make any loan in reliance on the statements on this APPLICATION FOR PARTICIPANT LOAN which I certify are correct and complete. If any statement proves false, then the Plan may declare my indebtedness immediately due.

4. Acknowledgement/Authorization

In applying for this loan, I acknowledge that I have read the section of the Summary Plan Description governing Plan loans and have been furnished with a copy of the Participant Loan Program established by the Plan.

I hereby authorize the Administrator to verify the statements in this application and to obtain any information the Plan or its authorized representative may require in connection with this application.

Date of execution: _____

Signature of Administrator

Signature of Participant

CITY OF ARVADA EXECUTIVE DEFINED CONTRIBUTION RETIREMENT PLAN

PROMISSORY NOTE
(Fixed Interest Rate)

Participant (BORROWER): _____

1. Payment Schedule. Your Payment Schedule will be:

Number of Months	Amount of Payments	When Payments are Due
_____	_____	_____

Prepayment: If you pay your loan off early, you will not have to pay a penalty.

Security Interest: You are giving a security interest in your account in the plan.

See below for any additional information about non-payment and default.

2. Promissory Note

For value received, I, the undersigned BORROWER, promises to pay City of Arvada Executive Defined Contribution Retirement Plan, the sum of _____ dollars \$_____, together with interest on the unpaid balance at the rate of _____% per annum, payable in _____ equal monthly payments of \$_____ each, including interest. The first payment is due on _____, with like payments due on the same date of each month thereafter until the BORROWER has made all payments under this Note.

The BORROWER will make all payments by agreeing to payroll deduction or payment by check or by making payments at such other place as the HOLDER designates. If not sooner paid, this Note in any event is due and payable _____.

At the option of the Administrator until payment in full or maturity, upon default, all monies payable under this Note are due and immediately payable. The Note is in default if any payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the BORROWER missed the scheduled payment. Also, all monies payable under this Note are due and immediately payable upon termination of the Plan.

The BORROWER may prepay the loan without penalty. Each payment first applies to the payment of accrued interest and the balance of each payment applies to the payment of principal.

The BORROWER secures this loan by a pledge and irrevocable assignment of his/her vested interest in City of Arvada Executive Defined Contribution Retirement Plan.

If the BORROWER does not pay this Note when due, the BORROWER promises to pay all costs of collection and reasonable attorneys' fees incurred by the HOLDER of this Note on account of such collection, whether or not the HOLDER files suit on this Note.

3. Acknowledgement/Authorization

Date of execution: _____

 Signature of Administrator

 Witness

 Signature of Participant (BORROWER)

CITY OF ARVADA EXECUTIVE DEFINED CONTRIBUTION RETIREMENT PLAN

IRREVOCABLE PLEDGE AND ASSIGNMENT

Participant (BORROWER): _____

1. Pledge. In consideration of a loan to me of \$ _____, from City of Arvada Executive Defined Contribution Retirement Plan (the "Plan"), as evidenced by a copy of the Promissory Note attached to this pledge, I hereby irrevocably pledge and assign to the Plan, or to its successor or successors, 50% of my vested account balances, at any time existing under the Plan, but not less than 50% of my vested account balances determined on the date of the loan which is subject to this pledge, to the extent necessary to satisfy such loan, any unpaid interest on such loan, all reasonable attorneys' fees necessary for collection of this obligation and all costs of collection. Failure by me to repay this loan when due or to pay any installment or interest when due will authorize the duly authorized representatives of the Plan to foreclose on this security or to bring a lawsuit to collect the outstanding indebtedness and interest on the indebtedness.

2. Acknowledgement/Authorization. This Irrevocable Pledge and Assignment shall bind my heirs, personal representatives or other legal representatives.

Date of execution: _____

Signature of Administrator

Witness

Signature of Participant (BORROWER)

**ADOPTION AGREEMENT FOR
GOVERNMENTAL VOLUME SUBMITTER MONEY PURCHASE PLAN**

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER, TIN AND FISCAL YEAR

Name: City of Arvada, Colorado

Address: 8101 Ralston Road

Street

Arvada Colorado 80001-8101

City

State

Zip

Telephone: 720-898-7565

Taxpayer Identification Number (TIN): 84-6000633

Employer's Fiscal Year ends: December 31

2. TYPE OF GOVERNMENTAL ENTITY. This Plan may only be adopted a state or local governmental entity, or agency thereof, including an Indian tribal government and may not be adopted by any other entity, including a federal government and any agency or instrumentality thereof.

- a. ☐ State government or state agency
- b. ☐ County or county agency
- c. ☒ Municipality or municipal agency
- d. ☐ Indian tribal government (see Note below)
- e. ☐ Other: _____

NOTE: An Indian tribal government may only adopt this Plan if such entity is defined under Code §7701(a)(40), is a subdivision of an Indian tribal government as determined in accordance with Code §7871(d), or is an agency or instrumentality of either, and all of the Participants under this Plan employed by such entity substantially perform services as an Employee in essential governmental functions and not in the performance of commercial activities (whether or not an essential government function).

3. PARTICIPATING EMPLOYERS (Plan Section 1.38). Will any other Employers adopt this Plan as Participating Employers?

- a. ☒ No
- b. ☐ Yes

PLAN INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9. through 10.)

4. PLAN NAME:

City of Arvada City Manager Retirement Plan

5. PLAN STATUS

- a. ☐ New Plan
- b. ☒ Amendment and restatement of existing Plan

PPA RESTATEMENT (leave blank if not applicable)

- 1. ☒ This is an amendment and restatement to bring a plan into compliance with the Pension Protection Act of 2006 ("PPA") and other legislative and regulatory changes (i.e., the 6-year pre-approved plan restatement).

6. EFFECTIVE DATE (Plan Section 1.16) (complete a. if new plan; complete a. AND b. if an amendment and restatement)

Initial Effective Date of Plan

- a. March 3, 1997 (enter month day, year) (hereinafter called the "Effective Date" unless 6.b. is entered below)

Restatement Effective Date. If this is an amendment and restatement, the effective date of the restatement (hereinafter called the "Effective Date") is:

- b. January 1, 2022 (enter month day, year; may enter a restatement date that is the first day of the current Plan Year. Plan contains appropriate retroactive effective dates with respect to provisions for appropriate laws.)

7. PLAN YEAR (Plan Section 1.42) means, except as otherwise provided in d. below:
- a. ☒ the calendar year
 - b. ☐ the twelve-month period ending on _____ (e.g., June 30th)

SHORT PLAN YEAR (Plan Section 1.46). This is a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 14):

- c. ☒ N/A
- d. ☐ beginning on _____ (enter month day, year; e.g., July 1, 2013)
and ending on _____ (enter month day, year).

8. VALUATION DATE (Plan Section 1.52) means:

- a. ☒ every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation)
- b. ☐ the last day of each Plan Year
- c. ☐ the last day of each Plan Year quarter
- d. ☐ other (specify day or days): _____ (must be at least once each Plan Year)

NOTE: The Plan always permits interim valuations.

9. TRUSTEE(S) OR INSURER(S) (Plan Sections 1.25 and 1.50):

- a. ☐ **Insurer.** This Plan is funded exclusively with Contracts and the name of the Insurer(s) is:

(1) _____ (2) _____ (if more than 2, add names to signature page).

- b. ☐ **Individual Trustee(s).** Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (add additional Trustees as necessary)

Name(s)	Title(s)
_____	_____
_____	_____
_____	_____

Address and telephone number

- 1. ☐ Use Employer address and telephone number
- 2. ☐ Use address and telephone number below:

Address: _____

Street

City State Zip

Telephone: _____

- c. ☒ **Corporate Trustee(s)** (add additional Trustees as necessary)

Name: Fidelity Management Trust Company

Address: 245 Summer Street

Street

Boston Massachusetts 02210

City State Zip

Telephone: _____

Directed/Discretionary Trustee. Unless otherwise specified below, if there is a corporate Trustee, it will serve as a Directed (nondiscretionary) Trustee (Plan Section 1.21) and if there is an individual Trustee, he or she will serve as a Discretionary Trustee (Plan Section 1.22) over all Plan assets (select all that apply; leave blank if defaults apply)

- d. ☒ Directed Trustee exceptions (leave blank if no exceptions):
- Directed Trustee over specified Plan assets (select all that apply; leave blank if none apply)
- 1. ☐ The corporate Trustee will serve as Directed Trustee over the following assets: _____
- 2. ☐ The individual Trustee(s) will serve as Directed Trustee over the following assets: _____
- Individual Trustee will serve as Directed Trustee (may not be selected with d.1. or d.2.)
- 3. ☐ over all Plan assets

- e. ☐ Discretionary Trustee exceptions (leave blank if no exceptions):
 Discretionary Trustee over specified Plan assets (select all that apply; leave blank if none apply)
 1. ☐ The individual Trustee(s) will serve as Discretionary Trustee over the following assets: _____
 2. ☐ The corporate Trustee will serve as Discretionary Trustee over the following assets: _____
 Corporate Trustee will serve as Discretionary Trustee (may not be selected with e.1. or e.2.)
 3. ☐ over all Plan assets

Separate trust. Will a separate trust agreement that is approved by the IRS for use with this Plan be used?

- f. ☐ No
 g. ☒ Yes

NOTE: If Yes is selected, an executed copy of the trust agreement between the Trustee and the Employer must be attached to this Plan. The Plan and trust agreement will be read and construed together. The responsibilities, rights and powers of the Trustee will be those specified in the trust agreement.

10. ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER

(If none is named, the Employer will be the Administrator (Plan Section 1.2).)

- a. ☐ Employer (use Employer address and telephone number)
 b. ☒ Other:

Name: City of Arvada Executive Defined Contribution Plan Board of Trustees

Address: 8101 Ralston Road Street
Arvada City Colorado State 80001-8101 Zip
 Telephone: 720-898-7565

11. CONTRIBUTION TYPES

The selections made below must correspond with the selections made under the Contributions and Allocations Section of this Adoption Agreement.

FROZEN PLAN OR CONTRIBUTIONS HAVE BEEN SUSPENDED (Plan Section 4.1(c)) (optional)

- a. ☐ This is a frozen Plan (i.e., all contributions cease) (if this is a temporary suspension, select a.2):
 1. ☐ All contributions ceased as of, or prior to, the effective date of this amendment and restatement and the prior Plan provisions are not reflected in this Adoption Agreement (may enter effective date at 3. below and/or select contributions at b. - f. (optional), skip questions 12-18 and 22-29)
 2. ☐ All contributions ceased or were suspended and the prior Plan provisions are reflected in this Adoption Agreement (must enter effective date at 3. below and select contributions at b. - f.)
Effective date
 3. ☐ as of _____ (effective date is optional unless a.2. has been selected above or this is the amendment or restatement to freeze the Plan).

CONTRIBUTIONS

The Plan permits the following contributions (select one or more):

- b. ☒ **Employer contributions other than matching** (Questions 24-25)
 1. ☐ This Plan qualifies as a Social Security Replacement Plan (Question 24.c. must be selected)
 c. ☐ **Employer matching contributions** (Questions 26-28)
 d. ☒ **Mandatory Employee contributions** (Question 31)
 e. ☒ **After-tax voluntary Employee contributions** (Question 32)
 f. ☒ **Rollover contributions** (Question 39)

ELIGIBILITY REQUIREMENTS

12. ELIGIBLE EMPLOYEES (Plan Section 1.17) means all Employees (including Leased Employees) EXCEPT those Employees who are excluded below or elsewhere in the Plan:

- a. ☐ **No excluded Employees.** There are no additional excluded Employees under the Plan (skip to Question 13).
 b. ☒ **Exclusions.** The following Employees are not Eligible Employees for Plan purposes (select one or more):
 1. ☐ Union Employees (as defined in Plan Section 1.17)
 2. ☐ Nonresident aliens (as defined in Plan Section 1.17)
 3. ☐ Leased Employees (Plan Section 1.28)
 4. ☐ Part-time/temporary/seasonal Employees. A part-time, temporary or seasonal Employee is an Employee whose regularly scheduled service is less than _____ Hours of Service in the relevant eligibility computation period (as defined in Plan Section 1.54). However, if any such excluded Employee actually completes a Year of Service, then such Employee will no longer be part of this excluded class.

5. ☒ Other: Only the City of Arvada City Manager is eligible to participate in this Plan. All other employees are excluded from participation in this Plan (must be definitely determinable under Regulations §1.401-1(b). Exclusions may be employment title specific but may not be by individual name nor result in only a finite group of individuals (e.g., excluding anyone hired after 12/31/12.)

13. **CONDITIONS OF ELIGIBILITY (Plan Section 3.1)**

- a. ☒ **No age or service required.** No age or service required for all Contribution Types (skip to Question 14).
b. ☐ **Eligibility.** An Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following (complete c. and d., select e. and f. if applicable):

Eligibility Requirements

c. ☐ **Age Requirement**

1. ☐ No age requirement
2. ☐ Age 20 1/2
3. ☐ Age 21
4. ☐ Age _____ (may not exceed 26)

d. ☐ **Service Requirement**

1. ☐ No service requirement
2. ☐ _____ (not to exceed 60) months of service (elapsed time)
3. ☐ 1 Year of Service
4. ☐ _____ (not to exceed 5) Years of Service
5. ☐ _____ consecutive month period from the Eligible Employee's employment commencement date and during which at least _____ Hours of Service are completed.
6. ☐ _____ consecutive months of employment from the Eligible Employee's employment commencement date.
7. ☐ Other: _____ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must satisfy the Notes below)

NOTE: If c.4. or d.7. is selected, the condition must be an age or service requirement that is definitely determinable and may not exceed age 26 and may not exceed 5 Years of Service.

NOTE: Year of Service means Period of Service if elapsed time method is chosen.

Waiver of conditions. The service and/or age requirements specified above will be waived in accordance with the following (leave blank if there are no waivers of conditions):

- e. ☐ If employed on _____ the following requirements, and the entry date requirement, will be waived. The waiver applies to any Eligible Employee unless 3. selected below. Such Employees will enter the Plan as of such date (select 1. and/or 2. AND 3. if applicable):
1. ☐ service requirement (may let part-time Eligible Employees into the Plan)
2. ☐ age requirement
3. ☐ waiver is for: _____

Amendment or restatement to change eligibility requirements

- f. ☐ This amendment or restatement (or a prior amendment and restatement) modified the eligibility requirements and the prior eligibility conditions continue to apply to the Eligible Employees specified below. If this option is NOT selected, then all Eligible Employees must satisfy the eligibility conditions set forth above.
1. ☐ The eligibility conditions above only apply to Eligible Employees who were not Participants as of the effective date of the modification.
2. ☐ The eligibility conditions above only apply to individuals who were hired on or after the effective date of the modification.

14. **EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)**

An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan as of the:

- a. ☐ date such requirements are met
b. ☐ first day of the month coinciding with or next following the date on which such requirements are met
c. ☐ first day of the Plan Year quarter coinciding with or next following the date on which such requirements are met
d. ☐ earlier of the first day of the Plan Year or the first day of the seventh month of the Plan Year coinciding with or next following the date on which such requirements are met
e. ☐ first day of the Plan Year coinciding with or next following the date on which such requirements are met (Eligibility must be six months of service (or 1 1/2 Years (or Periods) of Service if 100% immediate vesting is selected) or less and age must be 20 1/2 or less.)
f. ☐ first day of the Plan Year in which such requirements are met
g. ☐ first day of the Plan Year in which such requirements are met, if such requirements are met in the first 6 months of the Plan Year, or as of the first day of the next succeeding Plan Year if such requirements are met in the last 6 months of the Plan Year.
h. ☒ other: the day the individual commences employment as City Manager of the Employer (must be definitely determinable)

SERVICE

15. RECOGNITION OF SERVICE WITH OTHER EMPLOYERS (Plan Sections 1.39 and 1.54)

- a. ☒ No service with other employers is recognized except as otherwise required by law (e.g., the Plan already provides for the recognition of service with Employers who have adopted this Plan as well as service with Affiliated Employers and predecessor Employers who maintained this Plan; skip to Question 16).
- b. ☐ Prior service with the designated employers is recognized as follows (answer c. and select one or more of c.1. - 3.; select d. - f. as applicable) (if more than 3 employers, attach an addendum to the Adoption Agreement or complete option h. under Section B of Appendix A):

Other Employer	Eligibility	Vesting	Contribution Allocation
c. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐
d. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐
e. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐

Limitations

- f. ☐ The following provisions or limitations apply with respect to the recognition of prior service: _____ 1. ☐ 2. ☐ 3. ☐
(e.g., credit service with X only on/following 1/1/13)

NOTE: If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.39 and 1.54 regardless of any selections above.

16. SERVICE CREDITING METHOD (Plan Sections 1.39 and 1.54)

NOTE: If no selections are made in this Section, then the provisions set forth in the definition of Year of Service in Plan Section 1.54 will apply, including the following defaults:

1. A Year of Service means completion of at least 1,000 Hours of Service during the applicable computation period.
2. Hours of Service (Plan Section 1.24) will be based on actual Hours of Service.
3. For eligibility purposes, the computation period will be as defined in Plan Section 1.54 (i.e., shift to the Plan Year if the eligibility condition is one (1) Year of Service or less).
4. For vesting and allocation purposes, the computation period will be the Plan Year.

- a. ☐ **Elapsed time method.** (Period of Service applies instead of Year of Service) Instead of Hours of Service, elapsed time will be used for:

1. ☐ all purposes (skip to Question 17)
2. ☐ the following purposes (select one or more):
 - a. ☐ eligibility to participate
 - b. ☐ vesting
 - c. ☐ sharing in allocations or contributions

- b. ☐ **Alternative definitions for the Hours of Service method.** Instead of the defaults, the following alternatives will apply for the Hours of Service method (select one or more):

1. ☐ **Eligibility computation period.** Instead of shifting to the Plan Year, the eligibility computation period after the initial eligibility computation period will be based on each anniversary of the date the Employee first completes an Hour of Service
2. ☐ **Vesting computation period.** Instead of the Plan Year, the vesting computation period will be the date an Employee first performs an Hour of Service and each anniversary thereof.
3. ☐ **Equivalency method.** Instead of using actual Hours of Service, an equivalency method will be used to determine Hours of Service for:
 - a. ☐ all purposes
 - b. ☐ the following purposes (select one or more):
 1. ☐ eligibility to participate
 2. ☐ vesting
 3. ☐ sharing in allocations or contributions

Such method will apply to:

- c. ☐ all Employees
- d. ☐ Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees)
- e. ☐ other: _____ (e.g., per-diem Employees only)

Hours of Service will be determined on the basis of:

- f. ☐ days worked (10 hours per day)
- g. ☐ weeks worked (45 hours per week)
- h. ☐ semi-monthly payroll periods worked (95 hours per semi-monthly pay period)
- i. ☐ months worked (190 hours per month)
- j. ☐ bi-weekly payroll periods worked (90 hours per bi-weekly pay period)
- k. ☐ other: _____ (e.g., option f. is used for per-diem Employees and option g. is used for on-call Employees).

- 4. ☐ **Number of Hours of Service required.** Instead of 1,000 Hours of Service, Year of Service means the applicable computation period during which an Employee has completed at least _____ (not to exceed 1,000) Hours of Service for:
 - a. ☐ all purposes
 - b. ☐ the following purposes (select one or more):
 - 1. ☐ eligibility to participate
 - 2. ☐ vesting
 - 3. ☐ sharing in allocations or contributions

VESTING

17. VESTING OF PARTICIPANT'S INTEREST – EMPLOYER CONTRIBUTIONS (Plan Section 6.4(b))

- a. ☐ N/A (no Employer contributions; skip to Question 19)
- b. ☒ The vesting provisions selected below apply. Section B of Appendix A can be used to specify any exceptions to the provisions below.

NOTE: The Plan provides that contributions for converted sick leave and/or vacation leave are fully Vested.

Vesting for Employer contributions other than matching contributions

- c. ☐ N/A (no Employer contributions (other than matching contributions); skip to f.)
- d. ☒ 100% vesting. Participants are 100% Vested in Employer contributions (other than matching contributions) upon entering Plan.
- e. ☐ The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer contributions (other than matching contributions):
 - 1. ☐ 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 - 2. ☐ 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 - 3. ☐ 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 - 4. ☐ Cliff: 100% vesting after _____ (not to exceed 15) years
 - 5. ☐ Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

Vesting for Employer matching contributions

- f. ☒ N/A (no Employer matching contributions)
- g. ☐ The schedule above will also apply to Employer matching contributions.
- h. ☐ 100% vesting. Participants are 100% Vested in Employer matching contributions upon entering Plan.
- i. ☐ The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer matching contributions:
 - 1. ☐ 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 - 2. ☐ 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 - 3. ☐ 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 - 4. ☐ Cliff: 100% vesting after _____ (not to exceed 15) years
 - 5. ☐ Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

18. VESTING OPTIONS

Excluded vesting service. The following Years of Service will be disregarded for vesting purposes (select all that apply; leave blank if none apply):

- a. ☐ Service prior to the initial Effective Date of the Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))
- b. ☐ Service prior to the computation period in which an Employee has attained age _____.
- c. ☐ Service during a period for which an Employee did not make mandatory Employee contributions.

Vesting for death, Total And Permanent Disability and Early Retirement Date. Regardless of the vesting schedule, a Participant will become fully Vested upon (select all that apply; leave blank if none apply):

- d. ☐ Death
- e. ☐ Total and Permanent Disability
- f. ☐ Early Retirement Date

RETIREMENT AGES

19. NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.32) means:

- a. ☒ **Specific age.** The date a Participant attains age 55 (may not exceed 65)
- b. ☐ **Age/participation.** The later of the date a Participant attains age _____ (may not exceed 65) or the _____ (may not exceed 10th) anniversary of the first day of the Plan Year in which participation in the Plan commenced

NOTE: Effective for Plan Years beginning on or after the later of (1) January 1, 2015, or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three months after the final regulations are published in the Federal Register, Normal Retirement Age of less than age 62 must meet Regulation §1.401(a)-1(b)(2).

Qualified police or firefighters. Normal Retirement Age for qualified public safety employees (as defined in Code §72(t)(1)) (leave blank if not applicable)

- c. ☐ Age _____ (may not be less than 50)

20. NORMAL RETIREMENT DATE (Plan Section 1.33) means, with respect to any Participant, the:

- a. ☐ date on which the Participant attains "NRA"
- b. ☒ first day of the month coinciding with or next following the Participant's "NRA"
- c. ☐ first day of the month nearest the Participant's "NRA"
- d. ☐ Anniversary Date coinciding with or next following the Participant's "NRA"
- e. ☐ Anniversary Date nearest the Participant's "NRA"
- f. ☐ Other: _____ (e.g., first day of the month following the Participant's "NRA").

21. EARLY RETIREMENT DATE (Plan Section 1.15)

- a. ☒ N/A (no early retirement provision provided)
- b. ☐ Early Retirement Date means the:
 - 1. ☐ date on which a Participant satisfies the early retirement requirements
 - 2. ☐ first day of the month coinciding with or next following the date on which a Participant satisfies the early retirement requirements
 - 3. ☐ Anniversary Date coinciding with or next following the date on which a Participant satisfies the early retirement requirements

Early retirement requirements

- 4. ☐ Participant attains age _____
AND, completes.... (leave blank if not applicable)
 - a. ☐ at least _____ Years (or Periods) of Service for vesting purposes
 - b. ☐ at least _____ Years (or Periods) of Service for eligibility purposes
- c. ☐ Early Retirement Date means: _____ (must be definitely determinable)

COMPENSATION

22. COMPENSATION with respect to any Participant is defined as follows (Plan Sections 1.10 and 1.23).

Base definition

- a. ☒ Wages, tips and other compensation on Form W-2
- b. ☐ Code §3401(a) wages (wages for withholding purposes)
- c. ☐ 415 safe harbor compensation

NOTE: Plan Section 1.23(c) provides that the base definition of Compensation includes deferrals that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), 402(h)(1)(B)(SEP), 414(h)(2), & 457(b).

Determination period. Compensation will be based on the following "determination period" (this will also be the Limitation Year unless otherwise elected at option f. under Section B of Appendix A):

- d. ☒ the Plan Year
- e. ☐ the Fiscal Year coinciding with or ending within the Plan Year
- f. ☐ the calendar year coinciding with or ending within the Plan Year

Adjustments to Compensation (for Plan Section 1.10). Compensation will be adjusted by:

- g. ☐ **No adjustments** (skip to i. below)
- h. ☒ **Adjustments.** Compensation will be adjusted by (select all that apply):
 - 1. ☐ excluding salary reductions (401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2) pickup, & 457(b))
 - 2. ☐ excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in 1. above) and welfare benefits.
 - 3. ☒ excluding Compensation paid during the "determination period" while not a Participant in the Plan.
 - 4. ☐ excluding Military Differential Pay
 - 5. ☐ excluding overtime
 - 6. ☒ excluding bonuses
 - 7. ☒ other: severance pay (e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay)).

Military Differential Pay Special Effective Date (leave blank if not applicable)

- i. ☐ If this is a PPA restatement and the provisions above regarding Military Differential Pay (included unless h.4. is selected) have a later effective date than Plan Years beginning after December 31, 2008, then enter the date such provisions were first effective: _____ (may not be earlier than January 1, 2009; for Plan Years beginning prior to January 1, 2009, Military Differential Pay is treated in accordance with the post-severance Compensation provisions in the following Question).

23. POST-SEVERANCE COMPENSATION (415 REGULATIONS)

The following optional provision of the 415 Regulations will apply to Limitation Years beginning on or after July 1, 2007 unless otherwise elected below:

415 Compensation (post-severance compensation adjustments) (select all that apply at a.; leave blank if none apply)

NOTE: Unless otherwise elected under a. below, the following defaults apply: 415 Compensation will **include** (to the extent provided in Plan Section 1.23), post-severance regular pay, leave cash-outs and payments from nonqualified unfunded deferred compensation plans.

- a. ☐ The defaults listed above apply except for the following (select one or more):
 - 1. ☐ Leave cash-outs will be **excluded**
 - 2. ☐ Nonqualified unfunded deferred compensation will be **excluded**
 - 3. ☐ Military Differential Pay will be **included** (Plan automatically includes for Limitation Years beginning after December 31, 2008)
 - 4. ☐ Disability continuation payments will be **included**

Plan Compensation (post-severance compensation adjustments)

- b. ☐ **Defaults apply.** Compensation will **include** (to the extent provided in Plan Section 1.10 and to the extent such amounts would be included in Compensation if paid prior to severance of employment) post-severance regular pay, leave cash-outs, and payments from nonqualified unfunded deferred compensation plans.
- c. ☐ **Exclude all post-severance compensation.** Exclude all post-severance compensation for allocation purposes.
- d. ☒ **Post-severance adjustments.** The defaults listed at b. apply except for the following (select one or more):
 - 1. ☒ Exclude all post-severance compensation
 - 2. ☐ Regular pay will be **excluded**
 - 3. ☐ Leave cash-outs will be **excluded**
 - 4. ☐ Nonqualified unfunded deferred compensation will be **excluded**
 - 5. ☐ Military Differential Pay will be **included**
 - 6. ☐ Disability continuation payments will be **included**

NOTE: The above treatment of Military Differential Pay only applies to Plan Years beginning prior to January 1, 2009. For Plan Years beginning after such date, Military Differential Pay is not considered post-severance compensation and the provisions of Question 22 apply.

Post-severance compensation special effective date (leave blank if not applicable)

- e. ☐ If this is a PPA restatement and the post-severance compensation adjustments above for 415 Compensation or Plan Compensation applied other than the first day of the Plan Year beginning on or after July 1, 2007, then enter the date such provisions were first effective: _____

CONTRIBUTIONS AND ALLOCATIONS

24. **EMPLOYER CONTRIBUTIONS (OTHER THAN MATCHING CONTRIBUTIONS)** (Plan Section 4.1(a)(2)) (skip to Question 26 if Employer contributions are NOT selected at Question 11.b.)

CONTRIBUTION FORMULA (select one or more of the following contribution formulas:)

- a. ☒ **Fixed contribution** equal to (only select one):
1. ☒ 13.02 % of each Participant's Compensation for each:
 - a. ☒ Plan Year
 - b. ☐ calendar quarter
 - c. ☐ month
 - d. ☐ pay period
 - e. ☐ week
 2. ☐ \$ _____ per Participant.
 3. ☐ \$ _____ per Hour of Service worked while an Eligible Employee
 - a. ☐ up to _____ hours (leave blank if no limit)
 4. ☐ other: _____ (the formula described must satisfy the definitely determinable requirement under Regulations §1.401-1(b)).
- b. ☐ **Sick leave/vacation leave conversion.** The Employer will contribute an amount equal to an Employee's current hourly rate of pay multiplied by the Participant's number of unused accumulated sick leave and/or vacation days (as selected below). Only unpaid sick and vacation leave for which the Employee has no right to receive in cash may be included. In no event will the Employer's contribution for the Plan Year exceed the maximum contribution permitted under Code §415(c).

The following may be converted under the Plan: (select one or both):

1. ☐ Sick leave
2. ☐ Vacation leave

Eligible Employees. Only the following Participants shall receive the Employer contribution for sick leave and/or vacation leave (select 3. and/or 4; leave blank if no limitations provided, however, that this Plan may not be used to only provide benefits for terminated Employees)

3. ☐ **Former Employees.** All Employees terminating service with the Employer during the Plan Year and who have satisfied the eligibility requirements based on the terms of the Employer's accumulated benefits plans checked below (select all that apply; leave blank if no exclusions):
 - a. ☐ The Former Employee must be at least age _____ (e.g., 55)
 - b. ☐ The value of the sick and/or vacation leave must be at least \$ _____ (e.g., \$2,000)
 - c. ☐ A contribution will only be made if the total hours is over _____ (e.g., 10) hours
 - d. ☐ A contribution will not be made for hours in excess of _____ (e.g., 40) hours
 4. ☐ **Active Employees.** Active Employees who have not terminated service during the Plan Year and who meet the following requirements (select all that apply; leave blank if no exclusions):
 - a. ☐ The Employee must be at least age _____ (e.g., 55)
 - b. ☐ The value of the sick and/or vacation leave must be at least \$ _____ (e.g., \$2,000)
 - c. ☐ A contribution will only be made if the total hours is over _____ (e.g., 10) hours
 - d. ☐ A contribution will not be made for hours in excess of _____ (e.g., 40) hours
- c. ☐ **Social Security Replacement Plan.** An amount equal to 7.5% of the Participant's Compensation for the entire Plan Year, reduced by Employee and Employer contributions to this Plan actually contributed to the Participant's Account during such Plan Year. (may only be selected if Question 11.b.1. has also been selected)
- Include only part-time, seasonal and temporary Employees** (leave blank if not applicable)
1. ☐ Regardless of any other provision in this to the contrary, the contribution above will only be made for part-time, seasonal, or temporary Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Regulation §31.3121(b)(7)-2.

25. ALLOCATION CONDITIONS (Plan Section 4.3). If 24.a. is selected above, indicate requirements to share in allocations of Employer contributions (select a. OR b. and all that apply at c. - e.)
- a. ☒ **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 26).
- b. ☐ **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)
- Conditions for Participants NOT employed on the last day of the Plan Year**
1. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service (or _____ (not to exceed 12) months of service if the elapsed time method is selected).
 2. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 3. ☐ Participants will NOT share in the allocations, regardless of service.
 4. ☐ Participants will share in the allocations, regardless of service.
 5. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).
- Conditions for Participants employed on the last day of the Plan Year**
6. ☐ No service requirement.
 7. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 8. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.
 9. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).
- Waiver of conditions for Participants NOT employed on the last day of the Plan Year.** If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):
- c. ☐ Death
 - d. ☐ Total and Permanent Disability
 - e. ☐ Termination of employment on or after Normal Retirement Age
 1. ☐ or Early Retirement Date
26. EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 4.1(a)(3)). (skip to Question 29 if matching contributions are NOT selected at Question 11.c.) The Employer will make the following matching contributions:
- A. **Elective deferrals taken into account.** For purposes of applying the matching contribution provisions below, elective deferrals include elective deferral (pre-tax and Roth) contributions to the following Employer plan(s) (insert name of Plan(s) to which the elective deferral contributions being matched will be made):
- a. ☐ **457 plan(s).** Enter Plan name: _____
 - b. ☐ **403(b) plan(s).** Enter Plan name: _____
- NOTE:** If selected at Question 32, after-tax voluntary Employee contributions are also considered elective deferrals for purposes of matching contributions.
- B. **Matching Formula.** (select one)
- c. ☐ **Fixed - uniform rate/amount.** The Employer will make matching contributions equal to _____% (e.g., 50) of the Participant's elective deferrals
 1. ☐ that do not exceed _____% of a Participant's Compensation (leave blank if no limit)
 - d. ☐ **Fixed - tiered.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's elective deferrals, determined as follows:

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate \$ or %)	Matching Percentage
First _____	_____ %
Next _____	_____ %
Next _____	_____ %
Next _____	_____ %

- e. ☐ **Fixed - Years of Service.** The Employer will make matching contributions equal to a uniform percentage of each Participant's elective deferrals based on the Participant's Years of Service (or Periods of Service if the elapsed time method is selected), determined as follows (add additional tiers if necessary):

Years (or Periods) of Service	Matching Percentage
_____	_____ %
_____	_____ %
_____	_____ %

For purposes of the above matching contribution formula, a Year (or Period) of Service means a Year (or Period) of Service for:

1. ☐ vesting purposes
 2. ☐ eligibility purposes
 f. ☐ Other: _____ (the formula described must satisfy the definitely determinable requirement under Regulations §1.401-1(b))

27. MATCHING CONTRIBUTION PROVISIONS

- A. **Maximum matching contribution.** The total matching contribution made on behalf of any Participant for any Plan Year will not exceed:
- a. ☐ N/A (no Plan specific limit on the amount of matching contribution)
 b. ☐ \$ _____.
 c. ☐ _____ % of Compensation.
- B. **Period of determination.** The matching contribution formula will be applied on the following basis (and elective deferrals and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period):
- d. ☐ the Plan Year
 e. ☐ each payroll period
 f. ☐ each month
 g. ☐ each Plan Year quarter
 h. ☐ each payroll unit (e.g., hour)

28. ALLOCATION CONDITIONS FOR MATCHING CONTRIBUTIONS (Plan Section 4.3). Select a. OR b. and all that apply of c. - h.

- a. ☐ **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 29).
- b. ☐ **Allocation conditions apply** (select one of 1. -5. AND one of 6. - 9. below)
Conditions for Participants NOT employed on the last day of the Plan Year.
1. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service (or _____ (not to exceed 12) months of service if the elapsed time method is selected).
 2. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 3. ☐ Participants will NOT share in the allocations, regardless of service.
 4. ☐ Participants will share in the allocations, regardless of service.
 5. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

Conditions for Participants employed on the last day of the Plan Year

6. ☐ No service requirement.
 7. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 8. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.
 9. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

- c. ☐ Death
 d. ☐ Total and Permanent Disability
 e. ☐ Termination of employment on or after Normal Retirement Age
 1. ☐ or Early Retirement Date

Conditions based on period other than Plan Year. The allocation conditions above will be applied based on the Plan Year unless otherwise selected below. If selected, the above provisions will be applied by substituting the term Plan Year with the specified period (e.g., if Plan Year quarter is selected below and the allocation condition is 250 Hours of Service per quarter, enter 250 hours (not 1000) at b.8. above).

- f. ☐ The Plan Year quarter.
- g. ☐ Payroll period.
- h. ☐ Other: _____ (must be definitely determinable and not subject to Employer discretion and may not be longer than a twelve month period).

29. **FORFEITURES (Plan Sections 1.21 and 4.3(e))**

Forfeitures of Employer contributions other than matching contributions will be:

- a. ☐ added to the Employer contribution and allocated in the same manner
- b. ☐ used to reduce any Employer contribution
- c. ☐ allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
- d. ☒ other: there are no forfeitures - all contributions are fully vested (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

Forfeitures of Employer matching contributions will be:

- e. ☒ N/A. Same as above or no Employer matching contributions.
- f. ☐ used to reduce the Employer matching contribution.
- g. ☐ used to reduce any Employer contribution.
- h. ☐ other: _____ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

30. **ALLOCATION OF EARNINGS (Plan Section 4.3(c))**

Allocation of earnings with respect to amounts which are not subject to Participant investment direction and which are contributed to the Plan after the previous Valuation Date will be determined:

- a. ☒ N/A. (all assets in the Plan are subject to Participant investment direction)
- b. ☐ by using a weighted average based on the amount of time that has passed between the date a contribution or distribution is made and the prior Valuation Date
- c. ☐ by treating one-half of all such contributions as being a part of the Participant's nonsegregated Account balance as of the previous Valuation Date
- d. ☐ by using the method specified in Plan Section 4.3(c) (balance forward method)
- e. ☐ other: _____ (must be a definite predetermined formula)

31. **MANDATORY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8) (skip if mandatory Employee contributions NOT selected at Question 11.d.)**

- a. ☒ An Eligible Employee must contribute to the Plan 8 % (not to exceed 25%) of Compensation.
- b. ☐ An Eligible Employee must, prior to his or her first Entry Date, make a one-time irrevocable election to contribute to the Plan from _____% (not less than 1%) to _____% (not to exceed 25%) of Compensation.
- c. ☐ Other: _____ (must be definitely determinable)

Employer pick-up contribution. The mandatory Employee contribution is "picked up" by the Employer under Code §414(h)(2) unless elected below.

- d. ☐ The mandatory Employee contribution is not "picked-up" by the Employer.

32. **AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS (Plan Section 4.9) (skip if after-tax voluntary Employee contributions NOT selected at Question 11.e.)**

Matching after-tax voluntary Employee contributions. There are no Employer matching contributions on after-tax voluntary Employee contributions unless elected below.

- a. ☐ After-tax voluntary Employee contributions are considered elective deferrals for purposes of applying any matching contributions under the Plan.

DISTRIBUTIONS

33. **FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)**

Distributions under the Plan may be made in (select all that apply; must select at least one):

- a. ☒ lump-sums
- b. ☒ substantially equal installments
- c. ☐ partial withdrawals, provided the minimum withdrawal is \$ _____ (leave blank if no minimum)

- d. ☐ partial withdrawals or installments are only permitted for Participants or Beneficiaries who must receive required minimum distributions under Code §401(a)(9) except for the following (e.g., partial is not permitted for death benefits; leave blank if no exceptions):
1. ☐ _____
- e. ☐ annuity: _____ (describe the form of annuity or annuities)
- f. ☒ other: partial lump-sum payment of a designated amount, with the balance payable in installments for a period of years; installment payments in specific dollar amounts determined under a tax efficient systematic withdrawal program (must be definitely determinable and not subject to Employer discretion)

NOTE: Regardless of the above, a Participant is not required to request a withdrawal of his or her total Account for an in-service distribution, a hardship distribution, or a distribution from the Participant's Rollover Account.

Cash or property. Distributions may be made in:

- g. ☒ cash only, except for (select all that apply; leave blank if none apply):
1. ☐ insurance Contracts
2. ☐ annuity Contracts
3. ☐ Participant loans
- h. ☐ cash or property, except that the following limitation(s) apply: (leave blank if there are no limitations on property distributions):
1. ☐ _____ (must be definitely determinable and not subject to Employer discretion)

34. **CONDITIONS FOR DISTRIBUTIONS UPON SEVERANCE OF EMPLOYMENT.** Distributions upon severance of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

A. Accounts in excess of \$5,000

- a. ☒ Distributions may be made as soon as administratively feasible following severance of employment.
- b. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- c. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year quarter coincident with or next following severance of employment.
- d. ☐ Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following severance of employment.
- e. ☐ Distributions may be made as soon as administratively feasible after _____ months have elapsed following severance of employment.
- f. ☐ No distributions may be made until a Participant has reached Early or Normal Retirement Date.
- g. ☐ Other: _____ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

B. Accounts of \$5,000 or less

- h. ☒ Same as above
- i. ☐ Distributions may be made as soon as administratively feasible following severance of employment.
- j. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- k. ☐ Other: _____ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

C. Timing after initial distributable event. If a distribution is not made in accordance with the above provisions upon the occurrence of the distributable event, then a Participant may elect a subsequent distribution at any time after the time the amount was first distributable (assuming the amount is still distributable), unless otherwise selected below (may not be selected with 34.f. and 34.h.):

- l. ☐ Other: _____ (e.g., a subsequent distribution request may only be made in accordance with l. above (i.e., the last day of another Plan Year); must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

D. Participant consent (i.e., involuntary cash-outs). Should Vested Account balances less than a certain dollar threshold be automatically distributed without Participant consent (mandatory distributions)?

NOTE: The Plan provides that distributions of amounts of \$5,000 or less are only paid as lump-sums.

- m. ☐ No, Participant consent is required for all distributions.
- n. ☒ Yes, Participant consent is required only if the distribution is over:
1. ☐ \$5,000
2. ☒ \$1,000
3. ☐ \$_____ (less than \$1,000)

NOTE: If 2. or 3. is selected, rollovers will be included in determining the threshold for Participant consent.

Automatic IRA rollover. With respect to mandatory distributions of amounts that are \$1,000 or less, if a Participant makes no election, the amount will be distributed as a lump-sum unless selected below.

4. ☐ If a Participant makes no election, then the amount will be automatically rolled over to an IRA provided the amount is at least \$_____ (e.g., \$200).

- E. **Rollovers in determination of \$5,000 threshold.** Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be **included** in determining the \$5,000 threshold for timing of distributions, form of distributions, or consent rules.
- o. ☐ Exclude rollovers (rollover contributions will be **excluded** in determining the \$5,000 threshold)

NOTE: Regardless of the above election, if the Participant consent threshold is \$1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

35. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))

Distributions upon the death of a Participant prior to the "required beginning date" will:

- a. ☒ be made pursuant to the election of the Participant or "designated Beneficiary"
- b. ☐ begin within 1 year of death for a "designated Beneficiary" and be payable over the life (or over a period not exceeding the "life expectancy") of such Beneficiary, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2
- c. ☐ be made within 5 (or if lesser _____) years of death for all Beneficiaries
- d. ☐ be made within 5 (or if lesser _____) years of death for all Beneficiaries, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the "life expectancy") of such "surviving Spouse"

NOTE: The elections above must be coordinated with the Form of distributions (e.g., if the Plan only permits lump-sum distributions, then options a., b. and d. would not be applicable).

36. OTHER PERMITTED DISTRIBUTIONS (select all that apply; leave blank if none apply)

A. IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)

In-service distributions will NOT be allowed (except as otherwise permitted under the Plan without regard to this provision) unless selected below (if applicable, answer a. - e.; leave blank if not applicable):

- a. ☐ In-service distributions may be made to a Participant who has not separated from service provided the following has been satisfied:
1. ☐ Age. The Participant has reached:
 - a. ☐ Normal Retirement Age
 - b. ☐ age 62
 - c. ☐ age _____(may not be earlier than age 62)

Special effective date (may be left blank if same as Plan or Restatement Effective Date)

- d. ☐ _____ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than the first day of the Plan Year beginning in 2007)

Account restrictions. In-service distributions are permitted from the following Participant Accounts:

- b. ☐ all Accounts
- c. ☐ only from the following Accounts (select one or more):
1. ☐ Account attributable to Employer matching contributions
 2. ☐ Account attributable to Employer contributions other than matching contributions
 3. ☐ Rollover Account
 4. ☐ Transfer Account
 5. ☐ Other: _____ (specify Account(s) and conditions in a manner that satisfies the definitely determinable requirement under Regulations §1.401-1(b) and is not subject to Employer discretion)

Limitations. The following limitations apply to in-service distributions:

- d. ☐ N/A (no additional limitations)
- e. ☐ Additional limitations (select one or more):
1. ☐ The minimum amount of a distribution is \$_____.
 2. ☐ No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 3. ☐ Distributions may only be made from Accounts which are fully Vested.
 4. ☐ In-service distributions may be made subject to the following provisions: _____ (must satisfy the definitely determinable requirement under Regulations §1.401-1(b) and not be subject to Employer discretion).

37. HEART ACT PROVISIONS (Plan Section 6.17)

Continued benefit accruals.

- a. ☒ Continued benefit accruals will NOT apply
- b. ☐ Continued benefit accruals will apply

Special effective date. If this is a PPA restatement and the provision applied other than as of the first day of the 2007 Plan Year, then enter the date such provision was first effective: (leave blank if not applicable)

c. ☐ _____ (may not be earlier than the first day of the 2007 Plan Year)

Distributions for deemed severance of employment

d. ☒ The Plan does NOT permit distributions for deemed severance of employment

e. ☐ The Plan permits distributions for deemed severance of employment

Special effective date (may be left blank if same as Plan or Restatement Effective Date)

1. ☐ _____ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than January 1, 2007)

MISCELLANEOUS

38. LOANS TO PARTICIPANTS (Plan Section 7.6)

a. ☐ New loans are NOT permitted.

b. ☒ New loans are permitted.

NOTE: Regardless of whether new loans are permitted, if the Plan permits rollovers, then the Administrator may, in a uniform manner, accept rollovers of loans into this Plan.

39. ROLLOVERS (Plan Section 4.6) (skip if rollover contributions are NOT selected at 11.f.)

Eligibility. Rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply; leave blank if not applicable):

a. ☐ Any Eligible Employee, even prior to meeting eligibility conditions to be a Participant

b. ☐ Participants who are Former Employees

Distributions. When may distributions be made from a Participant's Rollover Account?

c. ☒ At any time

d. ☐ Only when the Participant is otherwise entitled to a distribution under the Plan

PPA TRANSITION RULES

The following questions only apply if this is a PPA restatement (i.e., Question 5.b.1. is selected). If this is not a PPA restatement, then this Plan will not be considered an individually designed plan merely because the following questions are deleted from the Adoption Agreement.

NOTE: The following provisions are designed to be left unanswered if the selections do not apply to the Plan.

40. WRERA - RMD WAIVERS FOR 2009 (Plan Section 6.8(f))

Suspension/continuation of RMDs. Unless otherwise elected below, required minimum distributions (RMDs) for 2009 were suspended unless a Participant or Beneficiary elected to receive such distributions:

a. ☐ RMDs for 2009 were suspended for any Participant or Beneficiary who was scheduled to receive his/her first RMD for 2009 or who did not make a continuing election prior to 2009 to receive his/her RMD (unless the Participant or Beneficiary made an election to receive such distribution). RMDs for 2009 were continued for any Participant or Beneficiary who had made a continuing election to receive an RMD prior to 2009 (unless the Participant or Beneficiary made an election to suspend such distribution).

b. ☐ RMDs continued unless otherwise elected by a Participant or Beneficiary.

c. ☐ RMDs continued in accordance with the terms of the Plan (i.e., no election available to Participants or Beneficiaries).

d. ☐ Other: _____

Direct rollovers. The Plan also treated the following as "eligible rollover distributions" in 2009 (If no election is made, then a "direct rollover" was only offered for "2009 RMDs"):

e. ☐ "2009 RMDs" and "Extended 2009 RMDs."

f. ☐ "2009 RMDs" but only if paid with an additional amount that is an "eligible rollover distribution" without regard to Code §401(a)(9)(H).

41. NON-SPOUSAL ROLLOVERS (Plan Section 6.14(d)). Non-spousal rollovers are permitted effective for distributions after December 31, 2006 unless an alternative effective date is selected at a. below:

a. ☐ Non-spousal rollovers are allowed effective _____ (may not be earlier than January 1, 2007 and not later than January 1, 2010; the Plan already provides for non-spousal rollovers effective as of January 1, 2010)

Governmental Money Purchase Plan

The adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Code §401 only to the extent provided in Rev. Proc. 2011-49 or subsequent guidance.

The Employer may not rely on the advisory letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the advisory letter issued with respect to the Plan and in Rev. Proc. 2011-49 or subsequent guidance. In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

This Adoption Agreement may be used only in conjunction with the Volume Submitter basic Plan document #09. This Adoption Agreement and the basic Plan document will together be known as FIS Business Systems LLC Governmental Volume Submitter Money Purchase Plan #09-002.

The adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

FIS Business Systems LLC will notify the Employer of any amendments made to the Plan or of the discontinuance or abandonment of the Plan. Furthermore, in order to be eligible to receive such notification, the Employer agrees to notify FIS Business Systems LLC of any change in address. In addition, this Plan is provided to the Employer either in connection with investment in a product or pursuant to a contract or other arrangement for products and/or services. Upon cessation of such investment in a product or cessation of such contract or arrangement, as applicable, the Employer is no longer considered to be an adopter of this Plan and FIS Business Systems LLC no longer has any obligations to the Employer that relate to the adoption of this Plan.

With regard to any questions regarding the provisions of the Plan, adoption of the Plan, or the effect of an advisory letter from the IRS, call or write (this information must be completed by the sponsor of this Plan or its designated representative):

Name: Rachel Morris, City Attorney

Address: 8101 Ralston Road

Arvada Colorado 80001-8101

Telephone: 720-898-7193

The Employer and Trustee (or Insurer) hereby cause this Plan to be executed on the date(s) specified below:

EMPLOYER: City of Arvada, Colorado

By: _____ DATE SIGNED _____

TRUSTEE (OR INSURER):

☒ The signature of the Trustee or Insurer appears on a separate agreement or Contract,

OR (add additional Trustee signature lines as necessary)

TRUSTEE OR INSURER

DATE SIGNED

**APPENDIX A
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS**

A. Special effective dates (leave blank if not applicable):

- a. ☐ **Special effective date(s):** _____. For periods prior to the specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law.

B. Other permitted elections (the following elections are optional):

- a. ☐ **No other permitted elections**

The following elections apply (select one or more):

- b. ☐ **Deemed 125 compensation** (Plan Section 1.23). Deemed 125 compensation will be included in Compensation and 415 Compensation.
- c. ☐ **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions)** (Plan Section 3.5(d)). The "rule of parity" provisions in Plan Section 3.5(d) will apply for (select one or both):
 1. ☐ eligibility purposes
 2. ☐ vesting purposes
- d. ☐ **Beneficiary if no beneficiary elected by Participant** (Plan Section 6.2(e)). In the event no valid designation of Beneficiary exists, then in lieu of the order set forth in Plan Section 6.2(e), the following order of priority will be used: _____ (specify an order of beneficiaries; e.g., children per stirpes, parents, and then step-children).
- e. ☐ **Common, collective or pooled trust funds** (Plan Sections 7.2(c)(5) and/or 7.3(b)(6)). The name(s) of the common, collective or pooled trust funds available under the Plan is (are): _____.
- f. ☐ **Limitation Year** (Plan Section 1.29). The Limitation Year for Code §415 purposes will be _____ (must be a consecutive twelve month period) instead of the "determination period" for Compensation.
- g. ☐ **415 Limits when 2 defined contribution plans are maintained** (Plan Section 4.4). If any Participant is covered under another qualified defined contribution plan maintained by the Employer or an Affiliated Employer, or if the Employer or an Affiliated Employer maintains a welfare benefit fund, as defined in Code §419(e), or an individual medical account, as defined in Code §415(l)(2), under which amounts are treated as "annual additions" with respect to any Participant in this Plan, then the provisions of Plan Section 4.4(b) will apply unless otherwise specified below:
 1. ☐ Specify, in a manner that precludes Employer discretion, the method under which the plans will limit total "annual additions" to the "maximum permissible amount" and will properly reduce any "excess amounts": _____.
- h. ☐ **Recognition of Service with other employers** (Plan Sections 1.39 and 1.54). Service with the following employers (in addition to those specified at Question 15) will be recognized as follows (select one or more):

	Eligibility	Vesting	Contribution Allocation
1. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
2. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
3. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
4. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
5. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
6. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐

Limitations

7. ☐ The following provisions or limitations apply with respect to the recognition of prior service: _____
 (e.g., credit service with X only on/following 1/1/13)

- i. ☐ **Other vesting provisions.** The following vesting provisions apply to the Plan (select one or more):
1. ☐ **Special vesting provisions.** The following special provisions apply to the vesting provisions of the Plan: _____ (must be definitely determinable and satisfy the parameters set forth at Question 17)
 2. ☐ **Pre-amendment vesting schedule.** (Plan Section 6.4(b)). If the vesting schedule has been amended and a different vesting schedule other than the schedule at Question 17 applies to any Participants, then the following provisions apply (must select one of a. – d. AND complete e.):

Applicable Participants. The vesting schedules in Question 17 only apply to:

- a. ☐ Participants who are Employees as of _____ (enter date).
- b. ☐ Participants in the Plan who have an Hour of Service on or after _____ (enter date).
- c. ☐ Participants (even if not an Employee) in the Plan on or after _____ (enter date).
- d. ☐ Other: _____ (e.g., Participants in division A)

Vesting schedule

- e. The schedule that applies to Participants not subject to the vesting schedule in Question 17 is:

Years (or Periods) of Service	Percentage
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

- j. ☐ **Minimum distribution transitional rules** (Plan Section 6.8(e)(5))

NOTE: This Section does not apply to (1) a new Plan, (2) an amendment or restatement of an existing Plan that never contained the provisions of Code §401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA), or (3) a Plan where the transition rules below do not affect any current Participants.

The "required beginning date" for a Participant is:

1. ☐ April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (pre-SBJPA rules continue to apply)
2. ☐ April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both; leave blank if both applied effective as of January 1, 1996):
 - a. ☐ A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of _____ (may not be earlier than January 1, 1996) was allowed to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the recommencement of distributions, if the Plan permits annuities as a form of distribution then the following apply:
 1. ☐ N/A (annuity distributions are not permitted)
 2. ☐ Upon the recommencement of distributions, the original Annuity Starting Date will be retained.
 3. ☐ Upon the recommencement of distributions, a new Annuity Starting Date is created.
 - b. ☐ A Participant who had not begun receiving required minimum distributions as of _____ (may not be earlier than January 1, 1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) applies to all such Participants unless selected below:
 1. ☐ The in-service distribution option was eliminated with respect to Participants who attained age 70 1/2 in or after the calendar year that began after the later of (1) December 31, 1998, or (2) the adoption date of the restatement to bring the Plan into compliance with the SBJPA.

- k. ☐ **Other spousal provisions** (select one or more)

1. ☐ **Definition of Spouse.** The term Spouse includes a spouse under federal law as well as the following: _____
2. ☐ **Automatic revocation of spousal designation** (Plan Section 6.2(f)). The automatic revocation of a spousal Beneficiary designation in the case of divorce does not apply.
3. ☐ **Timing of QDRO payment.** A distribution to an Alternate Payee shall not be permitted prior to the time a Participant would be entitled to a distribution.

- l. ☐ **Applicable law.** Instead of using the applicable laws set forth in Plan Section 9.4(a), the Plan will be governed by the laws of: _____

- m. ☐ **Total and Permanent Disability.** Instead of the definition at Plan Section 1.49, Total and Permanent Disability means: _____ (must be definitely determinable).

Governmental Money Purchase Plan

- n. ☐ **Permissible Trust (or Custodian) modifications.** The Employer makes the following modifications to the Trust (or Custodial) provisions as permitted under Rev. Proc. 2011-49 (or subsequent IRS guidance) (select one or more of 1. - 3. below):

NOTE: Any elections below must not: (i) conflict with any Plan provision unrelated to the Trust or Trustee; or (ii) cause the Plan to violate Code §401(a). In addition, this may not be used to substitute all of the Trust provisions in the Plan.

1. ☐ **Investments.** The Employer amends the Trust provisions relating to Trust investments as follows:

2. ☐ **Duties.** The Employer amends the Trust provisions relating to Trustee (or Custodian) duties as follows:

3. ☐ **Other administrative provisions.** The Employer amends the other administrative provisions of the Trust as follows:

ADMINISTRATIVE PROCEDURES

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this Section without a formal Plan amendment. In addition, modifications to these procedures will not affect an Employer's reliance on the Plan.

A. **Loan Limitations.** (complete only if loans to Participants are permitted; leave blank if none apply)

- a. ☒ Limitations (select one or more):
 1. ☒ Loans will be treated as Participant directed investments.
 2. ☐ Loans will only be made for hardship or financial necessity as specified below (select i. or ii.)
 - a. ☐ hardship reasons specified in Plan Section 6.12
 - b. ☐ financial necessity (as defined in the loan program).
 3. ☐ The minimum loan will be \$_____.
 4. ☐ A Participant may only have _____ (e.g., one (1)) loan(s) outstanding at any time.
 5. ☐ All outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution (including a hardship distribution), if applicable).
 6. ☐ **Account restrictions.** Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
 - a. ☐ Account(s) attributable to Employer matching contributions
 - b. ☐ Account attributable to Employer contributions other than matching contributions
 - c. ☐ Rollover Account
 - d. ☐ Transfer Account
 - e. ☐ Other: _____
- AND**, if loans are restricted to certain accounts, the limitations of Code §72(p) will be applied:
- f. ☐ by determining the limits by only considering the restricted accounts.
 - g. ☐ by determining the limits taking into account a Participant's entire interest in the Plan.

Additional Loan Provisions (select all that apply; leave blank if none apply)

- b. ☒ **Loan payments.** Loans are repaid by (if left blank, then payroll deduction applies unless Participant is not subject to payroll (e.g., partner who only has a draw)):
 1. ☒ payroll deduction
 2. ☐ ACH (Automated Clearing House)
 3. ☒ check
 - a. ☐ Only for prepayment
- c. ☒ **Interest rate.** Loans will be granted at the following interest rate (if left blank, then 3. below applies):
 1. ☐ _____ percentage points over the prime interest rate
 2. ☐ _____%
 3. ☐ the Administrator establishes the rate at the time the loan is made
- d. ☐ **Refinancing.** Loan refinancing is allowed.

B. **Life Insurance.** (Plan Section 7.5)

- a. ☒ Life insurance may not be purchased.
- b. ☐ Life insurance may be purchased...
 1. ☐ at the option of the Administrator
 2. ☐ at the option of the Participant

Limitations

3. ☐ N/A (no limitations)
4. ☐ The purchase of initial or additional life insurance will be subject to the following limitations (select one or more):
 - a. ☐ Each initial Contract will have a minimum face amount of \$_____.
 - b. ☐ Each additional Contract will have a minimum face amount of \$_____.
 - c. ☐ The Participant has completed _____ Years (or Periods) of Service.
 - d. ☐ The Participant has completed _____ Years (or Periods) of Service while a Participant in the Plan.
 - e. ☐ The Participant is under age _____ on the Contract issue date.
 - f. ☐ The maximum amount of all Contracts on behalf of a Participant may not exceed \$_____.
 - g. ☐ The maximum face amount of any life insurance Contract will be \$_____.

C. **Plan Expenses.** Will the Plan assess against an individual Participant's Account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan service?

- a. ☒ No
- b. ☐ Yes

D. **Directed investments**

- a. ☐ Participant directed investments are NOT permitted.
- b. ☒ Participant directed investments are permitted from the following Participant Accounts:
 - 1. ☒ all Accounts
 - 2. ☐ only from the following Accounts (select one or more):
 - a. ☐ Account attributable to Employer contributions
 - b. ☐ Rollover Account
 - c. ☐ Transfer Account
 - d. ☐ Other: _____ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

E. **Rollover Limitations.** Will the Plan accept rollover contributions and/or direct rollovers from the sources specified below?

- a. ☐ No, Administrator determines in operation which sources will be accepted.
- b. ☒ Yes

Rollover sources. Indicate the sources of rollovers that will be accepted (select one or more)

- 1. ☒ **Direct Rollovers.** The Plan will accept a direct rollover of an eligible rollover distribution from (select one or more):
 - a. ☒ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions
 - b. ☒ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions
 - c. ☒ a plan described in Code §403(a) (an annuity plan), excluding after-tax employee contributions
 - d. ☒ a plan described in Code §403(a) (an annuity plan), including after-tax employee contributions
 - e. ☒ a plan described in Code §403(b) (a tax-sheltered annuity), excluding after-tax employee contributions
 - f. ☒ a plan described in Code §403(b) (a tax-sheltered annuity), including after-tax employee contributions
 - g. ☒ a plan described in Code §457(b) (eligible deferred compensation plan)

Direct Rollovers of Participant Loan. The Plan will NOT accept a direct rollover of a Participant loan from another plan unless selected below (leave blank if default applies)

- h. ☒ The Plan will accept a direct rollover of a Participant loan
- i. ☐ The Plan will only accept a direct rollover of a Participant loan only in the following situation(s): _____ (e.g., only from Participants who were employees of an acquired organization).

- 2. ☒ **Participant Rollover Contributions from Other Plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution (select one or more):
 - a. ☒ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan)
 - b. ☒ a plan described in Code §403(a) (an annuity plan)
 - c. ☒ a plan described in Code §403(b) (a tax-sheltered annuity)
 - d. ☒ a governmental plan described in Code §457(b) (eligible deferred compensation plan)
- 3. ☒ **Participant Rollover Contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.

FIS BUSINESS SYSTEMS LLC VOLUME SUBMITTER MODIFICATIONS

CITY OF ARVADA CITY MANAGER RETIREMENT PLAN

The enclosed Plan is being submitted for expedited review as a Volume Submitter Plan.

No modifications from the approved specimen plan have been made to this Plan.

CITY OF ARVADA CITY MANAGER RETIREMENT PLAN

PARTICIPANT LOAN PROGRAM

City of Arvada City Manager Retirement Plan permits loans to be made to Participants and their beneficiaries. However, before any loan is made, the Plan requires that a written loan program be established which sets forth the rules and guidelines for making Participant loans. This document shall serve as the required written loan program. In addition, the Administrator may use this document to serve as, or supplement, any required notice of the loan program to Participants and their beneficiaries. All references to Participants in this loan program shall only include Participants and their Beneficiaries or any alternate payee with respect to the Plan.

The Administrator is authorized to administer the Participant Loan Program. A Participant must apply to the Administrator for a loan in the manner set forth by the Administrator.

1. Loan application. Any Participant may apply for a loan from the Plan. A Participant must apply for each loan with an application which specifies the amount of the loan desired, the requested duration for the loan and the source of security for the loan.

All loan applications will be considered by the Administrator within a reasonable time after the Participant applies for the loan. The Participant will be required to provide any supporting information deemed necessary by the Administrator.

2. Loan limitations and rules. The Administrator will not approve any loan to a Participant in an amount which exceeds 50% of his or her nonforfeitable account balance. The maximum aggregate dollar amount of loans outstanding to any Participant may not exceed \$50,000, reduced by the excess of the Participant's highest outstanding Participant loan balance during the 12-month period ending on the date of the loan over the Participant's current outstanding Participant loan balance on the date of the loan. With regard to any loan made pursuant to this program, the following rule(s) and limitation(s) shall apply, in addition to such other requirements set forth in the Plan:

a. All loans made pursuant to this program will be considered a directed investment from the account(s) of the Participant maintained under the Plan. As such, all payments of principal and interest made by the Participant will be credited only to the account(s) of such Participant. The Plan also will charge that portion of the Participant's account balances with expenses directly related to the origination, maintenance and collection of the note.

b. Loan refinancing is not permitted

3. Account restrictions. Loans may be made from any of the Participant's accounts in the Plan.

4. Evidence and terms of loan. The Administrator will document every loan in the form of a promissory note signed by the Participant for the face amount of the loan, together with a commercially reasonable rate of interest.

Any loan granted or renewed under this program will bear a commercially reasonable rate of interest established by the Administrator. In determining such rate of interest, the Plan will require a rate of return commensurate with the prevailing interest rate charged on similar loans under like circumstances by persons in the business of lending money. Such prevailing interest rate standard will permit the Administrator to consider factors pertaining to the opportunity for gain and risk of loss that a professional lender would consider on a similar arms length transaction, such as the creditworthiness of the Participant and the security given for the loan. Therefore, in establishing the rate of interest, the Administrator will conduct a reasonable and prudent inquiry with professional lenders in the same geographic locale where the Participant and Employer reside to determine such prevailing interest rate for loans under like circumstances. The interest rate will be fixed for the duration of the loan.

The loan must provide at least quarterly payments under a level amortization schedule. Generally, the Administrator will require that the Participant repay the loan by agreeing to payroll deduction while employed by the Employer, or payment by check thereafter.

The Administrator will fix the term for repayment of any loan, however, in no instance may the term of repayment be greater than five years, unless the loan qualifies as a home loan. A "home loan" is a loan used to acquire a dwelling unit which, within a reasonable time, the Participant will use as a principal residence.

A loan, if not otherwise due and payable, is due and payable on termination of the Plan, notwithstanding any contrary provision in the promissory note. Nothing in this loan policy restricts the Employer's right to terminate the Plan at any time.

Participants should note the law treats the amount of any loan (other than a "home loan") not repaid five years after the date of the loan as a taxable distribution on the last day of the five year period or, if sooner, at the time the loan is in default. If a Participant extends a non-home loan having a five year or less repayment term beyond five years, the balance of the loan at the time of the extension is a taxable distribution to the Participant.

5. Security for loan. The Plan will require that adequate security be provided by the Participant before a loan is granted. For this purpose, the Plan will consider a Participant's interest under the Plan to be adequate security. However, in no event will more than 50% of a Participant's vested interest in the Plan (determined immediately after origination of the loan) be used as security for the loan. Generally, it will be the policy of the Plan not to make loans which require security other than the Participant's vested interest in the Plan. However, if additional security is necessary to adequately secure the loan, then the Administrator will require that such security be provided before the loan will be granted.

6. Form of pledge. The pledge and assignment of a Participant's account balances will be in the form prescribed by the Administrator.

7. Military service. If a Participant separates from service (or takes a leave of absence) from the Employer because of service in the military and does not receive a distribution of his or her account balances, the Plan shall suspend loan repayments until the Participant's completion of military service. The Employer will provide the Participant with a written explanation of the effect of the Participant's military service upon his or her Plan loan. While the Participant is on active duty in the United States military, the interest rate on the loan shall not exceed six percent (6%), compounded annually.

8. Leave of absence/suspension of payment. The Administrator will suspend loan repayments for a period not exceeding one year which occurs during an approved leave of absence, either without pay from the Employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. The Administrator will provide the Participant with a written explanation of the effect of the leave of absence upon his or her Plan loan.

9. Payments after leave of absence. When payments resume following a payment suspension in connection with a leave of absence authorized in 7 or 8 above, the Participant shall select one of the following methods to repay the loan, plus accumulated interest:

- a. The Participant shall increase the amount of the required installments to an amount sufficient to amortize the remaining balance of the loan, plus accrued interest, over the remaining term of the loan.
- b. The Participant shall pay a balloon payment of the remaining unpaid principal and interest, at the conclusion of the term of the loan as determined in the promissory note.
- c. The Participant may extend the maturity of the loan and reamortize the payments over the remaining term of the loan. In no event shall the amount of the adjusted installment payment be less than the amount of the installment payment provided under the promissory note. In the case of a leave of absence described in item 8 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above. In the

case of a leave of absence described in item 7 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above, augmented by the time the Participant was actually in United States military service.

10. Default. The Administrator will treat a loan in default if:

- a. any scheduled payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the Participant missed the scheduled payment; or
- b. the Participant makes or furnishes any false representation or statement to the Plan.

The Participant will have the opportunity to repay the loan, resume current status of the loan by paying any missed payment plus interest or, if distribution is available under the Plan, request distribution of the note. If the loan remains in default, the Administrator will offset the Participant's vested account balances by the outstanding balance of the loan to the extent permitted by law. The Administrator will treat the note as repaid to the extent of any permissible offset. Pending final disposition of the note, the Participant remains obligated for any unpaid principal and accrued interest.

* * * * *

ADOPTION OF LOAN PROGRAM

The Administrator of City of Arvada City Manager Retirement Plan adopts this Loan Program on the date specified below.

Date: _____

By: _____
Administrator

CITY OF ARVADA CITY MANAGER RETIREMENT PLAN

APPLICATION FOR PARTICIPANT LOAN

Participant Information

Name _____

Address _____

Last 4 digits of Social Security Number _____

I hereby apply for a loan from the Plan. In support of this loan application, I attach such information which the Administrator may require to determine whether I qualify for the loan. I also authorize the Administrator to secure any credit reports to determine my creditworthiness and ability to repay the loan.

1. Loan amount. The amount of the loan is \$ _____ for a period of _____ months (if longer than 60 months, the purpose of the loan must be to acquire your principal residence).

2. Marital status. I am: (check one) ☐ married ☐ not married

3. Representations. I understand the Administrator will make any loan in reliance on the statements on this APPLICATION FOR PARTICIPANT LOAN which I certify are correct and complete. If any statement proves false, then the Plan may declare my indebtedness immediately due.

4. Acknowledgement/Authorization

In applying for this loan, I acknowledge that I have read the section of the Summary Plan Description governing Plan loans and have been furnished with a copy of the Participant Loan Program established by the Plan.

I hereby authorize the Administrator to verify the statements in this application and to obtain any information the Plan or its authorized representative may require in connection with this application.

Date of execution: _____

Signature of Administrator

Signature of Participant

CITY OF ARVADA CITY MANAGER RETIREMENT PLAN

PROMISSORY NOTE
(Fixed Interest Rate)

Participant (BORROWER): _____

1. Payment Schedule. Your Payment Schedule will be:

Number of Months	Amount of Payments	When Payments are Due
_____	_____	_____

Prepayment: If you pay your loan off early, you will not have to pay a penalty.

Security Interest: You are giving a security interest in your account in the plan.

See below for any additional information about non-payment and default.

2. Promissory Note

For value received, I, the undersigned BORROWER, promises to pay City of Arvada City Manager Retirement Plan, the sum of _____ dollars \$_____, together with interest on the unpaid balance at the rate of _____% per annum, payable in _____ equal monthly payments of \$_____ each, including interest. The first payment is due on _____, with like payments due on the same date of each month thereafter until the BORROWER has made all payments under this Note.

The BORROWER will make all payments by agreeing to payroll deduction or payment by check or by making payments at such other place as the HOLDER designates. If not sooner paid, this Note in any event is due and payable _____.

At the option of the Administrator until payment in full or maturity, upon default, all monies payable under this Note are due and immediately payable. The Note is in default if any payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the BORROWER missed the scheduled payment. Also, all monies payable under this Note are due and immediately payable upon termination of the Plan.

The BORROWER may prepay the loan without penalty. Each payment first applies to the payment of accrued interest and the balance of each payment applies to the payment of principal.

The BORROWER secures this loan by a pledge and irrevocable assignment of his/her vested interest in City of Arvada City Manager Retirement Plan.

If the BORROWER does not pay this Note when due, the BORROWER promises to pay all costs of collection and reasonable attorneys' fees incurred by the HOLDER of this Note on account of such collection, whether or not the HOLDER files suit on this Note.

3. Acknowledgement/Authorization

Date of execution: _____

 Signature of Administrator

 Witness

 Signature of Participant (BORROWER)

CITY OF ARVADA CITY MANAGER RETIREMENT PLAN

IRREVOCABLE PLEDGE AND ASSIGNMENT

Participant (BORROWER): _____

1. Pledge. In consideration of a loan to me of \$ _____, from City of Arvada City Manager Retirement Plan (the "Plan"), as evidenced by a copy of the Promissory Note attached to this pledge, I hereby irrevocably pledge and assign to the Plan, or to its successor or successors, 50% of my vested account balances, at any time existing under the Plan, but not less than 50% of my vested account balances determined on the date of the loan which is subject to this pledge, to the extent necessary to satisfy such loan, any unpaid interest on such loan, all reasonable attorneys' fees necessary for collection of this obligation and all costs of collection. Failure by me to repay this loan when due or to pay any installment or interest when due will authorize the duly authorized representatives of the Plan to foreclose on this security or to bring a lawsuit to collect the outstanding indebtedness and interest on the indebtedness.

2. Acknowledgement/Authorization. This Irrevocable Pledge and Assignment shall bind my heirs, personal representatives or other legal representatives.

Date of execution: _____

Signature of Administrator

Witness

Signature of Participant (BORROWER)

**ADOPTION AGREEMENT FOR
GOVERNMENTAL VOLUME SUBMITTER MONEY PURCHASE PLAN**

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER, TIN AND FISCAL YEAR

Name: City of Arvada, Colorado

Address: 8101 Ralston Road

Street

Arvada Colorado 80001-8101

City

State

Zip

Telephone: 720-898-7565

Taxpayer Identification Number (TIN): 84-6000633

Employer's Fiscal Year ends: December 31

2. TYPE OF GOVERNMENTAL ENTITY. This Plan may only be adopted a state or local governmental entity, or agency thereof, including an Indian tribal government and may not be adopted by any other entity, including a federal government and any agency or instrumentality thereof.

- a. ☐ State government or state agency
- b. ☐ County or county agency
- c. ☒ Municipality or municipal agency
- d. ☐ Indian tribal government (see Note below)
- e. ☐ Other: _____

NOTE: An Indian tribal government may only adopt this Plan if such entity is defined under Code §7701(a)(40), is a subdivision of an Indian tribal government as determined in accordance with Code §7871(d), or is an agency or instrumentality of either, and all of the Participants under this Plan employed by such entity substantially perform services as an Employee in essential governmental functions and not in the performance of commercial activities (whether or not an essential government function).

3. PARTICIPATING EMPLOYERS (Plan Section 1.38). Will any other Employers adopt this Plan as Participating Employers?

- a. ☒ No
- b. ☐ Yes

PLAN INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9. through 10.)

4. PLAN NAME:

City of Arvada City Attorney Retirement Plan

5. PLAN STATUS

- a. ☐ New Plan
- b. ☒ Amendment and restatement of existing Plan

PPA RESTATEMENT (leave blank if not applicable)

- 1. ☒ This is an amendment and restatement to bring a plan into compliance with the Pension Protection Act of 2006 ("PPA") and other legislative and regulatory changes (i.e., the 6-year pre-approved plan restatement).

6. EFFECTIVE DATE (Plan Section 1.16) (complete a. if new plan; complete a. AND b. if an amendment and restatement)

Initial Effective Date of Plan

- a. June 1, 2001 (enter month day, year) (hereinafter called the "Effective Date" unless 6.b. is entered below)

Restatement Effective Date. If this is an amendment and restatement, the effective date of the restatement (hereinafter called the "Effective Date") is:

- b. January 1, 2022 (enter month day, year; may enter a restatement date that is the first day of the current Plan Year. Plan contains appropriate retroactive effective dates with respect to provisions for appropriate laws.)

Governmental Money Purchase Plan

7. PLAN YEAR (Plan Section 1.42) means, except as otherwise provided in d. below:
- a. ☒ the calendar year
- b. ☐ the twelve-month period ending on _____ (e.g., June 30th)

SHORT PLAN YEAR (Plan Section 1.46). This is a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 14):

- c. ☒ N/A
- d. ☐ beginning on _____ (enter month day, year; e.g., July 1, 2013)
and ending on _____ (enter month day, year).

8. VALUATION DATE (Plan Section 1.52) means:
- a. ☒ every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation)
- b. ☐ the last day of each Plan Year
- c. ☐ the last day of each Plan Year quarter
- d. ☐ other (specify day or days): _____ (must be at least once each Plan Year)

NOTE: The Plan always permits interim valuations.

9. TRUSTEE(S) OR INSURER(S) (Plan Sections 1.25 and 1.50):

- a. ☐ **Insurer.** This Plan is funded exclusively with Contracts and the name of the Insurer(s) is:
 (1) _____ (2) _____ (if more than 2,
 add names to signature page).

- b. [] **Individual Trustee(s).** Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (add additional Trustees as necessary)

Name(s)

Title(s)

Address and telephone number

1. ☐ Use Employer address and telephone number
2. ☐ Use address and telephone number below:

Address:

Street

City

State

Zip

Telephone:

- c. ☒ **Corporate Trustee(s)** (add additional Trustees as necessary)

Name:

Fidelity Management Trust Company

Address:

245 Summer Street

Street

Boston

City

Massachusetts

State

02210

Zip

Telephone:

Directed/Discretionary Trustee. Unless otherwise specified below, if there is a corporate Trustee, it will serve as a Directed (nondiscretionary) Trustee (Plan Section 1.21) and if there is an individual Trustee, he or she will serve as a Discretionary Trustee (Plan Section 1.22) over all Plan assets (select all that apply; leave blank if defaults apply)

- d. [X] Directed Trustee exceptions (leave blank if no exceptions):

Directed Trustee over specified Plan assets (select all that apply; leave blank if none apply)

1. ☐ The corporate Trustee will serve as Directed Trustee over the following assets: _____
2. ☐ The individual Trustee(s) will serve as Directed Trustee over the following assets: _____

Individual Trustee will serve as Directed Trustee (may not be selected with d.1. or d.2.)

3. [] over all Plan assets

- e. ☐ Discretionary Trustee exceptions (leave blank if no exceptions):
 Discretionary Trustee over specified Plan assets (select all that apply; leave blank if none apply)
 1. ☐ The individual Trustee(s) will serve as Discretionary Trustee over the following assets: _____
 2. ☐ The corporate Trustee will serve as Discretionary Trustee over the following assets: _____
 Corporate Trustee will serve as Discretionary Trustee (may not be selected with e.1. or e.2.)
 3. ☐ over all Plan assets

Separate trust. Will a separate trust agreement that is approved by the IRS for use with this Plan be used?

- f. ☐ No
 g. ☒ Yes

NOTE: If Yes is selected, an executed copy of the trust agreement between the Trustee and the Employer must be attached to this Plan. The Plan and trust agreement will be read and construed together. The responsibilities, rights and powers of the Trustee will be those specified in the trust agreement.

10. ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER

(If none is named, the Employer will be the Administrator (Plan Section 1.2).)

- a. ☐ Employer (use Employer address and telephone number)
 b. ☒ Other:

Name: City of Arvada Executive Defined Contribution Plan Board of Trustees

Address: 8101 Ralston Road Street
Arvada City Colorado State 8001-8101 Zip
 Telephone: 720-898-7565

11. CONTRIBUTION TYPES

The selections made below must correspond with the selections made under the Contributions and Allocations Section of this Adoption Agreement.

FROZEN PLAN OR CONTRIBUTIONS HAVE BEEN SUSPENDED (Plan Section 4.1(c)) (optional)

- a. ☐ This is a frozen Plan (i.e., all contributions cease) (if this is a temporary suspension, select a.2):
 1. ☐ All contributions ceased as of, or prior to, the effective date of this amendment and restatement and the prior Plan provisions are not reflected in this Adoption Agreement (may enter effective date at 3. below and/or select contributions at b. - f. (optional), skip questions 12-18 and 22-29)
 2. ☐ All contributions ceased or were suspended and the prior Plan provisions are reflected in this Adoption Agreement (must enter effective date at 3. below and select contributions at b. - f.)

Effective date

3. ☐ as of _____ (effective date is optional unless a.2. has been selected above or this is the amendment or restatement to freeze the Plan).

CONTRIBUTIONS

The Plan permits the following contributions (select one or more):

- b. ☒ **Employer contributions other than matching** (Questions 24-25)
 1. ☐ This Plan qualifies as a Social Security Replacement Plan (Question 24.c. must be selected)
 c. ☐ **Employer matching contributions** (Questions 26-28)
 d. ☒ **Mandatory Employee contributions** (Question 31)
 e. ☒ **After-tax voluntary Employee contributions** (Question 32)
 f. ☒ **Rollover contributions** (Question 39)

ELIGIBILITY REQUIREMENTS

12. ELIGIBLE EMPLOYEES (Plan Section 1.17) means all Employees (including Leased Employees) EXCEPT those Employees who are excluded below or elsewhere in the Plan:

- a. ☐ **No excluded Employees.** There are no additional excluded Employees under the Plan (skip to Question 13).
 b. ☒ **Exclusions.** The following Employees are not Eligible Employees for Plan purposes (select one or more):
 1. ☐ Union Employees (as defined in Plan Section 1.17)
 2. ☐ Nonresident aliens (as defined in Plan Section 1.17)
 3. ☐ Leased Employees (Plan Section 1.28)
 4. ☐ Part-time/temporary/seasonal Employees. A part-time, temporary or seasonal Employee is an Employee whose regularly scheduled service is less than _____ Hours of Service in the relevant eligibility computation period (as defined in Plan Section 1.54). However, if any such excluded Employee actually completes a Year of Service, then such Employee will no longer be part of this excluded class.

5. ☒ Other: Only the City Attorney for the City of Arvada, Colorado, is eligible to participate in this Plan. All other employees are excluded from participation in this Plan (must be definitely determinable under Regulations §1.401-1(b). Exclusions may be employment title specific but may not be by individual name nor result in only a finite group of individuals (e.g., excluding anyone hired after 12/31/12.)

13. **CONDITIONS OF ELIGIBILITY (Plan Section 3.1)**

- a. ☒ **No age or service required.** No age or service required for all Contribution Types (skip to Question 14).
b. ☐ **Eligibility.** An Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following (complete c. and d., select e. and f. if applicable):

Eligibility Requirements

c. ☐ **Age Requirement**

1. ☐ No age requirement
2. ☐ Age 20 1/2
3. ☐ Age 21
4. ☐ Age _____ (may not exceed 26)

d. ☐ **Service Requirement**

1. ☐ No service requirement
2. ☐ _____ (not to exceed 60) months of service (elapsed time)
3. ☐ 1 Year of Service
4. ☐ _____ (not to exceed 5) Years of Service
5. ☐ _____ consecutive month period from the Eligible Employee's employment commencement date and during which at least _____ Hours of Service are completed.
6. ☐ _____ consecutive months of employment from the Eligible Employee's employment commencement date.
7. ☐ Other: _____ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must satisfy the Notes below)

NOTE: If c.4. or d.7. is selected, the condition must be an age or service requirement that is definitely determinable and may not exceed age 26 and may not exceed 5 Years of Service.

NOTE: Year of Service means Period of Service if elapsed time method is chosen.

Waiver of conditions. The service and/or age requirements specified above will be waived in accordance with the following (leave blank if there are no waivers of conditions):

- e. ☐ If employed on _____ the following requirements, and the entry date requirement, will be waived. The waiver applies to any Eligible Employee unless 3. selected below. Such Employees will enter the Plan as of such date (select 1. and/or 2. AND 3. if applicable):
1. ☐ service requirement (may let part-time Eligible Employees into the Plan)
2. ☐ age requirement
3. ☐ waiver is for: _____

Amendment or restatement to change eligibility requirements

- f. ☐ This amendment or restatement (or a prior amendment and restatement) modified the eligibility requirements and the prior eligibility conditions continue to apply to the Eligible Employees specified below. If this option is NOT selected, then all Eligible Employees must satisfy the eligibility conditions set forth above.
1. ☐ The eligibility conditions above only apply to Eligible Employees who were not Participants as of the effective date of the modification.
2. ☐ The eligibility conditions above only apply to individuals who were hired on or after the effective date of the modification.

14. **EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)**

An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan as of the:

- a. ☐ date such requirements are met
b. ☐ first day of the month coinciding with or next following the date on which such requirements are met
c. ☐ first day of the Plan Year quarter coinciding with or next following the date on which such requirements are met
d. ☐ earlier of the first day of the Plan Year or the first day of the seventh month of the Plan Year coinciding with or next following the date on which such requirements are met
e. ☐ first day of the Plan Year coinciding with or next following the date on which such requirements are met (Eligibility must be six months of service (or 1 1/2 Years (or Periods) of Service if 100% immediate vesting is selected) or less and age must be 20 1/2 or less.)
f. ☐ first day of the Plan Year in which such requirements are met
g. ☐ first day of the Plan Year in which such requirements are met, if such requirements are met in the first 6 months of the Plan Year, or as of the first day of the next succeeding Plan Year if such requirements are met in the last 6 months of the Plan Year.
h. ☒ other: the day the individual commences employment as City Attorney for the Employer (must be definitely determinable)

SERVICE

15. RECOGNITION OF SERVICE WITH OTHER EMPLOYERS (Plan Sections 1.39 and 1.54)

- a. ☒ No service with other employers is recognized except as otherwise required by law (e.g., the Plan already provides for the recognition of service with Employers who have adopted this Plan as well as service with Affiliated Employers and predecessor Employers who maintained this Plan; skip to Question 16).
- b. ☐ Prior service with the designated employers is recognized as follows (answer c. and select one or more of c.1. - 3.; select d. - f. as applicable) (if more than 3 employers, attach an addendum to the Adoption Agreement or complete option h. under Section B of Appendix A):

Other Employer	Eligibility	Vesting	Contribution Allocation
c. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐
d. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐
e. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐

Limitations

- f. ☐ The following provisions or limitations apply with respect to the recognition of prior service: _____ 1. ☐ 2. ☐ 3. ☐
(e.g., credit service with X only on/following 1/1/13)

NOTE: If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.39 and 1.54 regardless of any selections above.

16. SERVICE CREDITING METHOD (Plan Sections 1.39 and 1.54)

NOTE: If no selections are made in this Section, then the provisions set forth in the definition of Year of Service in Plan Section 1.54 will apply, including the following defaults:

1. A Year of Service means completion of at least 1,000 Hours of Service during the applicable computation period.
 2. Hours of Service (Plan Section 1.24) will be based on actual Hours of Service.
 3. For eligibility purposes, the computation period will be as defined in Plan Section 1.54 (i.e., shift to the Plan Year if the eligibility condition is one (1) Year of Service or less).
 4. For vesting and allocation purposes, the computation period will be the Plan Year.
- a. ☐ **Elapsed time method.** (Period of Service applies instead of Year of Service) Instead of Hours of Service, elapsed time will be used for:
1. ☐ all purposes (skip to Question 17)
 2. ☐ the following purposes (select one or more):
 - a. ☐ eligibility to participate
 - b. ☐ vesting
 - c. ☐ sharing in allocations or contributions
- b. ☐ **Alternative definitions for the Hours of Service method.** Instead of the defaults, the following alternatives will apply for the Hours of Service method (select one or more):
1. ☐ **Eligibility computation period.** Instead of shifting to the Plan Year, the eligibility computation period after the initial eligibility computation period will be based on each anniversary of the date the Employee first completes an Hour of Service
 2. ☐ **Vesting computation period.** Instead of the Plan Year, the vesting computation period will be the date an Employee first performs an Hour of Service and each anniversary thereof.
 3. ☐ **Equivalency method.** Instead of using actual Hours of Service, an equivalency method will be used to determine Hours of Service for:
 - a. ☐ all purposes
 - b. ☐ the following purposes (select one or more):
 1. ☐ eligibility to participate
 2. ☐ vesting
 3. ☐ sharing in allocations or contributions

Such method will apply to:

 - c. ☐ all Employees
 - d. ☐ Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees)
 - e. ☐ other: _____ (e.g., per-diem Employees only)

Hours of Service will be determined on the basis of:

- f. ☐ days worked (10 hours per day)
- g. ☐ weeks worked (45 hours per week)
- h. ☐ semi-monthly payroll periods worked (95 hours per semi-monthly pay period)
- i. ☐ months worked (190 hours per month)
- j. ☐ bi-weekly payroll periods worked (90 hours per bi-weekly pay period)
- k. ☐ other: _____ (e.g., option f. is used for per-diem Employees and option g. is used for on-call Employees).

- 4. ☐ **Number of Hours of Service required.** Instead of 1,000 Hours of Service, Year of Service means the applicable computation period during which an Employee has completed at least _____ (not to exceed 1,000) Hours of Service for:
 - a. ☐ all purposes
 - b. ☐ the following purposes (select one or more):
 - 1. ☐ eligibility to participate
 - 2. ☐ vesting
 - 3. ☐ sharing in allocations or contributions

VESTING

17. VESTING OF PARTICIPANT'S INTEREST – EMPLOYER CONTRIBUTIONS (Plan Section 6.4(b))

- a. ☐ N/A (no Employer contributions; skip to Question 19)
- b. ☒ The vesting provisions selected below apply. Section B of Appendix A can be used to specify any exceptions to the provisions below.

NOTE: The Plan provides that contributions for converted sick leave and/or vacation leave are fully Vested.

Vesting for Employer contributions other than matching contributions

- c. ☐ N/A (no Employer contributions (other than matching contributions); skip to f.)
- d. ☒ 100% vesting. Participants are 100% Vested in Employer contributions (other than matching contributions) upon entering Plan.
- e. ☐ The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer contributions (other than matching contributions):
 - 1. ☐ 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 - 2. ☐ 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 - 3. ☐ 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 - 4. ☐ Cliff: 100% vesting after _____ (not to exceed 15) years
 - 5. ☐ Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

Vesting for Employer matching contributions

- f. ☒ N/A (no Employer matching contributions)
- g. ☐ The schedule above will also apply to Employer matching contributions.
- h. ☐ 100% vesting. Participants are 100% Vested in Employer matching contributions upon entering Plan.
- i. ☐ The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer matching contributions:
 - 1. ☐ 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 - 2. ☐ 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 - 3. ☐ 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 - 4. ☐ Cliff: 100% vesting after _____ (not to exceed 15) years
 - 5. ☐ Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

18. VESTING OPTIONS

Excluded vesting service. The following Years of Service will be disregarded for vesting purposes (select all that apply; leave blank if none apply):

- a. ☐ Service prior to the initial Effective Date of the Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))
- b. ☐ Service prior to the computation period in which an Employee has attained age _____.
- c. ☐ Service during a period for which an Employee did not make mandatory Employee contributions.

Vesting for death, Total And Permanent Disability and Early Retirement Date. Regardless of the vesting schedule, a Participant will become fully Vested upon (select all that apply; leave blank if none apply):

- d. ☐ Death
- e. ☐ Total and Permanent Disability
- f. ☐ Early Retirement Date

RETIREMENT AGES

19. NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.32) means:

- a. ☒ **Specific age.** The date a Participant attains age 55 (may not exceed 65)
- b. ☐ **Age/participation.** The later of the date a Participant attains age _____ (may not exceed 65) or the _____ (may not exceed 10th) anniversary of the first day of the Plan Year in which participation in the Plan commenced

NOTE: Effective for Plan Years beginning on or after the later of (1) January 1, 2015, or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three months after the final regulations are published in the Federal Register, Normal Retirement Age of less than age 62 must meet Regulation §1.401(a)-1(b)(2).

Qualified police or firefighters. Normal Retirement Age for qualified public safety employees (as defined in Code §72(t)(1)) (leave blank if not applicable)

- c. ☐ Age _____ (may not be less than 50)

20. NORMAL RETIREMENT DATE (Plan Section 1.33) means, with respect to any Participant, the:

- a. ☐ date on which the Participant attains "NRA"
- b. ☒ first day of the month coinciding with or next following the Participant's "NRA"
- c. ☐ first day of the month nearest the Participant's "NRA"
- d. ☐ Anniversary Date coinciding with or next following the Participant's "NRA"
- e. ☐ Anniversary Date nearest the Participant's "NRA"
- f. ☐ Other: _____ (e.g., first day of the month following the Participant's "NRA").

21. EARLY RETIREMENT DATE (Plan Section 1.15)

- a. ☒ N/A (no early retirement provision provided)
- b. ☐ Early Retirement Date means the:
 - 1. ☐ date on which a Participant satisfies the early retirement requirements
 - 2. ☐ first day of the month coinciding with or next following the date on which a Participant satisfies the early retirement requirements
 - 3. ☐ Anniversary Date coinciding with or next following the date on which a Participant satisfies the early retirement requirements

Early retirement requirements

- 4. ☐ Participant attains age _____
AND, completes.... (leave blank if not applicable)
 - a. ☐ at least _____ Years (or Periods) of Service for vesting purposes
 - b. ☐ at least _____ Years (or Periods) of Service for eligibility purposes
- c. ☐ Early Retirement Date means: _____ (must be definitely determinable)

COMPENSATION

22. COMPENSATION with respect to any Participant is defined as follows (Plan Sections 1.10 and 1.23).

Base definition

- a. ☒ Wages, tips and other compensation on Form W-2
- b. ☐ Code §3401(a) wages (wages for withholding purposes)
- c. ☐ 415 safe harbor compensation

NOTE: Plan Section 1.23(c) provides that the base definition of Compensation includes deferrals that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), 402(h)(1)(B)(SEP), 414(h)(2), & 457(b).

Determination period. Compensation will be based on the following "determination period" (this will also be the Limitation Year unless otherwise elected at option f. under Section B of Appendix A):

- d. ☒ the Plan Year
- e. ☐ the Fiscal Year coinciding with or ending within the Plan Year
- f. ☐ the calendar year coinciding with or ending within the Plan Year

Adjustments to Compensation (for Plan Section 1.10). Compensation will be adjusted by:

- g. ☐ **No adjustments** (skip to i. below)
- h. ☒ **Adjustments.** Compensation will be adjusted by (select all that apply):
 - 1. ☐ excluding salary reductions (401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2) pickup, & 457(b))
 - 2. ☐ excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in 1. above) and welfare benefits.
 - 3. ☒ excluding Compensation paid during the "determination period" while not a Participant in the Plan.
 - 4. ☐ excluding Military Differential Pay
 - 5. ☐ excluding overtime
 - 6. ☒ excluding bonuses
 - 7. ☒ other: severance pay (e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay)).

Military Differential Pay Special Effective Date (leave blank if not applicable)

- i. ☐ If this is a PPA restatement and the provisions above regarding Military Differential Pay (included unless h.4. is selected) have a later effective date than Plan Years beginning after December 31, 2008, then enter the date such provisions were first effective: _____ (may not be earlier than January 1, 2009; for Plan Years beginning prior to January 1, 2009, Military Differential Pay is treated in accordance with the post-severance Compensation provisions in the following Question).

23. POST-SEVERANCE COMPENSATION (415 REGULATIONS)

The following optional provision of the 415 Regulations will apply to Limitation Years beginning on or after July 1, 2007 unless otherwise elected below:

415 Compensation (post-severance compensation adjustments) (select all that apply at a.; leave blank if none apply)

NOTE: Unless otherwise elected under a. below, the following defaults apply: 415 Compensation will **include** (to the extent provided in Plan Section 1.23), post-severance regular pay, leave cash-outs and payments from nonqualified unfunded deferred compensation plans.

- a. ☐ The defaults listed above apply except for the following (select one or more):
 - 1. ☐ Leave cash-outs will be **excluded**
 - 2. ☐ Nonqualified unfunded deferred compensation will be **excluded**
 - 3. ☐ Military Differential Pay will be **included** (Plan automatically includes for Limitation Years beginning after December 31, 2008)
 - 4. ☐ Disability continuation payments will be **included**

Plan Compensation (post-severance compensation adjustments)

- b. ☐ **Defaults apply.** Compensation will **include** (to the extent provided in Plan Section 1.10 and to the extent such amounts would be included in Compensation if paid prior to severance of employment) post-severance regular pay, leave cash-outs, and payments from nonqualified unfunded deferred compensation plans.
- c. ☐ **Exclude all post-severance compensation.** Exclude all post-severance compensation for allocation purposes.
- d. ☒ **Post-severance adjustments.** The defaults listed at b. apply except for the following (select one or more):
 - 1. ☒ Exclude all post-severance compensation
 - 2. ☐ Regular pay will be **excluded**
 - 3. ☐ Leave cash-outs will be **excluded**
 - 4. ☐ Nonqualified unfunded deferred compensation will be **excluded**
 - 5. ☐ Military Differential Pay will be **included**
 - 6. ☐ Disability continuation payments will be **included**

NOTE: The above treatment of Military Differential Pay only applies to Plan Years beginning prior to January 1, 2009. For Plan Years beginning after such date, Military Differential Pay is not considered post-severance compensation and the provisions of Question 22 apply.

Post-severance compensation special effective date (leave blank if not applicable)

- e. ☐ If this is a PPA restatement and the post-severance compensation adjustments above for 415 Compensation or Plan Compensation applied other than the first day of the Plan Year beginning on or after July 1, 2007, then enter the date such provisions were first effective: _____

CONTRIBUTIONS AND ALLOCATIONS

24. **EMPLOYER CONTRIBUTIONS (OTHER THAN MATCHING CONTRIBUTIONS)** (Plan Section 4.1(a)(2)) (skip to Question 26 if Employer contributions are NOT selected at Question 11.b.)

CONTRIBUTION FORMULA (select one or more of the following contribution formulas:)

- a. ☒ **Fixed contribution** equal to (only select one):
1. ☒ 10.02 % of each Participant's Compensation for each:
 - a. ☒ Plan Year
 - b. ☐ calendar quarter
 - c. ☐ month
 - d. ☐ pay period
 - e. ☐ week
 2. ☐ \$ _____ per Participant.
 3. ☐ \$ _____ per Hour of Service worked while an Eligible Employee
 - a. ☐ up to _____ hours (leave blank if no limit)
 4. ☐ other: _____ (the formula described must satisfy the definitely determinable requirement under Regulations §1.401-1(b)).
- b. ☐ **Sick leave/vacation leave conversion.** The Employer will contribute an amount equal to an Employee's current hourly rate of pay multiplied by the Participant's number of unused accumulated sick leave and/or vacation days (as selected below). Only unpaid sick and vacation leave for which the Employee has no right to receive in cash may be included. In no event will the Employer's contribution for the Plan Year exceed the maximum contribution permitted under Code §415(c).

The following may be converted under the Plan: (select one or both):

1. ☐ Sick leave
2. ☐ Vacation leave

Eligible Employees. Only the following Participants shall receive the Employer contribution for sick leave and/or vacation leave (select 3. and/or 4; leave blank if no limitations provided, however, that this Plan may not be used to only provide benefits for terminated Employees)

3. ☐ **Former Employees.** All Employees terminating service with the Employer during the Plan Year and who have satisfied the eligibility requirements based on the terms of the Employer's accumulated benefits plans checked below (select all that apply; leave blank if no exclusions):
 - a. ☐ The Former Employee must be at least age _____ (e.g., 55)
 - b. ☐ The value of the sick and/or vacation leave must be at least \$ _____ (e.g., \$2,000)
 - c. ☐ A contribution will only be made if the total hours is over _____ (e.g., 10) hours
 - d. ☐ A contribution will not be made for hours in excess of _____ (e.g., 40) hours
 4. ☐ **Active Employees.** Active Employees who have not terminated service during the Plan Year and who meet the following requirements (select all that apply; leave blank if no exclusions):
 - a. ☐ The Employee must be at least age _____ (e.g., 55)
 - b. ☐ The value of the sick and/or vacation leave must be at least \$ _____ (e.g., \$2,000)
 - c. ☐ A contribution will only be made if the total hours is over _____ (e.g., 10) hours
 - d. ☐ A contribution will not be made for hours in excess of _____ (e.g., 40) hours
 - c. ☐ **Social Security Replacement Plan.** An amount equal to 7.5% of the Participant's Compensation for the entire Plan Year, reduced by Employee and Employer contributions to this Plan actually contributed to the Participant's Account during such Plan Year. (may only be selected if Question 11.b.1. has also been selected)
- Include only part-time, seasonal and temporary Employees** (leave blank if not applicable)
1. ☐ Regardless of any other provision in this to the contrary, the contribution above will only be made for part-time, seasonal, or temporary Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Regulation §31.3121(b)(7)-2.

25. ALLOCATION CONDITIONS (Plan Section 4.3). If 24.a. is selected above, indicate requirements to share in allocations of Employer contributions (select a. OR b. and all that apply at c. - e.)
- a. ☒ **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 26).
- b. ☐ **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)
- Conditions for Participants NOT employed on the last day of the Plan Year**
1. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service (or _____ (not to exceed 12) months of service if the elapsed time method is selected).
 2. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 3. ☐ Participants will NOT share in the allocations, regardless of service.
 4. ☐ Participants will share in the allocations, regardless of service.
 5. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).
- Conditions for Participants employed on the last day of the Plan Year**
6. ☐ No service requirement.
 7. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 8. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.
 9. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).
- Waiver of conditions for Participants NOT employed on the last day of the Plan Year.** If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):
- c. ☐ Death
 - d. ☐ Total and Permanent Disability
 - e. ☐ Termination of employment on or after Normal Retirement Age
 1. ☐ or Early Retirement Date
26. EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 4.1(a)(3)). (skip to Question 29 if matching contributions are NOT selected at Question 11.c.) The Employer will make the following matching contributions:
- A. **Elective deferrals taken into account.** For purposes of applying the matching contribution provisions below, elective deferrals include elective deferral (pre-tax and Roth) contributions to the following Employer plan(s) (insert name of Plan(s) to which the elective deferral contributions being matched will be made):
- a. ☐ **457 plan(s).** Enter Plan name: _____
 - b. ☐ **403(b) plan(s).** Enter Plan name: _____
- NOTE:** If selected at Question 32, after-tax voluntary Employee contributions are also considered elective deferrals for purposes of matching contributions.
- B. **Matching Formula.** (select one)
- c. ☐ **Fixed - uniform rate/amount.** The Employer will make matching contributions equal to _____% (e.g., 50) of the Participant's elective deferrals
 1. ☐ that do not exceed _____% of a Participant's Compensation (leave blank if no limit)
 - d. ☐ **Fixed - tiered.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's elective deferrals, determined as follows:

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate \$ or %)	Matching Percentage
First _____	_____ %
Next _____	_____ %
Next _____	_____ %
Next _____	_____ %

- e. ☐ **Fixed - Years of Service.** The Employer will make matching contributions equal to a uniform percentage of each Participant's elective deferrals based on the Participant's Years of Service (or Periods of Service if the elapsed time method is selected), determined as follows (add additional tiers if necessary):

Years (or Periods) of Service	Matching Percentage
_____	_____ %
_____	_____ %
_____	_____ %

For purposes of the above matching contribution formula, a Year (or Period) of Service means a Year (or Period) of Service for:

1. ☐ vesting purposes
 2. ☐ eligibility purposes
 f. ☐ Other: _____ (the formula described must satisfy the definitely determinable requirement under Regulations §1.401-1(b))

27. MATCHING CONTRIBUTION PROVISIONS

- A. **Maximum matching contribution.** The total matching contribution made on behalf of any Participant for any Plan Year will not exceed:
- a. ☐ N/A (no Plan specific limit on the amount of matching contribution)
 b. ☐ \$ _____.
 c. ☐ _____ % of Compensation.
- B. **Period of determination.** The matching contribution formula will be applied on the following basis (and elective deferrals and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period):
- d. ☐ the Plan Year
 e. ☐ each payroll period
 f. ☐ each month
 g. ☐ each Plan Year quarter
 h. ☐ each payroll unit (e.g., hour)

28. ALLOCATION CONDITIONS FOR MATCHING CONTRIBUTIONS (Plan Section 4.3). Select a. OR b. and all that apply of c. - h.

- a. ☐ **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 29).
- b. ☐ **Allocation conditions apply** (select one of 1. -5. AND one of 6. - 9. below)
Conditions for Participants NOT employed on the last day of the Plan Year.
1. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service (or _____ (not to exceed 12) months of service if the elapsed time method is selected).
 2. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 3. ☐ Participants will NOT share in the allocations, regardless of service.
 4. ☐ Participants will share in the allocations, regardless of service.
 5. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

Conditions for Participants employed on the last day of the Plan Year

6. ☐ No service requirement.
 7. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 8. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.
 9. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

- c. ☐ Death
 d. ☐ Total and Permanent Disability
 e. ☐ Termination of employment on or after Normal Retirement Age
 1. ☐ or Early Retirement Date

Conditions based on period other than Plan Year. The allocation conditions above will be applied based on the Plan Year unless otherwise selected below. If selected, the above provisions will be applied by substituting the term Plan Year with the specified period (e.g., if Plan Year quarter is selected below and the allocation condition is 250 Hours of Service per quarter, enter 250 hours (not 1000) at b.8. above).

- f. ☐ The Plan Year quarter.
- g. ☐ Payroll period.
- h. ☐ Other: _____ (must be definitely determinable and not subject to Employer discretion and may not be longer than a twelve month period).

29. **FORFEITURES (Plan Sections 1.21 and 4.3(e))**

Forfeitures of Employer contributions other than matching contributions will be:

- a. ☐ added to the Employer contribution and allocated in the same manner
- b. ☐ used to reduce any Employer contribution
- c. ☐ allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
- d. ☒ other: there are no forfeitures - all contributions are fully vested (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

Forfeitures of Employer matching contributions will be:

- e. ☒ N/A. Same as above or no Employer matching contributions.
- f. ☐ used to reduce the Employer matching contribution.
- g. ☐ used to reduce any Employer contribution.
- h. ☐ other: _____ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

30. **ALLOCATION OF EARNINGS (Plan Section 4.3(c))**

Allocation of earnings with respect to amounts which are not subject to Participant investment direction and which are contributed to the Plan after the previous Valuation Date will be determined:

- a. ☒ N/A. (all assets in the Plan are subject to Participant investment direction)
- b. ☐ by using a weighted average based on the amount of time that has passed between the date a contribution or distribution is made and the prior Valuation Date
- c. ☐ by treating one-half of all such contributions as being a part of the Participant's nonsegregated Account balance as of the previous Valuation Date
- d. ☐ by using the method specified in Plan Section 4.3(c) (balance forward method)
- e. ☐ other: _____ (must be a definite predetermined formula)

31. **MANDATORY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8) (skip if mandatory Employee contributions NOT selected at Question 11.d.)**

- a. ☒ An Eligible Employee must contribute to the Plan 8 % (not to exceed 25%) of Compensation.
- b. ☐ An Eligible Employee must, prior to his or her first Entry Date, make a one-time irrevocable election to contribute to the Plan from _____ % (not less than 1%) to _____ % (not to exceed 25%) of Compensation.
- c. ☐ Other: _____ (must be definitely determinable)

Employer pick-up contribution. The mandatory Employee contribution is "picked up" by the Employer under Code §414(h)(2) unless elected below.

- d. ☐ The mandatory Employee contribution is not "picked-up" by the Employer.

32. **AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS (Plan Section 4.9) (skip if after-tax voluntary Employee contributions NOT selected at Question 11.e.)**

Matching after-tax voluntary Employee contributions. There are no Employer matching contributions on after-tax voluntary Employee contributions unless elected below.

- a. ☐ After-tax voluntary Employee contributions are considered elective deferrals for purposes of applying any matching contributions under the Plan.

DISTRIBUTIONS

33. **FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)**

Distributions under the Plan may be made in (select all that apply; must select at least one):

- a. ☒ lump-sums
- b. ☒ substantially equal installments
- c. ☐ partial withdrawals, provided the minimum withdrawal is \$ _____ (leave blank if no minimum)

- d. ☐ partial withdrawals or installments are only permitted for Participants or Beneficiaries who must receive required minimum distributions under Code §401(a)(9) except for the following (e.g., partial is not permitted for death benefits; leave blank if no exceptions):
1. ☐ _____
- e. ☐ annuity: _____ (describe the form of annuity or annuities)
- f. ☒ other: partial lump-sum payment of a designated amount, with the balance payable in installments for a period of years; installment payments in specific dollar amounts determined under a tax efficient systematic withdrawal program (must be definitely determinable and not subject to Employer discretion)

NOTE: Regardless of the above, a Participant is not required to request a withdrawal of his or her total Account for an in-service distribution, a hardship distribution, or a distribution from the Participant's Rollover Account.

Cash or property. Distributions may be made in:

- g. ☒ cash only, except for (select all that apply; leave blank if none apply):
1. ☐ insurance Contracts
2. ☐ annuity Contracts
3. ☐ Participant loans
- h. ☐ cash or property, except that the following limitation(s) apply: (leave blank if there are no limitations on property distributions):
1. ☐ _____ (must be definitely determinable and not subject to Employer discretion)

34. **CONDITIONS FOR DISTRIBUTIONS UPON SEVERANCE OF EMPLOYMENT.** Distributions upon severance of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

A. Accounts in excess of \$5,000

- a. ☒ Distributions may be made as soon as administratively feasible following severance of employment.
- b. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- c. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year quarter coincident with or next following severance of employment.
- d. ☐ Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following severance of employment.
- e. ☐ Distributions may be made as soon as administratively feasible after _____ months have elapsed following severance of employment.
- f. ☐ No distributions may be made until a Participant has reached Early or Normal Retirement Date.
- g. ☐ Other: _____ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

B. Accounts of \$5,000 or less

- h. ☒ Same as above
- i. ☐ Distributions may be made as soon as administratively feasible following severance of employment.
- j. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- k. ☐ Other: _____ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

C. Timing after initial distributable event. If a distribution is not made in accordance with the above provisions upon the occurrence of the distributable event, then a Participant may elect a subsequent distribution at any time after the time the amount was first distributable (assuming the amount is still distributable), unless otherwise selected below (may not be selected with 34.f. and 34.h.):

- l. ☐ Other: _____ (e.g., a subsequent distribution request may only be made in accordance with l. above (i.e., the last day of another Plan Year); must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

D. Participant consent (i.e., involuntary cash-outs). Should Vested Account balances less than a certain dollar threshold be automatically distributed without Participant consent (mandatory distributions)?

NOTE: The Plan provides that distributions of amounts of \$5,000 or less are only paid as lump-sums.

- m. ☐ No, Participant consent is required for all distributions.
- n. ☒ Yes, Participant consent is required only if the distribution is over:
1. ☐ \$5,000
2. ☒ \$1,000
3. ☐ \$_____ (less than \$1,000)

NOTE: If 2. or 3. is selected, rollovers will be included in determining the threshold for Participant consent.

Automatic IRA rollover. With respect to mandatory distributions of amounts that are \$1,000 or less, if a Participant makes no election, the amount will be distributed as a lump-sum unless selected below.

4. ☐ If a Participant makes no election, then the amount will be automatically rolled over to an IRA provided the amount is at least \$_____ (e.g., \$200).

- E. **Rollovers in determination of \$5,000 threshold.** Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be **included** in determining the \$5,000 threshold for timing of distributions, form of distributions, or consent rules.
- o. ☐ Exclude rollovers (rollover contributions will be **excluded** in determining the \$5,000 threshold)

NOTE: Regardless of the above election, if the Participant consent threshold is \$1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

35. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))

Distributions upon the death of a Participant prior to the "required beginning date" will:

- a. ☒ be made pursuant to the election of the Participant or "designated Beneficiary"
- b. ☐ begin within 1 year of death for a "designated Beneficiary" and be payable over the life (or over a period not exceeding the "life expectancy") of such Beneficiary, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2
- c. ☐ be made within 5 (or if lesser _____) years of death for all Beneficiaries
- d. ☐ be made within 5 (or if lesser _____) years of death for all Beneficiaries, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the "life expectancy") of such "surviving Spouse"

NOTE: The elections above must be coordinated with the Form of distributions (e.g., if the Plan only permits lump-sum distributions, then options a., b. and d. would not be applicable).

36. OTHER PERMITTED DISTRIBUTIONS (select all that apply; leave blank if none apply)

A. IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)

In-service distributions will NOT be allowed (except as otherwise permitted under the Plan without regard to this provision) unless selected below (if applicable, answer a. - e.; leave blank if not applicable):

- a. ☐ In-service distributions may be made to a Participant who has not separated from service provided the following has been satisfied:
1. ☐ Age. The Participant has reached:
 - a. ☐ Normal Retirement Age
 - b. ☐ age 62
 - c. ☐ age _____(may not be earlier than age 62)

Special effective date (may be left blank if same as Plan or Restatement Effective Date)

- d. ☐ _____ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than the first day of the Plan Year beginning in 2007)

Account restrictions. In-service distributions are permitted from the following Participant Accounts:

- b. ☐ all Accounts
- c. ☐ only from the following Accounts (select one or more):
1. ☐ Account attributable to Employer matching contributions
 2. ☐ Account attributable to Employer contributions other than matching contributions
 3. ☐ Rollover Account
 4. ☐ Transfer Account
 5. ☐ Other: _____ (specify Account(s) and conditions in a manner that satisfies the definitely determinable requirement under Regulations §1.401-1(b) and is not subject to Employer discretion)

Limitations. The following limitations apply to in-service distributions:

- d. ☐ N/A (no additional limitations)
- e. ☐ Additional limitations (select one or more):
1. ☐ The minimum amount of a distribution is \$_____.
 2. ☐ No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 3. ☐ Distributions may only be made from Accounts which are fully Vested.
 4. ☐ In-service distributions may be made subject to the following provisions: _____ (must satisfy the definitely determinable requirement under Regulations §1.401-1(b) and not be subject to Employer discretion).

37. HEART ACT PROVISIONS (Plan Section 6.17)

Continued benefit accruals.

- a. ☒ Continued benefit accruals will NOT apply
- b. ☐ Continued benefit accruals will apply

Special effective date. If this is a PPA restatement and the provision applied other than as of the first day of the 2007 Plan Year, then enter the date such provision was first effective: (leave blank if not applicable)

c. ☐ _____ (may not be earlier than the first day of the 2007 Plan Year)

Distributions for deemed severance of employment

d. ☒ The Plan does NOT permit distributions for deemed severance of employment

e. ☐ The Plan permits distributions for deemed severance of employment

Special effective date (may be left blank if same as Plan or Restatement Effective Date)

1. ☐ _____ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than January 1, 2007)

MISCELLANEOUS

38. LOANS TO PARTICIPANTS (Plan Section 7.6)

a. ☐ New loans are NOT permitted.

b. ☒ New loans are permitted.

NOTE: Regardless of whether new loans are permitted, if the Plan permits rollovers, then the Administrator may, in a uniform manner, accept rollovers of loans into this Plan.

39. ROLLOVERS (Plan Section 4.6) (skip if rollover contributions are NOT selected at 11.f.)

Eligibility. Rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply; leave blank if not applicable):

a. ☐ Any Eligible Employee, even prior to meeting eligibility conditions to be a Participant

b. ☐ Participants who are Former Employees

Distributions. When may distributions be made from a Participant's Rollover Account?

c. ☒ At any time

d. ☐ Only when the Participant is otherwise entitled to a distribution under the Plan

PPA TRANSITION RULES

The following questions only apply if this is a PPA restatement (i.e., Question 5.b.1. is selected). If this is not a PPA restatement, then this Plan will not be considered an individually designed plan merely because the following questions are deleted from the Adoption Agreement.

NOTE: The following provisions are designed to be left unanswered if the selections do not apply to the Plan.

40. WRERA - RMD WAIVERS FOR 2009 (Plan Section 6.8(f))

Suspension/continuation of RMDs. Unless otherwise elected below, required minimum distributions (RMDs) for 2009 were suspended unless a Participant or Beneficiary elected to receive such distributions:

a. ☐ RMDs for 2009 were suspended for any Participant or Beneficiary who was scheduled to receive his/her first RMD for 2009 or who did not make a continuing election prior to 2009 to receive his/her RMD (unless the Participant or Beneficiary made an election to receive such distribution). RMDs for 2009 were continued for any Participant or Beneficiary who had made a continuing election to receive an RMD prior to 2009 (unless the Participant or Beneficiary made an election to suspend such distribution).

b. ☐ RMDs continued unless otherwise elected by a Participant or Beneficiary.

c. ☐ RMDs continued in accordance with the terms of the Plan (i.e., no election available to Participants or Beneficiaries).

d. ☐ Other: _____

Direct rollovers. The Plan also treated the following as "eligible rollover distributions" in 2009 (If no election is made, then a "direct rollover" was only offered for "2009 RMDs"):

e. ☐ "2009 RMDs" and "Extended 2009 RMDs."

f. ☐ "2009 RMDs" but only if paid with an additional amount that is an "eligible rollover distribution" without regard to Code §401(a)(9)(H).

41. NON-SPOUSAL ROLLOVERS (Plan Section 6.14(d)). Non-spousal rollovers are permitted effective for distributions after December 31, 2006 unless an alternative effective date is selected at a. below:

a. ☐ Non-spousal rollovers are allowed effective _____ (may not be earlier than January 1, 2007 and not later than January 1, 2010; the Plan already provides for non-spousal rollovers effective as of January 1, 2010)

Governmental Money Purchase Plan

The adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Code §401 only to the extent provided in Rev. Proc. 2011-49 or subsequent guidance.

The Employer may not rely on the advisory letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the advisory letter issued with respect to the Plan and in Rev. Proc. 2011-49 or subsequent guidance. In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

This Adoption Agreement may be used only in conjunction with the Volume Submitter basic Plan document #09. This Adoption Agreement and the basic Plan document will together be known as FIS Business Systems LLC Governmental Volume Submitter Money Purchase Plan #09-002.

The adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

FIS Business Systems LLC will notify the Employer of any amendments made to the Plan or of the discontinuance or abandonment of the Plan. Furthermore, in order to be eligible to receive such notification, the Employer agrees to notify FIS Business Systems LLC of any change in address. In addition, this Plan is provided to the Employer either in connection with investment in a product or pursuant to a contract or other arrangement for products and/or services. Upon cessation of such investment in a product or cessation of such contract or arrangement, as applicable, the Employer is no longer considered to be an adopter of this Plan and FIS Business Systems LLC no longer has any obligations to the Employer that relate to the adoption of this Plan.

With regard to any questions regarding the provisions of the Plan, adoption of the Plan, or the effect of an advisory letter from the IRS, call or write (this information must be completed by the sponsor of this Plan or its designated representative):

Name: Bryan Archer, Director of Finance

Address: 8101 Ralston Road

Arvada Colorado 800001-8101

Telephone: 720-898-7123

The Employer and Trustee (or Insurer) hereby cause this Plan to be executed on the date(s) specified below:

EMPLOYER: City of Arvada, Colorado

By: _____ DATE SIGNED _____

TRUSTEE (OR INSURER):

☒ The signature of the Trustee or Insurer appears on a separate agreement or Contract,

OR (add additional Trustee signature lines as necessary)

TRUSTEE OR INSURER

DATE SIGNED

**APPENDIX A
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS**

A. Special effective dates (leave blank if not applicable):

- a. ☐ **Special effective date(s):** _____. For periods prior to the specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law.

B. Other permitted elections (the following elections are optional):

- a. ☐ **No other permitted elections**

The following elections apply (select one or more):

- b. ☐ **Deemed 125 compensation** (Plan Section 1.23). Deemed 125 compensation will be included in Compensation and 415 Compensation.
- c. ☐ **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions)** (Plan Section 3.5(d)). The "rule of parity" provisions in Plan Section 3.5(d) will apply for (select one or both):
 1. ☐ eligibility purposes
 2. ☐ vesting purposes
- d. ☐ **Beneficiary if no beneficiary elected by Participant** (Plan Section 6.2(e)). In the event no valid designation of Beneficiary exists, then in lieu of the order set forth in Plan Section 6.2(e), the following order of priority will be used: _____ (specify an order of beneficiaries; e.g., children per stirpes, parents, and then step-children).
- e. ☐ **Common, collective or pooled trust funds** (Plan Sections 7.2(c)(5) and/or 7.3(b)(6)). The name(s) of the common, collective or pooled trust funds available under the Plan is (are): _____.
- f. ☐ **Limitation Year** (Plan Section 1.29). The Limitation Year for Code §415 purposes will be _____ (must be a consecutive twelve month period) instead of the "determination period" for Compensation.
- g. ☐ **415 Limits when 2 defined contribution plans are maintained** (Plan Section 4.4). If any Participant is covered under another qualified defined contribution plan maintained by the Employer or an Affiliated Employer, or if the Employer or an Affiliated Employer maintains a welfare benefit fund, as defined in Code §419(e), or an individual medical account, as defined in Code §415(l)(2), under which amounts are treated as "annual additions" with respect to any Participant in this Plan, then the provisions of Plan Section 4.4(b) will apply unless otherwise specified below:
 1. ☐ Specify, in a manner that precludes Employer discretion, the method under which the plans will limit total "annual additions" to the "maximum permissible amount" and will properly reduce any "excess amounts": _____.
- h. ☐ **Recognition of Service with other employers** (Plan Sections 1.39 and 1.54). Service with the following employers (in addition to those specified at Question 15) will be recognized as follows (select one or more):

	Eligibility	Vesting	Contribution Allocation
1. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
2. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
3. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
4. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
5. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
6. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐

Limitations

7. ☐ The following provisions or limitations apply with respect to the recognition of prior service: _____
 (e.g., credit service with X only on/following 1/1/13)

- i. ☐ **Other vesting provisions.** The following vesting provisions apply to the Plan (select one or more):
1. ☐ **Special vesting provisions.** The following special provisions apply to the vesting provisions of the Plan: _____ (must be definitely determinable and satisfy the parameters set forth at Question 17)
 2. ☐ **Pre-amendment vesting schedule.** (Plan Section 6.4(b)). If the vesting schedule has been amended and a different vesting schedule other than the schedule at Question 17 applies to any Participants, then the following provisions apply (must select one of a. – d. AND complete e.):

Applicable Participants. The vesting schedules in Question 17 only apply to:

- a. ☐ Participants who are Employees as of _____ (enter date).
- b. ☐ Participants in the Plan who have an Hour of Service on or after _____ (enter date).
- c. ☐ Participants (even if not an Employee) in the Plan on or after _____ (enter date).
- d. ☐ Other: _____ (e.g., Participants in division A)

Vesting schedule

- e. The schedule that applies to Participants not subject to the vesting schedule in Question 17 is:

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

- j. ☐ **Minimum distribution transitional rules** (Plan Section 6.8(e)(5))

NOTE: This Section does not apply to (1) a new Plan, (2) an amendment or restatement of an existing Plan that never contained the provisions of Code §401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA), or (3) a Plan where the transition rules below do not affect any current Participants.

The "required beginning date" for a Participant is:

1. ☐ April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (pre-SBJPA rules continue to apply)
2. ☐ April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both; leave blank if both applied effective as of January 1, 1996):
 - a. ☐ A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of _____ (may not be earlier than January 1, 1996) was allowed to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the recommencement of distributions, if the Plan permits annuities as a form of distribution then the following apply:
 1. ☐ N/A (annuity distributions are not permitted)
 2. ☐ Upon the recommencement of distributions, the original Annuity Starting Date will be retained.
 3. ☐ Upon the recommencement of distributions, a new Annuity Starting Date is created.
 - b. ☐ A Participant who had not begun receiving required minimum distributions as of _____ (may not be earlier than January 1, 1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) applies to all such Participants unless selected below:
 1. ☐ The in-service distribution option was eliminated with respect to Participants who attained age 70 1/2 in or after the calendar year that began after the later of (1) December 31, 1998, or (2) the adoption date of the restatement to bring the Plan into compliance with the SBJPA.

- k. ☐ **Other spousal provisions** (select one or more)

1. ☐ **Definition of Spouse.** The term Spouse includes a spouse under federal law as well as the following: _____
2. ☐ **Automatic revocation of spousal designation** (Plan Section 6.2(f)). The automatic revocation of a spousal Beneficiary designation in the case of divorce does not apply.
3. ☐ **Timing of QDRO payment.** A distribution to an Alternate Payee shall not be permitted prior to the time a Participant would be entitled to a distribution.

- l. ☐ **Applicable law.** Instead of using the applicable laws set forth in Plan Section 9.4(a), the Plan will be governed by the laws of: _____

- m. ☐ **Total and Permanent Disability.** Instead of the definition at Plan Section 1.49, Total and Permanent Disability means: _____ (must be definitely determinable).

Governmental Money Purchase Plan

- n. ☐ **Permissible Trust (or Custodian) modifications.** The Employer makes the following modifications to the Trust (or Custodial) provisions as permitted under Rev. Proc. 2011-49 (or subsequent IRS guidance) (select one or more of 1. - 3. below):

NOTE: Any elections below must not: (i) conflict with any Plan provision unrelated to the Trust or Trustee; or (ii) cause the Plan to violate Code §401(a). In addition, this may not be used to substitute all of the Trust provisions in the Plan.

1. ☐ **Investments.** The Employer amends the Trust provisions relating to Trust investments as follows:

2. ☐ **Duties.** The Employer amends the Trust provisions relating to Trustee (or Custodian) duties as follows:

3. ☐ **Other administrative provisions.** The Employer amends the other administrative provisions of the Trust as follows:

ADMINISTRATIVE PROCEDURES

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this Section without a formal Plan amendment. In addition, modifications to these procedures will not affect an Employer's reliance on the Plan.

A. **Loan Limitations.** (complete only if loans to Participants are permitted; leave blank if none apply)

- a. ☒ Limitations (select one or more):
 1. ☒ Loans will be treated as Participant directed investments.
 2. ☐ Loans will only be made for hardship or financial necessity as specified below (select i. or ii.)
 - a. ☐ hardship reasons specified in Plan Section 6.12
 - b. ☐ financial necessity (as defined in the loan program).
 3. ☐ The minimum loan will be \$_____.
 4. ☐ A Participant may only have _____ (e.g., one (1)) loan(s) outstanding at any time.
 5. ☐ All outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution (including a hardship distribution), if applicable).
 6. ☐ **Account restrictions.** Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
 - a. ☐ Account(s) attributable to Employer matching contributions
 - b. ☐ Account attributable to Employer contributions other than matching contributions
 - c. ☐ Rollover Account
 - d. ☐ Transfer Account
 - e. ☐ Other: _____
- AND**, if loans are restricted to certain accounts, the limitations of Code §72(p) will be applied:
- f. ☐ by determining the limits by only considering the restricted accounts.
 - g. ☐ by determining the limits taking into account a Participant's entire interest in the Plan.

Additional Loan Provisions (select all that apply; leave blank if none apply)

- b. ☒ **Loan payments.** Loans are repaid by (if left blank, then payroll deduction applies unless Participant is not subject to payroll (e.g., partner who only has a draw)):
 1. ☒ payroll deduction
 2. ☐ ACH (Automated Clearing House)
 3. ☒ check
 - a. ☐ Only for prepayment
- c. ☒ **Interest rate.** Loans will be granted at the following interest rate (if left blank, then 3. below applies):
 1. ☐ _____ percentage points over the prime interest rate
 2. ☐ _____%
 3. ☐ the Administrator establishes the rate at the time the loan is made
- d. ☐ **Refinancing.** Loan refinancing is allowed.

B. **Life Insurance.** (Plan Section 7.5)

- a. ☒ Life insurance may not be purchased.
- b. ☐ Life insurance may be purchased...
 1. ☐ at the option of the Administrator
 2. ☐ at the option of the Participant

Limitations

3. ☐ N/A (no limitations)
4. ☐ The purchase of initial or additional life insurance will be subject to the following limitations (select one or more):
 - a. ☐ Each initial Contract will have a minimum face amount of \$_____.
 - b. ☐ Each additional Contract will have a minimum face amount of \$_____.
 - c. ☐ The Participant has completed _____ Years (or Periods) of Service.
 - d. ☐ The Participant has completed _____ Years (or Periods) of Service while a Participant in the Plan.
 - e. ☐ The Participant is under age _____ on the Contract issue date.
 - f. ☐ The maximum amount of all Contracts on behalf of a Participant may not exceed \$_____.
 - g. ☐ The maximum face amount of any life insurance Contract will be \$_____.

C. **Plan Expenses.** Will the Plan assess against an individual Participant's Account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan service?

- a. ☒ No
- b. ☐ Yes

D. Directed investments

- a. ☐ Participant directed investments are NOT permitted.
- b. ☒ Participant directed investments are permitted from the following Participant Accounts:
 - 1. ☒ all Accounts
 - 2. ☐ only from the following Accounts (select one or more):
 - a. ☐ Account attributable to Employer contributions
 - b. ☐ Rollover Account
 - c. ☐ Transfer Account
 - d. ☐ Other: _____ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

E. Rollover Limitations. Will the Plan accept rollover contributions and/or direct rollovers from the sources specified below?

- a. ☐ No, Administrator determines in operation which sources will be accepted.
- b. ☒ Yes

Rollover sources. Indicate the sources of rollovers that will be accepted (select one or more)

- 1. ☒ **Direct Rollovers.** The Plan will accept a direct rollover of an eligible rollover distribution from (select one or more):
 - a. ☒ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions
 - b. ☒ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions
 - c. ☒ a plan described in Code §403(a) (an annuity plan), excluding after-tax employee contributions
 - d. ☒ a plan described in Code §403(a) (an annuity plan), including after-tax employee contributions
 - e. ☒ a plan described in Code §403(b) (a tax-sheltered annuity), excluding after-tax employee contributions
 - f. ☒ a plan described in Code §403(b) (a tax-sheltered annuity), including after-tax employee contributions
 - g. ☒ a plan described in Code §457(b) (eligible deferred compensation plan)

Direct Rollovers of Participant Loan. The Plan will NOT accept a direct rollover of a Participant loan from another plan unless selected below (leave blank if default applies)

- h. ☒ The Plan will accept a direct rollover of a Participant loan
- i. ☐ The Plan will only accept a direct rollover of a Participant loan only in the following situation(s): _____ (e.g., only from Participants who were employees of an acquired organization).

- 2. ☒ **Participant Rollover Contributions from Other Plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution (select one or more):
 - a. ☒ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan)
 - b. ☒ a plan described in Code §403(a) (an annuity plan)
 - c. ☒ a plan described in Code §403(b) (a tax-sheltered annuity)
 - d. ☒ a governmental plan described in Code §457(b) (eligible deferred compensation plan)
- 3. ☒ **Participant Rollover Contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.

FIS BUSINESS SYSTEMS LLC VOLUME SUBMITTER MODIFICATIONS

CITY OF ARVADA CITY ATTORNEY RETIREMENT PLAN

The enclosed Plan is being submitted for expedited review as a Volume Submitter Plan.

No modifications from the approved specimen plan have been made to this Plan.

CITY OF ARVADA CITY ATTORNEY RETIREMENT PLAN

PARTICIPANT LOAN PROGRAM

City of Arvada City Attorney Retirement Plan permits loans to be made to Participants and their beneficiaries. However, before any loan is made, the Plan requires that a written loan program be established which sets forth the rules and guidelines for making Participant loans. This document shall serve as the required written loan program. In addition, the Administrator may use this document to serve as, or supplement, any required notice of the loan program to Participants and their beneficiaries. All references to Participants in this loan program shall only include Participants and their Beneficiaries or any alternate payee with respect to the Plan.

The Administrator is authorized to administer the Participant Loan Program. A Participant must apply to the Administrator for a loan in the manner set forth by the Administrator.

1. Loan application. Any Participant may apply for a loan from the Plan. A Participant must apply for each loan with an application which specifies the amount of the loan desired, the requested duration for the loan and the source of security for the loan.

All loan applications will be considered by the Administrator within a reasonable time after the Participant applies for the loan. The Participant will be required to provide any supporting information deemed necessary by the Administrator.

2. Loan limitations and rules. The Administrator will not approve any loan to a Participant in an amount which exceeds 50% of his or her nonforfeitable account balance. The maximum aggregate dollar amount of loans outstanding to any Participant may not exceed \$50,000, reduced by the excess of the Participant's highest outstanding Participant loan balance during the 12-month period ending on the date of the loan over the Participant's current outstanding Participant loan balance on the date of the loan. With regard to any loan made pursuant to this program, the following rule(s) and limitation(s) shall apply, in addition to such other requirements set forth in the Plan:

- a. All loans made pursuant to this program will be considered a directed investment from the account(s) of the Participant maintained under the Plan. As such, all payments of principal and interest made by the Participant will be credited only to the account(s) of such Participant. The Plan also will charge that portion of the Participant's account balances with expenses directly related to the origination, maintenance and collection of the note.
- b. Loan refinancing is not permitted

3. Account restrictions. Loans may be made from any of the Participant's accounts in the Plan.

4. Evidence and terms of loan. The Administrator will document every loan in the form of a promissory note signed by the Participant for the face amount of the loan, together with a commercially reasonable rate of interest.

Any loan granted or renewed under this program will bear a commercially reasonable rate of interest established by the Administrator. In determining such rate of interest, the Plan will require a rate of return commensurate with the prevailing interest rate charged on similar loans under like circumstances by persons in the business of lending money. Such prevailing interest rate standard will permit the Administrator to consider factors pertaining to the opportunity for gain and risk of loss that a professional lender would consider on a similar arms length transaction, such as the creditworthiness of the Participant and the security given for the loan. Therefore, in establishing the rate of interest, the Administrator will conduct a reasonable and prudent inquiry with professional lenders in the same geographic locale where the Participant and Employer reside to determine such prevailing interest rate for loans under like circumstances. The interest rate will be fixed for the duration of the loan.

The loan must provide at least quarterly payments under a level amortization schedule. Generally, the Administrator will require that the Participant repay the loan by agreeing to payroll deduction while employed by the Employer, or payment by check thereafter.

The Administrator will fix the term for repayment of any loan, however, in no instance may the term of repayment be greater than five years, unless the loan qualifies as a home loan. A "home loan" is a loan used to acquire a dwelling unit which, within a reasonable time, the Participant will use as a principal residence.

A loan, if not otherwise due and payable, is due and payable on termination of the Plan, notwithstanding any contrary provision in the promissory note. Nothing in this loan policy restricts the Employer's right to terminate the Plan at any time.

Participants should note the law treats the amount of any loan (other than a "home loan") not repaid five years after the date of the loan as a taxable distribution on the last day of the five year period or, if sooner, at the time the loan is in default. If a Participant extends a non-home loan having a five year or less repayment term beyond five years, the balance of the loan at the time of the extension is a taxable distribution to the Participant.

5. Security for loan. The Plan will require that adequate security be provided by the Participant before a loan is granted. For this purpose, the Plan will consider a Participant's interest under the Plan to be adequate security. However, in no event will more than 50% of a Participant's vested interest in the Plan (determined immediately after origination of the loan) be used as security for the loan. Generally, it will be the policy of the Plan not to make loans which require security other than the Participant's vested interest in the Plan. However, if additional security is necessary to adequately secure the loan, then the Administrator will require that such security be provided before the loan will be granted.

6. Form of pledge. The pledge and assignment of a Participant's account balances will be in the form prescribed by the Administrator.

7. Military service. If a Participant separates from service (or takes a leave of absence) from the Employer because of service in the military and does not receive a distribution of his or her account balances, the Plan shall suspend loan repayments until the Participant's completion of military service. The Employer will provide the Participant with a written explanation of the effect of the Participant's military service upon his or her Plan loan. While the Participant is on active duty in the United States military, the interest rate on the loan shall not exceed six percent (6%), compounded annually.

8. Leave of absence/suspension of payment. The Administrator will suspend loan repayments for a period not exceeding one year which occurs during an approved leave of absence, either without pay from the Employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. The Administrator will provide the Participant with a written explanation of the effect of the leave of absence upon his or her Plan loan.

9. Payments after leave of absence. When payments resume following a payment suspension in connection with a leave of absence authorized in 7 or 8 above, the Participant shall select one of the following methods to repay the loan, plus accumulated interest:

- a. The Participant shall increase the amount of the required installments to an amount sufficient to amortize the remaining balance of the loan, plus accrued interest, over the remaining term of the loan.
- b. The Participant shall pay a balloon payment of the remaining unpaid principal and interest, at the conclusion of the term of the loan as determined in the promissory note.
- c. The Participant may extend the maturity of the loan and reamortize the payments over the remaining term of the loan. In no event shall the amount of the adjusted installment payment be less than the amount of the installment payment provided under the promissory note. In the case of a leave of absence described in item 8 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above. In the

case of a leave of absence described in item 7 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above, augmented by the time the Participant was actually in United States military service.

10. Default. The Administrator will treat a loan in default if:

- a. any scheduled payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the Participant missed the scheduled payment; or
- b. the Participant makes or furnishes any false representation or statement to the Plan.

The Participant will have the opportunity to repay the loan, resume current status of the loan by paying any missed payment plus interest or, if distribution is available under the Plan, request distribution of the note. If the loan remains in default, the Administrator will offset the Participant's vested account balances by the outstanding balance of the loan to the extent permitted by law. The Administrator will treat the note as repaid to the extent of any permissible offset. Pending final disposition of the note, the Participant remains obligated for any unpaid principal and accrued interest.

* * * * *

ADOPTION OF LOAN PROGRAM

The Administrator of City of Arvada City Attorney Retirement Plan adopts this Loan Program on the date specified below.

Date: _____

By: _____
Administrator

CITY OF ARVADA CITY ATTORNEY RETIREMENT PLAN

APPLICATION FOR PARTICIPANT LOAN

Participant Information

Name _____

Address _____

Last 4 digits of Social Security Number _____

I hereby apply for a loan from the Plan. In support of this loan application, I attach such information which the Administrator may require to determine whether I qualify for the loan. I also authorize the Administrator to secure any credit reports to determine my creditworthiness and ability to repay the loan.

1. Loan amount. The amount of the loan is \$ _____ for a period of _____ months (if longer than 60 months, the purpose of the loan must be to acquire your principal residence).

2. Marital status. I am: (check one) ☐ married ☐ not married

3. Representations. I understand the Administrator will make any loan in reliance on the statements on this APPLICATION FOR PARTICIPANT LOAN which I certify are correct and complete. If any statement proves false, then the Plan may declare my indebtedness immediately due.

4. Acknowledgement/Authorization

In applying for this loan, I acknowledge that I have read the section of the Summary Plan Description governing Plan loans and have been furnished with a copy of the Participant Loan Program established by the Plan.

I hereby authorize the Administrator to verify the statements in this application and to obtain any information the Plan or its authorized representative may require in connection with this application.

Date of execution: _____

Signature of Administrator

Signature of Participant

CITY OF ARVADA CITY ATTORNEY RETIREMENT PLAN

PROMISSORY NOTE
(Fixed Interest Rate)

Participant (BORROWER): _____

1. Payment Schedule. Your Payment Schedule will be:

Number of Months	Amount of Payments	When Payments are Due
_____	_____	_____

Prepayment: If you pay your loan off early, you will not have to pay a penalty.

Security Interest: You are giving a security interest in your account in the plan.

See below for any additional information about non-payment and default.

2. Promissory Note

For value received, I, the undersigned BORROWER, promises to pay City of Arvada City Attorney Retirement Plan, the sum of _____ dollars \$_____, together with interest on the unpaid balance at the rate of _____% per annum, payable in _____ equal monthly payments of \$_____ each, including interest. The first payment is due on _____, with like payments due on the same date of each month thereafter until the BORROWER has made all payments under this Note.

The BORROWER will make all payments by agreeing to payroll deduction or payment by check or by making payments at such other place as the HOLDER designates. If not sooner paid, this Note in any event is due and payable _____.

At the option of the Administrator until payment in full or maturity, upon default, all monies payable under this Note are due and immediately payable. The Note is in default if any payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the BORROWER missed the scheduled payment. Also, all monies payable under this Note are due and immediately payable upon termination of the Plan.

The BORROWER may prepay the loan without penalty. Each payment first applies to the payment of accrued interest and the balance of each payment applies to the payment of principal.

The BORROWER secures this loan by a pledge and irrevocable assignment of his/her vested interest in City of Arvada City Attorney Retirement Plan.

If the BORROWER does not pay this Note when due, the BORROWER promises to pay all costs of collection and reasonable attorneys' fees incurred by the HOLDER of this Note on account of such collection, whether or not the HOLDER files suit on this Note.

3. Acknowledgement/Authorization

Date of execution: _____

 Signature of Administrator

 Witness

 Signature of Participant (BORROWER)

CITY OF ARVADA CITY ATTORNEY RETIREMENT PLAN

IRREVOCABLE PLEDGE AND ASSIGNMENT

Participant (BORROWER): _____

1. Pledge. In consideration of a loan to me of \$ _____, from City of Arvada City Attorney Retirement Plan (the "Plan"), as evidenced by a copy of the Promissory Note attached to this pledge, I hereby irrevocably pledge and assign to the Plan, or to its successor or successors, 50% of my vested account balances, at any time existing under the Plan, but not less than 50% of my vested account balances determined on the date of the loan which is subject to this pledge, to the extent necessary to satisfy such loan, any unpaid interest on such loan, all reasonable attorneys' fees necessary for collection of this obligation and all costs of collection. Failure by me to repay this loan when due or to pay any installment or interest when due will authorize the duly authorized representatives of the Plan to foreclose on this security or to bring a lawsuit to collect the outstanding indebtedness and interest on the indebtedness.

2. Acknowledgement/Authorization. This Irrevocable Pledge and Assignment shall bind my heirs, personal representatives or other legal representatives.

Date of execution: _____

Signature of Administrator

Witness

Signature of Participant (BORROWER)

**ADOPTION AGREEMENT FOR
GOVERNMENTAL VOLUME SUBMITTER MONEY PURCHASE PLAN**

CAUTION: Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

EMPLOYER INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in this Employer Information Section.)

1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER, TIN AND FISCAL YEAR

Name: City of Arvada, Colorado

Address: 8101 Ralston Road

Street

Arvada Colorado 80001-8101

City

State

Zip

Telephone: 720-898-7565

Taxpayer Identification Number (TIN): 84-6000633

Employer's Fiscal Year ends: December 31

2. TYPE OF GOVERNMENTAL ENTITY. This Plan may only be adopted a state or local governmental entity, or agency thereof, including an Indian tribal government and may not be adopted by any other entity, including a federal government and any agency or instrumentality thereof.

- a. ☐ State government or state agency
- b. ☐ County or county agency
- c. ☒ Municipality or municipal agency
- d. ☐ Indian tribal government (see Note below)
- e. ☐ Other: _____

NOTE: An Indian tribal government may only adopt this Plan if such entity is defined under Code §7701(a)(40), is a subdivision of an Indian tribal government as determined in accordance with Code §7871(d), or is an agency or instrumentality of either, and all of the Participants under this Plan employed by such entity substantially perform services as an Employee in essential governmental functions and not in the performance of commercial activities (whether or not an essential government function).

3. PARTICIPATING EMPLOYERS (Plan Section 1.38). Will any other Employers adopt this Plan as Participating Employers?

- a. ☒ No
- b. ☐ Yes

PLAN INFORMATION

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9. through 10.)

4. PLAN NAME:

City of Arvada Municipal Judge Retirement Plan

5. PLAN STATUS

- a. ☐ New Plan
- b. ☒ Amendment and restatement of existing Plan

PPA RESTATEMENT (leave blank if not applicable)

- 1. ☒ This is an amendment and restatement to bring a plan into compliance with the Pension Protection Act of 2006 ("PPA") and other legislative and regulatory changes (i.e., the 6-year pre-approved plan restatement).

6. EFFECTIVE DATE (Plan Section 1.16) (complete a. if new plan; complete a. AND b. if an amendment and restatement)

Initial Effective Date of Plan

- a. December 19, 2011 (enter month day, year) (hereinafter called the "Effective Date" unless 6.b. is entered below)

Restatement Effective Date. If this is an amendment and restatement, the effective date of the restatement (hereinafter called the "Effective Date") is:

- b. January 1, 2022 (enter month day, year; may enter a restatement date that is the first day of the current Plan Year. Plan contains appropriate retroactive effective dates with respect to provisions for appropriate laws.)

7. PLAN YEAR (Plan Section 1.42) means, except as otherwise provided in d. below:
- a. ☒ the calendar year
 - b. ☐ the twelve-month period ending on _____ (e.g., June 30th)

SHORT PLAN YEAR (Plan Section 1.46). This is a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 14):

- c. ☒ N/A
- d. ☐ beginning on _____ (enter month day, year; e.g., July 1, 2013)
and ending on _____ (enter month day, year).

8. VALUATION DATE (Plan Section 1.52) means:

- a. ☒ every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation)
- b. ☐ the last day of each Plan Year
- c. ☐ the last day of each Plan Year quarter
- d. ☐ other (specify day or days): _____ (must be at least once each Plan Year)

NOTE: The Plan always permits interim valuations.

9. TRUSTEE(S) OR INSURER(S) (Plan Sections 1.25 and 1.50):

- a. ☐ **Insurer.** This Plan is funded exclusively with Contracts and the name of the Insurer(s) is:

(1) _____ (2) _____ (if more than 2, add names to signature page).

- b. ☐ **Individual Trustee(s).** Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (add additional Trustees as necessary)

Name(s)	Title(s)
_____	_____
_____	_____
_____	_____

Address and telephone number

- 1. ☐ Use Employer address and telephone number
- 2. ☐ Use address and telephone number below:

Address: _____

Street

City State Zip

Telephone: _____

- c. ☒ **Corporate Trustee(s)** (add additional Trustees as necessary)

Name: Fidelity Management Trust Company

Address: 245 Summer Street

Street

Boston Massachusetts 02210

City State Zip

Telephone: _____

Directed/Discretionary Trustee. Unless otherwise specified below, if there is a corporate Trustee, it will serve as a Directed (nondiscretionary) Trustee (Plan Section 1.21) and if there is an individual Trustee, he or she will serve as a Discretionary Trustee (Plan Section 1.22) over all Plan assets (select all that apply; leave blank if defaults apply)

- d. ☒ Directed Trustee exceptions (leave blank if no exceptions):
- Directed Trustee over specified Plan assets (select all that apply; leave blank if none apply)
- 1. ☐ The corporate Trustee will serve as Directed Trustee over the following assets: _____
- 2. ☐ The individual Trustee(s) will serve as Directed Trustee over the following assets: _____
- Individual Trustee will serve as Directed Trustee (may not be selected with d.1. or d.2.)
- 3. ☐ over all Plan assets

- e. ☐ Discretionary Trustee exceptions (leave blank if no exceptions):
 Discretionary Trustee over specified Plan assets (select all that apply; leave blank if none apply)
 1. ☐ The individual Trustee(s) will serve as Discretionary Trustee over the following assets: _____
 2. ☐ The corporate Trustee will serve as Discretionary Trustee over the following assets: _____
 Corporate Trustee will serve as Discretionary Trustee (may not be selected with e.1. or e.2.)
 3. ☐ over all Plan assets

Separate trust. Will a separate trust agreement that is approved by the IRS for use with this Plan be used?

- f. ☐ No
 g. ☒ Yes

NOTE: If Yes is selected, an executed copy of the trust agreement between the Trustee and the Employer must be attached to this Plan. The Plan and trust agreement will be read and construed together. The responsibilities, rights and powers of the Trustee will be those specified in the trust agreement.

10. ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER

(If none is named, the Employer will be the Administrator (Plan Section 1.2).)

- a. ☐ Employer (use Employer address and telephone number)
 b. ☒ Other:

Name: City of Arvada Executive Defined Contribution Plan Board of Trustees

Address: 8101 Ralston Road Street
Arvada City Colorado State 80110-8101 Zip
 Telephone: 720-898-7565

11. CONTRIBUTION TYPES

The selections made below must correspond with the selections made under the Contributions and Allocations Section of this Adoption Agreement.

FROZEN PLAN OR CONTRIBUTIONS HAVE BEEN SUSPENDED (Plan Section 4.1(c)) (optional)

- a. ☐ This is a frozen Plan (i.e., all contributions cease) (if this is a temporary suspension, select a.2):
 1. ☐ All contributions ceased as of, or prior to, the effective date of this amendment and restatement and the prior Plan provisions are not reflected in this Adoption Agreement (may enter effective date at 3. below and/or select contributions at b. - f. (optional), skip questions 12-18 and 22-29)
 2. ☐ All contributions ceased or were suspended and the prior Plan provisions are reflected in this Adoption Agreement (must enter effective date at 3. below and select contributions at b. - f.)
Effective date
 3. ☐ as of _____ (effective date is optional unless a.2. has been selected above or this is the amendment or restatement to freeze the Plan).

CONTRIBUTIONS

The Plan permits the following contributions (select one or more):

- b. ☒ **Employer contributions other than matching** (Questions 24-25)
 1. ☐ This Plan qualifies as a Social Security Replacement Plan (Question 24.c. must be selected)
 c. ☐ **Employer matching contributions** (Questions 26-28)
 d. ☒ **Mandatory Employee contributions** (Question 31)
 e. ☒ **After-tax voluntary Employee contributions** (Question 32)
 f. ☒ **Rollover contributions** (Question 39)

ELIGIBILITY REQUIREMENTS

12. ELIGIBLE EMPLOYEES (Plan Section 1.17) means all Employees (including Leased Employees) EXCEPT those Employees who are excluded below or elsewhere in the Plan:

- a. ☐ **No excluded Employees.** There are no additional excluded Employees under the Plan (skip to Question 13).
 b. ☒ **Exclusions.** The following Employees are not Eligible Employees for Plan purposes (select one or more):
 1. ☐ Union Employees (as defined in Plan Section 1.17)
 2. ☐ Nonresident aliens (as defined in Plan Section 1.17)
 3. ☐ Leased Employees (Plan Section 1.28)
 4. ☐ Part-time/temporary/seasonal Employees. A part-time, temporary or seasonal Employee is an Employee whose regularly scheduled service is less than _____ Hours of Service in the relevant eligibility computation period (as defined in Plan Section 1.54). However, if any such excluded Employee actually completes a Year of Service, then such Employee will no longer be part of this excluded class.

5. ☒ Other: Only the City of Arvada Presiding Municipal Judge is eligible to participate in this Plan. All other employees are excluded from participation in this Plan (must be definitely determinable under Regulations §1.401-1(b). Exclusions may be employment title specific but may not be by individual name nor result in only a finite group of individuals (e.g., excluding anyone hired after 12/31/12.)

13. **CONDITIONS OF ELIGIBILITY (Plan Section 3.1)**

- a. ☒ **No age or service required.** No age or service required for all Contribution Types (skip to Question 14).
b. ☐ **Eligibility.** An Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following (complete c. and d., select e. and f. if applicable):

Eligibility Requirements

c. ☐ **Age Requirement**

1. ☐ No age requirement
2. ☐ Age 20 1/2
3. ☐ Age 21
4. ☐ Age _____ (may not exceed 26)

d. ☐ **Service Requirement**

1. ☐ No service requirement
2. ☐ _____ (not to exceed 60) months of service (elapsed time)
3. ☐ 1 Year of Service
4. ☐ _____ (not to exceed 5) Years of Service
5. ☐ _____ consecutive month period from the Eligible Employee's employment commencement date and during which at least _____ Hours of Service are completed.
6. ☐ _____ consecutive months of employment from the Eligible Employee's employment commencement date.
7. ☐ Other: _____ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must satisfy the Notes below)

NOTE: If c.4. or d.7. is selected, the condition must be an age or service requirement that is definitely determinable and may not exceed age 26 and may not exceed 5 Years of Service.

NOTE: Year of Service means Period of Service if elapsed time method is chosen.

Waiver of conditions. The service and/or age requirements specified above will be waived in accordance with the following (leave blank if there are no waivers of conditions):

- e. ☐ If employed on _____ the following requirements, and the entry date requirement, will be waived. The waiver applies to any Eligible Employee unless 3. selected below. Such Employees will enter the Plan as of such date (select 1. and/or 2. AND 3. if applicable):
1. ☐ service requirement (may let part-time Eligible Employees into the Plan)
2. ☐ age requirement
3. ☐ waiver is for: _____

Amendment or restatement to change eligibility requirements

- f. ☐ This amendment or restatement (or a prior amendment and restatement) modified the eligibility requirements and the prior eligibility conditions continue to apply to the Eligible Employees specified below. If this option is NOT selected, then all Eligible Employees must satisfy the eligibility conditions set forth above.
1. ☐ The eligibility conditions above only apply to Eligible Employees who were not Participants as of the effective date of the modification.
2. ☐ The eligibility conditions above only apply to individuals who were hired on or after the effective date of the modification.

14. **EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)**

An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan as of the:

- a. ☐ date such requirements are met
b. ☐ first day of the month coinciding with or next following the date on which such requirements are met
c. ☐ first day of the Plan Year quarter coinciding with or next following the date on which such requirements are met
d. ☐ earlier of the first day of the Plan Year or the first day of the seventh month of the Plan Year coinciding with or next following the date on which such requirements are met
e. ☐ first day of the Plan Year coinciding with or next following the date on which such requirements are met (Eligibility must be six months of service (or 1 1/2 Years (or Periods) of Service if 100% immediate vesting is selected) or less and age must be 20 1/2 or less.)
f. ☐ first day of the Plan Year in which such requirements are met
g. ☐ first day of the Plan Year in which such requirements are met, if such requirements are met in the first 6 months of the Plan Year, or as of the first day of the next succeeding Plan Year if such requirements are met in the last 6 months of the Plan Year.
h. ☒ other: the day the individual commences employment as Presiding Municipal Judge of the Employer (must be definitely determinable)

SERVICE

15. RECOGNITION OF SERVICE WITH OTHER EMPLOYERS (Plan Sections 1.39 and 1.54)

- a. ☒ No service with other employers is recognized except as otherwise required by law (e.g., the Plan already provides for the recognition of service with Employers who have adopted this Plan as well as service with Affiliated Employers and predecessor Employers who maintained this Plan; skip to Question 16).
- b. ☐ Prior service with the designated employers is recognized as follows (answer c. and select one or more of c.1. - 3.; select d. - f. as applicable) (if more than 3 employers, attach an addendum to the Adoption Agreement or complete option h. under Section B of Appendix A):

Other Employer	Eligibility	Vesting	Contribution Allocation
c. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐
d. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐
e. ☐ Employer name: _____	1. ☐	2. ☐	3. ☐

Limitations

- f. ☐ The following provisions or limitations apply with respect to the recognition of prior service: _____ 1. ☐ 2. ☐ 3. ☐
(e.g., credit service with X only on/following 1/1/13)

NOTE: If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.39 and 1.54 regardless of any selections above.

16. SERVICE CREDITING METHOD (Plan Sections 1.39 and 1.54)

NOTE: If no selections are made in this Section, then the provisions set forth in the definition of Year of Service in Plan Section 1.54 will apply, including the following defaults:

1. A Year of Service means completion of at least 1,000 Hours of Service during the applicable computation period.
2. Hours of Service (Plan Section 1.24) will be based on actual Hours of Service.
3. For eligibility purposes, the computation period will be as defined in Plan Section 1.54 (i.e., shift to the Plan Year if the eligibility condition is one (1) Year of Service or less).
4. For vesting and allocation purposes, the computation period will be the Plan Year.

- a. ☐ **Elapsed time method.** (Period of Service applies instead of Year of Service) Instead of Hours of Service, elapsed time will be used for:

1. ☐ all purposes (skip to Question 17)
2. ☐ the following purposes (select one or more):
 - a. ☐ eligibility to participate
 - b. ☐ vesting
 - c. ☐ sharing in allocations or contributions

- b. ☐ **Alternative definitions for the Hours of Service method.** Instead of the defaults, the following alternatives will apply for the Hours of Service method (select one or more):

1. ☐ **Eligibility computation period.** Instead of shifting to the Plan Year, the eligibility computation period after the initial eligibility computation period will be based on each anniversary of the date the Employee first completes an Hour of Service
2. ☐ **Vesting computation period.** Instead of the Plan Year, the vesting computation period will be the date an Employee first performs an Hour of Service and each anniversary thereof.
3. ☐ **Equivalency method.** Instead of using actual Hours of Service, an equivalency method will be used to determine Hours of Service for:
 - a. ☐ all purposes
 - b. ☐ the following purposes (select one or more):
 1. ☐ eligibility to participate
 2. ☐ vesting
 3. ☐ sharing in allocations or contributions

Such method will apply to:

- c. ☐ all Employees
- d. ☐ Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees)
- e. ☐ other: _____ (e.g., per-diem Employees only)

Hours of Service will be determined on the basis of:

- f. ☐ days worked (10 hours per day)
- g. ☐ weeks worked (45 hours per week)
- h. ☐ semi-monthly payroll periods worked (95 hours per semi-monthly pay period)
- i. ☐ months worked (190 hours per month)
- j. ☐ bi-weekly payroll periods worked (90 hours per bi-weekly pay period)
- k. ☐ other: _____ (e.g., option f. is used for per-diem Employees and option g. is used for on-call Employees).

- 4. ☐ **Number of Hours of Service required.** Instead of 1,000 Hours of Service, Year of Service means the applicable computation period during which an Employee has completed at least _____ (not to exceed 1,000) Hours of Service for:
 - a. ☐ all purposes
 - b. ☐ the following purposes (select one or more):
 - 1. ☐ eligibility to participate
 - 2. ☐ vesting
 - 3. ☐ sharing in allocations or contributions

VESTING

17. VESTING OF PARTICIPANT'S INTEREST – EMPLOYER CONTRIBUTIONS (Plan Section 6.4(b))

- a. ☐ N/A (no Employer contributions; skip to Question 19)
- b. ☒ The vesting provisions selected below apply. Section B of Appendix A can be used to specify any exceptions to the provisions below.

NOTE: The Plan provides that contributions for converted sick leave and/or vacation leave are fully Vested.

Vesting for Employer contributions other than matching contributions

- c. ☐ N/A (no Employer contributions (other than matching contributions); skip to f.)
- d. ☒ 100% vesting. Participants are 100% Vested in Employer contributions (other than matching contributions) upon entering Plan.
- e. ☐ The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer contributions (other than matching contributions):
 - 1. ☐ 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 - 2. ☐ 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 - 3. ☐ 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 - 4. ☐ Cliff: 100% vesting after _____ (not to exceed 15) years
 - 5. ☐ Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

Vesting for Employer matching contributions

- f. ☒ N/A (no Employer matching contributions)
- g. ☐ The schedule above will also apply to Employer matching contributions.
- h. ☐ 100% vesting. Participants are 100% Vested in Employer matching contributions upon entering Plan.
- i. ☐ The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer matching contributions:
 - 1. ☐ 6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
 - 2. ☐ 4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
 - 3. ☐ 5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
 - 4. ☐ Cliff: 100% vesting after _____ (not to exceed 15) years
 - 5. ☐ Other graded vesting schedule (must provide for full vesting no later than 15 years of service; add additional lines as necessary)

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

18. VESTING OPTIONS

Excluded vesting service. The following Years of Service will be disregarded for vesting purposes (select all that apply; leave blank if none apply):

- a. ☐ Service prior to the initial Effective Date of the Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))
- b. ☐ Service prior to the computation period in which an Employee has attained age _____.
- c. ☐ Service during a period for which an Employee did not make mandatory Employee contributions.

Vesting for death, Total And Permanent Disability and Early Retirement Date. Regardless of the vesting schedule, a Participant will become fully Vested upon (select all that apply; leave blank if none apply):

- d. ☐ Death
- e. ☐ Total and Permanent Disability
- f. ☐ Early Retirement Date

RETIREMENT AGES

19. NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.32) means:

- a. ☒ **Specific age.** The date a Participant attains age 55 (may not exceed 65)
- b. ☐ **Age/participation.** The later of the date a Participant attains age _____ (may not exceed 65) or the _____ (may not exceed 10th) anniversary of the first day of the Plan Year in which participation in the Plan commenced

NOTE: Effective for Plan Years beginning on or after the later of (1) January 1, 2015, or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is three months after the final regulations are published in the Federal Register, Normal Retirement Age of less than age 62 must meet Regulation §1.401(a)-1(b)(2).

Qualified police or firefighters. Normal Retirement Age for qualified public safety employees (as defined in Code §72(t)(1)) (leave blank if not applicable)

- c. ☐ Age _____ (may not be less than 50)

20. NORMAL RETIREMENT DATE (Plan Section 1.33) means, with respect to any Participant, the:

- a. ☐ date on which the Participant attains "NRA"
- b. ☒ first day of the month coinciding with or next following the Participant's "NRA"
- c. ☐ first day of the month nearest the Participant's "NRA"
- d. ☐ Anniversary Date coinciding with or next following the Participant's "NRA"
- e. ☐ Anniversary Date nearest the Participant's "NRA"
- f. ☐ Other: _____ (e.g., first day of the month following the Participant's "NRA").

21. EARLY RETIREMENT DATE (Plan Section 1.15)

- a. ☒ N/A (no early retirement provision provided)
- b. ☐ Early Retirement Date means the:
 - 1. ☐ date on which a Participant satisfies the early retirement requirements
 - 2. ☐ first day of the month coinciding with or next following the date on which a Participant satisfies the early retirement requirements
 - 3. ☐ Anniversary Date coinciding with or next following the date on which a Participant satisfies the early retirement requirements

Early retirement requirements

- 4. ☐ Participant attains age _____
AND, completes.... (leave blank if not applicable)
 - a. ☐ at least _____ Years (or Periods) of Service for vesting purposes
 - b. ☐ at least _____ Years (or Periods) of Service for eligibility purposes
- c. ☐ Early Retirement Date means: _____ (must be definitely determinable)

COMPENSATION

22. COMPENSATION with respect to any Participant is defined as follows (Plan Sections 1.10 and 1.23).

Base definition

- a. ☒ Wages, tips and other compensation on Form W-2
- b. ☐ Code §3401(a) wages (wages for withholding purposes)
- c. ☐ 415 safe harbor compensation

NOTE: Plan Section 1.23(c) provides that the base definition of Compensation includes deferrals that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), 402(h)(1)(B)(SEP), 414(h)(2), & 457(b).

Determination period. Compensation will be based on the following "determination period" (this will also be the Limitation Year unless otherwise elected at option f. under Section B of Appendix A):

- d. ☒ the Plan Year
- e. ☐ the Fiscal Year coinciding with or ending within the Plan Year
- f. ☐ the calendar year coinciding with or ending within the Plan Year

Adjustments to Compensation (for Plan Section 1.10). Compensation will be adjusted by:

- g. ☐ **No adjustments** (skip to i. below)
- h. ☒ **Adjustments.** Compensation will be adjusted by (select all that apply):
 - 1. ☐ excluding salary reductions (401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2) pickup, & 457(b))
 - 2. ☐ excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in 1. above) and welfare benefits.
 - 3. ☒ excluding Compensation paid during the "determination period" while not a Participant in the Plan.
 - 4. ☐ excluding Military Differential Pay
 - 5. ☐ excluding overtime
 - 6. ☒ excluding bonuses
 - 7. ☒ other: severance pay (e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay)).

Military Differential Pay Special Effective Date (leave blank if not applicable)

- i. ☐ If this is a PPA restatement and the provisions above regarding Military Differential Pay (included unless h.4. is selected) have a later effective date than Plan Years beginning after December 31, 2008, then enter the date such provisions were first effective: _____ (may not be earlier than January 1, 2009; for Plan Years beginning prior to January 1, 2009, Military Differential Pay is treated in accordance with the post-severance Compensation provisions in the following Question).

23. POST-SEVERANCE COMPENSATION (415 REGULATIONS)

The following optional provision of the 415 Regulations will apply to Limitation Years beginning on or after July 1, 2007 unless otherwise elected below:

415 Compensation (post-severance compensation adjustments) (select all that apply at a.; leave blank if none apply)

NOTE: Unless otherwise elected under a. below, the following defaults apply: 415 Compensation will **include** (to the extent provided in Plan Section 1.23), post-severance regular pay, leave cash-outs and payments from nonqualified unfunded deferred compensation plans.

- a. ☐ The defaults listed above apply except for the following (select one or more):
 - 1. ☐ Leave cash-outs will be **excluded**
 - 2. ☐ Nonqualified unfunded deferred compensation will be **excluded**
 - 3. ☐ Military Differential Pay will be **included** (Plan automatically includes for Limitation Years beginning after December 31, 2008)
 - 4. ☐ Disability continuation payments will be **included**

Plan Compensation (post-severance compensation adjustments)

- b. ☐ **Defaults apply.** Compensation will **include** (to the extent provided in Plan Section 1.10 and to the extent such amounts would be included in Compensation if paid prior to severance of employment) post-severance regular pay, leave cash-outs, and payments from nonqualified unfunded deferred compensation plans.
- c. ☒ **Exclude all post-severance compensation.** Exclude all post-severance compensation for allocation purposes.
- d. ☐ **Post-severance adjustments.** The defaults listed at b. apply except for the following (select one or more):
 - 1. ☐ Exclude all post-severance compensation
 - 2. ☐ Regular pay will be **excluded**
 - 3. ☐ Leave cash-outs will be **excluded**
 - 4. ☐ Nonqualified unfunded deferred compensation will be **excluded**
 - 5. ☐ Military Differential Pay will be **included**
 - 6. ☐ Disability continuation payments will be **included**

NOTE: The above treatment of Military Differential Pay only applies to Plan Years beginning prior to January 1, 2009. For Plan Years beginning after such date, Military Differential Pay is not considered post-severance compensation and the provisions of Question 22 apply.

Post-severance compensation special effective date (leave blank if not applicable)

- e. ☐ If this is a PPA restatement and the post-severance compensation adjustments above for 415 Compensation or Plan Compensation applied other than the first day of the Plan Year beginning on or after July 1, 2007, then enter the date such provisions were first effective: _____

CONTRIBUTIONS AND ALLOCATIONS

24. **EMPLOYER CONTRIBUTIONS (OTHER THAN MATCHING CONTRIBUTIONS)** (Plan Section 4.1(a)(2)) (skip to Question 26 if Employer contributions are NOT selected at Question 11.b.)

CONTRIBUTION FORMULA (select one or more of the following contribution formulas:)

- a. ☒ **Fixed contribution** equal to (only select one):
1. ☒ 10.02 % of each Participant's Compensation for each:
 - a. ☒ Plan Year
 - b. ☐ calendar quarter
 - c. ☐ month
 - d. ☐ pay period
 - e. ☐ week
 2. ☐ \$ _____ per Participant.
 3. ☐ \$ _____ per Hour of Service worked while an Eligible Employee
 - a. ☐ up to _____ hours (leave blank if no limit)
 4. ☐ other: _____ (the formula described must satisfy the definitely determinable requirement under Regulations §1.401-1(b)).
- b. ☐ **Sick leave/vacation leave conversion.** The Employer will contribute an amount equal to an Employee's current hourly rate of pay multiplied by the Participant's number of unused accumulated sick leave and/or vacation days (as selected below). Only unpaid sick and vacation leave for which the Employee has no right to receive in cash may be included. In no event will the Employer's contribution for the Plan Year exceed the maximum contribution permitted under Code §415(c).

The following may be converted under the Plan: (select one or both):

1. ☐ Sick leave
2. ☐ Vacation leave

Eligible Employees. Only the following Participants shall receive the Employer contribution for sick leave and/or vacation leave (select 3. and/or 4; leave blank if no limitations provided, however, that this Plan may not be used to only provide benefits for terminated Employees)

3. ☐ **Former Employees.** All Employees terminating service with the Employer during the Plan Year and who have satisfied the eligibility requirements based on the terms of the Employer's accumulated benefits plans checked below (select all that apply; leave blank if no exclusions):
 - a. ☐ The Former Employee must be at least age _____ (e.g., 55)
 - b. ☐ The value of the sick and/or vacation leave must be at least \$ _____ (e.g., \$2,000)
 - c. ☐ A contribution will only be made if the total hours is over _____ (e.g., 10) hours
 - d. ☐ A contribution will not be made for hours in excess of _____ (e.g., 40) hours
 4. ☐ **Active Employees.** Active Employees who have not terminated service during the Plan Year and who meet the following requirements (select all that apply; leave blank if no exclusions):
 - a. ☐ The Employee must be at least age _____ (e.g., 55)
 - b. ☐ The value of the sick and/or vacation leave must be at least \$ _____ (e.g., \$2,000)
 - c. ☐ A contribution will only be made if the total hours is over _____ (e.g., 10) hours
 - d. ☐ A contribution will not be made for hours in excess of _____ (e.g., 40) hours
 - c. ☐ **Social Security Replacement Plan.** An amount equal to 7.5% of the Participant's Compensation for the entire Plan Year, reduced by Employee and Employer contributions to this Plan actually contributed to the Participant's Account during such Plan Year. (may only be selected if Question 11.b.1. has also been selected)
- Include only part-time, seasonal and temporary Employees** (leave blank if not applicable)
1. ☐ Regardless of any other provision in this to the contrary, the contribution above will only be made for part-time, seasonal, or temporary Employees who are not otherwise covered by another qualifying public retirement system as defined for purposes of Regulation §31.3121(b)(7)-2.

25. ALLOCATION CONDITIONS (Plan Section 4.3). If 24.a. is selected above, indicate requirements to share in allocations of Employer contributions (select a. OR b. and all that apply at c. - e.)
- a. ☒ **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 26).
- b. ☐ **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)
- Conditions for Participants NOT employed on the last day of the Plan Year**
1. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service (or _____ (not to exceed 12) months of service if the elapsed time method is selected).
 2. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 3. ☐ Participants will NOT share in the allocations, regardless of service.
 4. ☐ Participants will share in the allocations, regardless of service.
 5. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).
- Conditions for Participants employed on the last day of the Plan Year**
6. ☐ No service requirement.
 7. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 8. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.
 9. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).
- Waiver of conditions for Participants NOT employed on the last day of the Plan Year.** If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):
- c. ☐ Death
 - d. ☐ Total and Permanent Disability
 - e. ☐ Termination of employment on or after Normal Retirement Age
 1. ☐ or Early Retirement Date
26. EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 4.1(a)(3)). (skip to Question 29 if matching contributions are NOT selected at Question 11.c.) The Employer will make the following matching contributions:
- A. **Elective deferrals taken into account.** For purposes of applying the matching contribution provisions below, elective deferrals include elective deferral (pre-tax and Roth) contributions to the following Employer plan(s) (insert name of Plan(s) to which the elective deferral contributions being matched will be made):
- a. ☐ **457 plan(s).** Enter Plan name: _____
 - b. ☐ **403(b) plan(s).** Enter Plan name: _____
- NOTE:** If selected at Question 32, after-tax voluntary Employee contributions are also considered elective deferrals for purposes of matching contributions.
- B. **Matching Formula.** (select one)
- c. ☐ **Fixed - uniform rate/amount.** The Employer will make matching contributions equal to _____% (e.g., 50) of the Participant's elective deferrals
 1. ☐ that do not exceed _____% of a Participant's Compensation (leave blank if no limit)
 - d. ☐ **Fixed - tiered.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's elective deferrals, determined as follows:

NOTE: Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate \$ or %)	Matching Percentage
First _____	_____ %
Next _____	_____ %
Next _____	_____ %
Next _____	_____ %

- e. ☐ **Fixed - Years of Service.** The Employer will make matching contributions equal to a uniform percentage of each Participant's elective deferrals based on the Participant's Years of Service (or Periods of Service if the elapsed time method is selected), determined as follows (add additional tiers if necessary):

Years (or Periods) of Service	Matching Percentage
_____	_____ %
_____	_____ %
_____	_____ %

For purposes of the above matching contribution formula, a Year (or Period) of Service means a Year (or Period) of Service for:

1. ☐ vesting purposes
 2. ☐ eligibility purposes
 f. ☐ Other: _____ (the formula described must satisfy the definitely determinable requirement under Regulations §1.401-1(b))

27. MATCHING CONTRIBUTION PROVISIONS

- A. **Maximum matching contribution.** The total matching contribution made on behalf of any Participant for any Plan Year will not exceed:
- a. ☐ N/A (no Plan specific limit on the amount of matching contribution)
 b. ☐ \$ _____.
 c. ☐ _____ % of Compensation.
- B. **Period of determination.** The matching contribution formula will be applied on the following basis (and elective deferrals and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period):
- d. ☐ the Plan Year
 e. ☐ each payroll period
 f. ☐ each month
 g. ☐ each Plan Year quarter
 h. ☐ each payroll unit (e.g., hour)

28. ALLOCATION CONDITIONS FOR MATCHING CONTRIBUTIONS (Plan Section 4.3). Select a. OR b. and all that apply of c. - h.

- a. ☐ **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 29).
- b. ☐ **Allocation conditions apply** (select one of 1. -5. AND one of 6. - 9. below)
Conditions for Participants NOT employed on the last day of the Plan Year.
1. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service (or _____ (not to exceed 12) months of service if the elapsed time method is selected).
 2. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 3. ☐ Participants will NOT share in the allocations, regardless of service.
 4. ☐ Participants will share in the allocations, regardless of service.
 5. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

Conditions for Participants employed on the last day of the Plan Year

6. ☐ No service requirement.
 7. ☐ A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
 8. ☐ A Participant must complete at least _____ (not to exceed 1,000) Hours of Service during the Plan Year.
 9. ☐ Other: _____ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected)).

Waiver of conditions for Participants NOT employed on the last day of the Plan Year. If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

- c. ☐ Death
 d. ☐ Total and Permanent Disability
 e. ☐ Termination of employment on or after Normal Retirement Age
 1. ☐ or Early Retirement Date

Conditions based on period other than Plan Year. The allocation conditions above will be applied based on the Plan Year unless otherwise selected below. If selected, the above provisions will be applied by substituting the term Plan Year with the specified period (e.g., if Plan Year quarter is selected below and the allocation condition is 250 Hours of Service per quarter, enter 250 hours (not 1000) at b.8. above).

- f. ☐ The Plan Year quarter.
- g. ☐ Payroll period.
- h. ☐ Other: _____ (must be definitely determinable and not subject to Employer discretion and may not be longer than a twelve month period).

29. **FORFEITURES (Plan Sections 1.21 and 4.3(e))**

Forfeitures of Employer contributions other than matching contributions will be:

- a. ☐ added to the Employer contribution and allocated in the same manner
- b. ☐ used to reduce any Employer contribution
- c. ☐ allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
- d. ☒ other: there are no forfeitures - all contributions are fully vested (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

Forfeitures of Employer matching contributions will be:

- e. ☒ N/A. Same as above or no Employer matching contributions.
- f. ☐ used to reduce the Employer matching contribution.
- g. ☐ used to reduce any Employer contribution.
- h. ☐ other: _____ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants)

30. **ALLOCATION OF EARNINGS (Plan Section 4.3(c))**

Allocation of earnings with respect to amounts which are not subject to Participant investment direction and which are contributed to the Plan after the previous Valuation Date will be determined:

- a. ☒ N/A. (all assets in the Plan are subject to Participant investment direction)
- b. ☐ by using a weighted average based on the amount of time that has passed between the date a contribution or distribution is made and the prior Valuation Date
- c. ☐ by treating one-half of all such contributions as being a part of the Participant's nonsegregated Account balance as of the previous Valuation Date
- d. ☐ by using the method specified in Plan Section 4.3(c) (balance forward method)
- e. ☐ other: _____ (must be a definite predetermined formula)

31. **MANDATORY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8) (skip if mandatory Employee contributions NOT selected at Question 11.d.)**

- a. ☒ An Eligible Employee must contribute to the Plan 8 % (not to exceed 25%) of Compensation.
- b. ☐ An Eligible Employee must, prior to his or her first Entry Date, make a one-time irrevocable election to contribute to the Plan from _____ % (not less than 1%) to _____ % (not to exceed 25%) of Compensation.
- c. ☐ Other: _____ (must be definitely determinable)

Employer pick-up contribution. The mandatory Employee contribution is "picked up" by the Employer under Code §414(h)(2) unless elected below.

- d. ☐ The mandatory Employee contribution is not "picked-up" by the Employer.

32. **AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS (Plan Section 4.9) (skip if after-tax voluntary Employee contributions NOT selected at Question 11.e.)**

Matching after-tax voluntary Employee contributions. There are no Employer matching contributions on after-tax voluntary Employee contributions unless elected below.

- a. ☐ After-tax voluntary Employee contributions are considered elective deferrals for purposes of applying any matching contributions under the Plan.

DISTRIBUTIONS

33. **FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)**

Distributions under the Plan may be made in (select all that apply; must select at least one):

- a. ☒ lump-sums
- b. ☒ substantially equal installments
- c. ☐ partial withdrawals, provided the minimum withdrawal is \$ _____ (leave blank if no minimum)

- d. ☐ partial withdrawals or installments are only permitted for Participants or Beneficiaries who must receive required minimum distributions under Code §401(a)(9) except for the following (e.g., partial is not permitted for death benefits; leave blank if no exceptions):
1. ☐ _____
- e. ☐ annuity: _____ (describe the form of annuity or annuities)
- f. ☒ other: partial lump-sum payment of a designated amount, with the balance payable in installments for a period of years; installment payments in specific dollar amounts determined under a tax efficient systematic withdrawal program (must be definitely determinable and not subject to Employer discretion)

NOTE: Regardless of the above, a Participant is not required to request a withdrawal of his or her total Account for an in-service distribution, a hardship distribution, or a distribution from the Participant's Rollover Account.

Cash or property. Distributions may be made in:

- g. ☒ cash only, except for (select all that apply; leave blank if none apply):
1. ☐ insurance Contracts
2. ☐ annuity Contracts
3. ☐ Participant loans
- h. ☐ cash or property, except that the following limitation(s) apply: (leave blank if there are no limitations on property distributions):
1. ☐ _____ (must be definitely determinable and not subject to Employer discretion)

34. **CONDITIONS FOR DISTRIBUTIONS UPON SEVERANCE OF EMPLOYMENT.** Distributions upon severance of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

A. Accounts in excess of \$5,000

- a. ☒ Distributions may be made as soon as administratively feasible following severance of employment.
- b. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- c. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year quarter coincident with or next following severance of employment.
- d. ☐ Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following severance of employment.
- e. ☐ Distributions may be made as soon as administratively feasible after _____ months have elapsed following severance of employment.
- f. ☐ No distributions may be made until a Participant has reached Early or Normal Retirement Date.
- g. ☐ Other: _____ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

B. Accounts of \$5,000 or less

- h. ☒ Same as above
- i. ☐ Distributions may be made as soon as administratively feasible following severance of employment.
- j. ☐ Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- k. ☐ Other: _____ (must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

C. Timing after initial distributable event. If a distribution is not made in accordance with the above provisions upon the occurrence of the distributable event, then a Participant may elect a subsequent distribution at any time after the time the amount was first distributable (assuming the amount is still distributable), unless otherwise selected below (may not be selected with 34.f. and 34.h.):

- l. ☐ Other: _____ (e.g., a subsequent distribution request may only be made in accordance with l. above (i.e., the last day of another Plan Year); must be objective conditions which are ascertainable and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

D. Participant consent (i.e., involuntary cash-outs). Should Vested Account balances less than a certain dollar threshold be automatically distributed without Participant consent (mandatory distributions)?

NOTE: The Plan provides that distributions of amounts of \$5,000 or less are only paid as lump-sums.

- m. ☐ No, Participant consent is required for all distributions.
- n. ☒ Yes, Participant consent is required only if the distribution is over:
1. ☐ \$5,000
2. ☒ \$1,000
3. ☐ \$_____ (less than \$1,000)

NOTE: If 2. or 3. is selected, rollovers will be included in determining the threshold for Participant consent.

Automatic IRA rollover. With respect to mandatory distributions of amounts that are \$1,000 or less, if a Participant makes no election, the amount will be distributed as a lump-sum unless selected below.

4. ☐ If a Participant makes no election, then the amount will be automatically rolled over to an IRA provided the amount is at least \$_____ (e.g., \$200).

- E. **Rollovers in determination of \$5,000 threshold.** Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be **included** in determining the \$5,000 threshold for timing of distributions, form of distributions, or consent rules.
- o. ☐ Exclude rollovers (rollover contributions will be **excluded** in determining the \$5,000 threshold)

NOTE: Regardless of the above election, if the Participant consent threshold is \$1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

35. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))

Distributions upon the death of a Participant prior to the "required beginning date" will:

- a. ☒ be made pursuant to the election of the Participant or "designated Beneficiary"
- b. ☐ begin within 1 year of death for a "designated Beneficiary" and be payable over the life (or over a period not exceeding the "life expectancy") of such Beneficiary, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2
- c. ☐ be made within 5 (or if lesser _____) years of death for all Beneficiaries
- d. ☐ be made within 5 (or if lesser _____) years of death for all Beneficiaries, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the "life expectancy") of such "surviving Spouse"

NOTE: The elections above must be coordinated with the Form of distributions (e.g., if the Plan only permits lump-sum distributions, then options a., b. and d. would not be applicable).

36. OTHER PERMITTED DISTRIBUTIONS (select all that apply; leave blank if none apply)

A. IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)

In-service distributions will NOT be allowed (except as otherwise permitted under the Plan without regard to this provision) unless selected below (if applicable, answer a. - e.; leave blank if not applicable):

- a. ☐ In-service distributions may be made to a Participant who has not separated from service provided the following has been satisfied:
1. ☐ Age. The Participant has reached:
 - a. ☐ Normal Retirement Age
 - b. ☐ age 62
 - c. ☐ age _____(may not be earlier than age 62)

Special effective date (may be left blank if same as Plan or Restatement Effective Date)

- d. ☐ _____ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than the first day of the Plan Year beginning in 2007)

Account restrictions. In-service distributions are permitted from the following Participant Accounts:

- b. ☐ all Accounts
- c. ☐ only from the following Accounts (select one or more):
1. ☐ Account attributable to Employer matching contributions
 2. ☐ Account attributable to Employer contributions other than matching contributions
 3. ☐ Rollover Account
 4. ☐ Transfer Account
 5. ☐ Other: _____ (specify Account(s) and conditions in a manner that satisfies the definitely determinable requirement under Regulations §1.401-1(b) and is not subject to Employer discretion)

Limitations. The following limitations apply to in-service distributions:

- d. ☐ N/A (no additional limitations)
- e. ☐ Additional limitations (select one or more):
1. ☐ The minimum amount of a distribution is \$_____.
 2. ☐ No more than _____ distribution(s) may be made to a Participant during a Plan Year.
 3. ☐ Distributions may only be made from Accounts which are fully Vested.
 4. ☐ In-service distributions may be made subject to the following provisions: _____ (must satisfy the definitely determinable requirement under Regulations §1.401-1(b) and not be subject to Employer discretion).

37. HEART ACT PROVISIONS (Plan Section 6.17)

Continued benefit accruals.

- a. ☒ Continued benefit accruals will NOT apply
- b. ☐ Continued benefit accruals will apply

Special effective date. If this is a PPA restatement and the provision applied other than as of the first day of the 2007 Plan Year, then enter the date such provision was first effective: (leave blank if not applicable)

c. ☐ _____ (may not be earlier than the first day of the 2007 Plan Year)

Distributions for deemed severance of employment

d. ☒ The Plan does NOT permit distributions for deemed severance of employment

e. ☐ The Plan permits distributions for deemed severance of employment

Special effective date (may be left blank if same as Plan or Restatement Effective Date)

1. ☐ _____ (if this is a PPA restatement and the provisions were effective prior to the Restatement Effective Date, then enter the date such provisions were first effective; may not be earlier than January 1, 2007)

MISCELLANEOUS

38. LOANS TO PARTICIPANTS (Plan Section 7.6)

a. ☐ New loans are NOT permitted.

b. ☒ New loans are permitted.

NOTE: Regardless of whether new loans are permitted, if the Plan permits rollovers, then the Administrator may, in a uniform manner, accept rollovers of loans into this Plan.

39. ROLLOVERS (Plan Section 4.6) (skip if rollover contributions are NOT selected at 11.f.)

Eligibility. Rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply; leave blank if not applicable):

a. ☐ Any Eligible Employee, even prior to meeting eligibility conditions to be a Participant

b. ☐ Participants who are Former Employees

Distributions. When may distributions be made from a Participant's Rollover Account?

c. ☒ At any time

d. ☐ Only when the Participant is otherwise entitled to a distribution under the Plan

PPA TRANSITION RULES

The following questions only apply if this is a PPA restatement (i.e., Question 5.b.1. is selected). If this is not a PPA restatement, then this Plan will not be considered an individually designed plan merely because the following questions are deleted from the Adoption Agreement.

NOTE: The following provisions are designed to be left unanswered if the selections do not apply to the Plan.

40. WRERA - RMD WAIVERS FOR 2009 (Plan Section 6.8(f))

Suspension/continuation of RMDs. Unless otherwise elected below, required minimum distributions (RMDs) for 2009 were suspended unless a Participant or Beneficiary elected to receive such distributions:

a. ☐ RMDs for 2009 were suspended for any Participant or Beneficiary who was scheduled to receive his/her first RMD for 2009 or who did not make a continuing election prior to 2009 to receive his/her RMD (unless the Participant or Beneficiary made an election to receive such distribution). RMDs for 2009 were continued for any Participant or Beneficiary who had made a continuing election to receive an RMD prior to 2009 (unless the Participant or Beneficiary made an election to suspend such distribution).

b. ☐ RMDs continued unless otherwise elected by a Participant or Beneficiary.

c. ☐ RMDs continued in accordance with the terms of the Plan (i.e., no election available to Participants or Beneficiaries).

d. ☐ Other: _____

Direct rollovers. The Plan also treated the following as "eligible rollover distributions" in 2009 (If no election is made, then a "direct rollover" was only offered for "2009 RMDs"):

e. ☐ "2009 RMDs" and "Extended 2009 RMDs."

f. ☐ "2009 RMDs" but only if paid with an additional amount that is an "eligible rollover distribution" without regard to Code §401(a)(9)(H).

41. NON-SPOUSAL ROLLOVERS (Plan Section 6.14(d)). Non-spousal rollovers are permitted effective for distributions after December 31, 2006 unless an alternative effective date is selected at a. below:

a. ☐ Non-spousal rollovers are allowed effective _____ (may not be earlier than January 1, 2007 and not later than January 1, 2010; the Plan already provides for non-spousal rollovers effective as of January 1, 2010)

Governmental Money Purchase Plan

The adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Code §401 only to the extent provided in Rev. Proc. 2011-49 or subsequent guidance.

The Employer may not rely on the advisory letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the advisory letter issued with respect to the Plan and in Rev. Proc. 2011-49 or subsequent guidance. In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

This Adoption Agreement may be used only in conjunction with the Volume Submitter basic Plan document #09. This Adoption Agreement and the basic Plan document will together be known as FIS Business Systems LLC Governmental Volume Submitter Money Purchase Plan #09-002.

The adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

FIS Business Systems LLC will notify the Employer of any amendments made to the Plan or of the discontinuance or abandonment of the Plan. Furthermore, in order to be eligible to receive such notification, the Employer agrees to notify FIS Business Systems LLC of any change in address. In addition, this Plan is provided to the Employer either in connection with investment in a product or pursuant to a contract or other arrangement for products and/or services. Upon cessation of such investment in a product or cessation of such contract or arrangement, as applicable, the Employer is no longer considered to be an adopter of this Plan and FIS Business Systems LLC no longer has any obligations to the Employer that relate to the adoption of this Plan.

With regard to any questions regarding the provisions of the Plan, adoption of the Plan, or the effect of an advisory letter from the IRS, call or write (this information must be completed by the sponsor of this Plan or its designated representative):

Name: Rachel Morris, City Attorney

Address: 8101 Ralston Road

Arvada Colorado 80001-8101

Telephone: 720-898-7193

The Employer and Trustee (or Insurer) hereby cause this Plan to be executed on the date(s) specified below:

EMPLOYER: City of Arvada, Colorado

By: _____ DATE SIGNED _____

TRUSTEE (OR INSURER):

☒ [X] The signature of the Trustee or Insurer appears on a separate agreement or Contract,

OR (add additional Trustee signature lines as necessary)

Fidelity Management Trust Company

TRUSTEE OR INSURER

DATE SIGNED

**APPENDIX A
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS**

A. Special effective dates (leave blank if not applicable):

- a. ☐ **Special effective date(s):** _____. For periods prior to the specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law.

B. Other permitted elections (the following elections are optional):

- a. ☐ **No other permitted elections**

The following elections apply (select one or more):

- b. ☐ **Deemed 125 compensation** (Plan Section 1.23). Deemed 125 compensation will be included in Compensation and 415 Compensation.
- c. ☐ **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions)** (Plan Section 3.5(d)). The "rule of parity" provisions in Plan Section 3.5(d) will apply for (select one or both):
 1. ☐ eligibility purposes
 2. ☐ vesting purposes
- d. ☐ **Beneficiary if no beneficiary elected by Participant** (Plan Section 6.2(e)). In the event no valid designation of Beneficiary exists, then in lieu of the order set forth in Plan Section 6.2(e), the following order of priority will be used: _____ (specify an order of beneficiaries; e.g., children per stirpes, parents, and then step-children).
- e. ☐ **Common, collective or pooled trust funds** (Plan Sections 7.2(c)(5) and/or 7.3(b)(6)). The name(s) of the common, collective or pooled trust funds available under the Plan is (are): _____.
- f. ☐ **Limitation Year** (Plan Section 1.29). The Limitation Year for Code §415 purposes will be _____ (must be a consecutive twelve month period) instead of the "determination period" for Compensation.
- g. ☐ **415 Limits when 2 defined contribution plans are maintained** (Plan Section 4.4). If any Participant is covered under another qualified defined contribution plan maintained by the Employer or an Affiliated Employer, or if the Employer or an Affiliated Employer maintains a welfare benefit fund, as defined in Code §419(e), or an individual medical account, as defined in Code §415(l)(2), under which amounts are treated as "annual additions" with respect to any Participant in this Plan, then the provisions of Plan Section 4.4(b) will apply unless otherwise specified below:
 1. ☐ Specify, in a manner that precludes Employer discretion, the method under which the plans will limit total "annual additions" to the "maximum permissible amount" and will properly reduce any "excess amounts": _____.
- h. ☐ **Recognition of Service with other employers** (Plan Sections 1.39 and 1.54). Service with the following employers (in addition to those specified at Question 15) will be recognized as follows (select one or more):

	Eligibility	Vesting	Contribution Allocation
1. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
2. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
3. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
4. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
5. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐
6. ☐ Employer name: _____	a. ☐	b. ☐	c. ☐

Limitations

7. ☐ The following provisions or limitations apply with respect to the recognition of prior service: _____
 (e.g., credit service with X only on/following 1/1/13)

- i. ☐ **Other vesting provisions.** The following vesting provisions apply to the Plan (select one or more):
1. ☐ **Special vesting provisions.** The following special provisions apply to the vesting provisions of the Plan: _____ (must be definitely determinable and satisfy the parameters set forth at Question 17)
 2. ☐ **Pre-amendment vesting schedule.** (Plan Section 6.4(b)). If the vesting schedule has been amended and a different vesting schedule other than the schedule at Question 17 applies to any Participants, then the following provisions apply (must select one of a. – d. AND complete e.):

Applicable Participants. The vesting schedules in Question 17 only apply to:

- a. ☐ Participants who are Employees as of _____ (enter date).
- b. ☐ Participants in the Plan who have an Hour of Service on or after _____ (enter date).
- c. ☐ Participants (even if not an Employee) in the Plan on or after _____ (enter date).
- d. ☐ Other: _____ (e.g., Participants in division A)

Vesting schedule

- e. The schedule that applies to Participants not subject to the vesting schedule in Question 17 is:

Years (or Periods) of Service	Percentage
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

- j. ☐ **Minimum distribution transitional rules** (Plan Section 6.8(e)(5))

NOTE: This Section does not apply to (1) a new Plan, (2) an amendment or restatement of an existing Plan that never contained the provisions of Code §401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA), or (3) a Plan where the transition rules below do not affect any current Participants.

The "required beginning date" for a Participant is:

1. ☐ April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (pre-SBJPA rules continue to apply)
2. ☐ April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both; leave blank if both applied effective as of January 1, 1996):
 - a. ☐ A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of _____ (may not be earlier than January 1, 1996) was allowed to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the recommencement of distributions, if the Plan permits annuities as a form of distribution then the following apply:
 1. ☐ N/A (annuity distributions are not permitted)
 2. ☐ Upon the recommencement of distributions, the original Annuity Starting Date will be retained.
 3. ☐ Upon the recommencement of distributions, a new Annuity Starting Date is created.
 - b. ☐ A Participant who had not begun receiving required minimum distributions as of _____ (may not be earlier than January 1, 1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) applies to all such Participants unless selected below:
 1. ☐ The in-service distribution option was eliminated with respect to Participants who attained age 70 1/2 in or after the calendar year that began after the later of (1) December 31, 1998, or (2) the adoption date of the restatement to bring the Plan into compliance with the SBJPA.

- k. ☐ **Other spousal provisions** (select one or more)

1. ☐ **Definition of Spouse.** The term Spouse includes a spouse under federal law as well as the following: _____
2. ☐ **Automatic revocation of spousal designation** (Plan Section 6.2(f)). The automatic revocation of a spousal Beneficiary designation in the case of divorce does not apply.
3. ☐ **Timing of QDRO payment.** A distribution to an Alternate Payee shall not be permitted prior to the time a Participant would be entitled to a distribution.

- l. ☐ **Applicable law.** Instead of using the applicable laws set forth in Plan Section 9.4(a), the Plan will be governed by the laws of: _____

- m. ☐ **Total and Permanent Disability.** Instead of the definition at Plan Section 1.49, Total and Permanent Disability means: _____ (must be definitely determinable).

Governmental Money Purchase Plan

- n. ☐ **Permissible Trust (or Custodian) modifications.** The Employer makes the following modifications to the Trust (or Custodial) provisions as permitted under Rev. Proc. 2011-49 (or subsequent IRS guidance) (select one or more of 1. - 3. below):

NOTE: Any elections below must not: (i) conflict with any Plan provision unrelated to the Trust or Trustee; or (ii) cause the Plan to violate Code §401(a). In addition, this may not be used to substitute all of the Trust provisions in the Plan.

1. ☐ **Investments.** The Employer amends the Trust provisions relating to Trust investments as follows:

2. ☐ **Duties.** The Employer amends the Trust provisions relating to Trustee (or Custodian) duties as follows:

3. ☐ **Other administrative provisions.** The Employer amends the other administrative provisions of the Trust as follows:

ADMINISTRATIVE PROCEDURES

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this Section without a formal Plan amendment. In addition, modifications to these procedures will not affect an Employer's reliance on the Plan.

A. **Loan Limitations.** (complete only if loans to Participants are permitted; leave blank if none apply)

- a. ☒ Limitations (select one or more):
 1. ☒ Loans will be treated as Participant directed investments.
 2. ☐ Loans will only be made for hardship or financial necessity as specified below (select i. or ii.)
 - a. ☐ hardship reasons specified in Plan Section 6.12
 - b. ☐ financial necessity (as defined in the loan program).
 3. ☐ The minimum loan will be \$_____.
 4. ☐ A Participant may only have _____ (e.g., one (1)) loan(s) outstanding at any time.
 5. ☐ All outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution (including a hardship distribution), if applicable).
 6. ☐ **Account restrictions.** Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
 - a. ☐ Account(s) attributable to Employer matching contributions
 - b. ☐ Account attributable to Employer contributions other than matching contributions
 - c. ☐ Rollover Account
 - d. ☐ Transfer Account
 - e. ☐ Other: _____
- AND**, if loans are restricted to certain accounts, the limitations of Code §72(p) will be applied:
- f. ☐ by determining the limits by only considering the restricted accounts.
 - g. ☐ by determining the limits taking into account a Participant's entire interest in the Plan.

Additional Loan Provisions (select all that apply; leave blank if none apply)

- b. ☒ **Loan payments.** Loans are repaid by (if left blank, then payroll deduction applies unless Participant is not subject to payroll (e.g., partner who only has a draw)):
 1. ☒ payroll deduction
 2. ☐ ACH (Automated Clearing House)
 3. ☒ check
 - a. ☐ Only for prepayment
- c. ☒ **Interest rate.** Loans will be granted at the following interest rate (if left blank, then 3. below applies):
 1. ☐ _____ percentage points over the prime interest rate
 2. ☐ _____%
 3. ☒ the Administrator establishes the rate at the time the loan is made
- d. ☒ **Refinancing.** Loan refinancing is allowed.

B. **Life Insurance.** (Plan Section 7.5)

- a. ☒ Life insurance may not be purchased.
- b. ☐ Life insurance may be purchased...
 1. ☐ at the option of the Administrator
 2. ☐ at the option of the Participant

Limitations

3. ☐ N/A (no limitations)
4. ☐ The purchase of initial or additional life insurance will be subject to the following limitations (select one or more):
 - a. ☐ Each initial Contract will have a minimum face amount of \$_____.
 - b. ☐ Each additional Contract will have a minimum face amount of \$_____.
 - c. ☐ The Participant has completed _____ Years (or Periods) of Service.
 - d. ☐ The Participant has completed _____ Years (or Periods) of Service while a Participant in the Plan.
 - e. ☐ The Participant is under age _____ on the Contract issue date.
 - f. ☐ The maximum amount of all Contracts on behalf of a Participant may not exceed \$_____.
 - g. ☐ The maximum face amount of any life insurance Contract will be \$_____.

C. **Plan Expenses.** Will the Plan assess against an individual Participant's Account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan service?

- a. ☒ No
- b. ☐ Yes

D. **Directed investments**

- a. ☐ Participant directed investments are NOT permitted.
- b. ☒ Participant directed investments are permitted from the following Participant Accounts:
 - 1. ☒ all Accounts
 - 2. ☐ only from the following Accounts (select one or more):
 - a. ☐ Account attributable to Employer contributions
 - b. ☐ Rollover Account
 - c. ☐ Transfer Account
 - d. ☐ Other: _____ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

E. **Rollover Limitations.** Will the Plan accept rollover contributions and/or direct rollovers from the sources specified below?

- a. ☐ No, Administrator determines in operation which sources will be accepted.
- b. ☒ Yes

Rollover sources. Indicate the sources of rollovers that will be accepted (select one or more)

- 1. ☒ **Direct Rollovers.** The Plan will accept a direct rollover of an eligible rollover distribution from (select one or more):
 - a. ☒ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions
 - b. ☒ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions
 - c. ☒ a plan described in Code §403(a) (an annuity plan), excluding after-tax employee contributions
 - d. ☒ a plan described in Code §403(a) (an annuity plan), including after-tax employee contributions
 - e. ☒ a plan described in Code §403(b) (a tax-sheltered annuity), excluding after-tax employee contributions
 - f. ☒ a plan described in Code §403(b) (a tax-sheltered annuity), including after-tax employee contributions
 - g. ☒ a plan described in Code §457(b) (eligible deferred compensation plan)

Direct Rollovers of Participant Loan. The Plan will NOT accept a direct rollover of a Participant loan from another plan unless selected below (leave blank if default applies)

- h. ☒ The Plan will accept a direct rollover of a Participant loan
- i. ☐ The Plan will only accept a direct rollover of a Participant loan only in the following situation(s): _____ (e.g., only from Participants who were employees of an acquired organization).
- 2. ☐ **Participant Rollover Contributions from Other Plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution (select one or more):
 - a. ☐ a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan)
 - b. ☐ a plan described in Code §403(a) (an annuity plan)
 - c. ☐ a plan described in Code §403(b) (a tax-sheltered annuity)
 - d. ☐ a governmental plan described in Code §457(b) (eligible deferred compensation plan)
- 3. ☐ **Participant Rollover Contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.

CITY OF ARVADA MUNICIPAL JUDGE RETIREMENT PLAN

PARTICIPANT LOAN PROGRAM

City of Arvada Municipal Judge Retirement Plan permits loans to be made to Participants and their beneficiaries. However, before any loan is made, the Plan requires that a written loan program be established which sets forth the rules and guidelines for making Participant loans. This document shall serve as the required written loan program. In addition, the Administrator may use this document to serve as, or supplement, any required notice of the loan program to Participants and their beneficiaries. All references to Participants in this loan program shall only include Participants and their Beneficiaries or any alternate payee with respect to the Plan.

The Administrator is authorized to administer the Participant Loan Program. A Participant must apply to the Administrator for a loan in the manner set forth by the Administrator.

1. Loan application. Any Participant may apply for a loan from the Plan. A Participant must apply for each loan with an application which specifies the amount of the loan desired, the requested duration for the loan and the source of security for the loan.

All loan applications will be considered by the Administrator within a reasonable time after the Participant applies for the loan. The Participant will be required to provide any supporting information deemed necessary by the Administrator.

2. Loan limitations and rules. The Administrator will not approve any loan to a Participant in an amount which exceeds 50% of his or her nonforfeitable account balance. The maximum aggregate dollar amount of loans outstanding to any Participant may not exceed \$50,000, reduced by the excess of the Participant's highest outstanding Participant loan balance during the 12-month period ending on the date of the loan over the Participant's current outstanding Participant loan balance on the date of the loan. With regard to any loan made pursuant to this program, the following rule(s) and limitation(s) shall apply, in addition to such other requirements set forth in the Plan:

- a. All loans made pursuant to this program will be considered a directed investment from the account(s) of the Participant maintained under the Plan. As such, all payments of principal and interest made by the Participant will be credited only to the account(s) of such Participant. The Plan also will charge that portion of the Participant's account balances with expenses directly related to the origination, maintenance and collection of the note.
- b. Loan refinancing is not permitted

3. Account restrictions. Loans may be made from any of the Participant's accounts in the Plan.

4. Evidence and terms of loan. The Administrator will document every loan in the form of a promissory note signed by the Participant for the face amount of the loan, together with a commercially reasonable rate of interest.

Any loan granted or renewed under this program will bear a commercially reasonable rate of interest established by the Administrator. In determining such rate of interest, the Plan will require a rate of return commensurate with the prevailing interest rate charged on similar loans under like circumstances by persons in the business of lending money. Such prevailing interest rate standard will permit the Administrator to consider factors pertaining to the opportunity for gain and risk of loss that a professional lender would consider on a similar arms length transaction, such as the creditworthiness of the Participant and the security given for the loan. Therefore, in establishing the rate of interest, the Administrator will conduct a reasonable and prudent inquiry with professional lenders in the same geographic locale where the Participant and Employer reside to determine such prevailing interest rate for loans under like circumstances. The interest rate will be fixed for the duration of the loan.

The loan must provide at least quarterly payments under a level amortization schedule. Generally, the Administrator will require that the Participant repay the loan by agreeing to payroll deduction while employed by the Employer, or payment by check thereafter.

The Administrator will fix the term for repayment of any loan, however, in no instance may the term of repayment be greater than five years, unless the loan qualifies as a home loan. A "home loan" is a loan used to acquire a dwelling unit which, within a reasonable time, the Participant will use as a principal residence.

A loan, if not otherwise due and payable, is due and payable on termination of the Plan, notwithstanding any contrary provision in the promissory note. Nothing in this loan policy restricts the Employer's right to terminate the Plan at any time.

Participants should note the law treats the amount of any loan (other than a "home loan") not repaid five years after the date of the loan as a taxable distribution on the last day of the five year period or, if sooner, at the time the loan is in default. If a Participant extends a non-home loan having a five year or less repayment term beyond five years, the balance of the loan at the time of the extension is a taxable distribution to the Participant.

5. Security for loan. The Plan will require that adequate security be provided by the Participant before a loan is granted. For this purpose, the Plan will consider a Participant's interest under the Plan to be adequate security. However, in no event will more than 50% of a Participant's vested interest in the Plan (determined immediately after origination of the loan) be used as security for the loan. Generally, it will be the policy of the Plan not to make loans which require security other than the Participant's vested interest in the Plan. However, if additional security is necessary to adequately secure the loan, then the Administrator will require that such security be provided before the loan will be granted.

6. Form of pledge. The pledge and assignment of a Participant's account balances will be in the form prescribed by the Administrator.

7. Military service. If a Participant separates from service (or takes a leave of absence) from the Employer because of service in the military and does not receive a distribution of his or her account balances, the Plan shall suspend loan repayments until the Participant's completion of military service. The Employer will provide the Participant with a written explanation of the effect of the Participant's military service upon his or her Plan loan. While the Participant is on active duty in the United States military, the interest rate on the loan shall not exceed six percent (6%), compounded annually.

8. Leave of absence/suspension of payment. The Administrator will suspend loan repayments for a period not exceeding one year which occurs during an approved leave of absence, either without pay from the Employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. The Administrator will provide the Participant with a written explanation of the effect of the leave of absence upon his or her Plan loan.

9. Payments after leave of absence. When payments resume following a payment suspension in connection with a leave of absence authorized in 7 or 8 above, the Participant shall select one of the following methods to repay the loan, plus accumulated interest:

- a. The Participant shall increase the amount of the required installments to an amount sufficient to amortize the remaining balance of the loan, plus accrued interest, over the remaining term of the loan.
- b. The Participant shall pay a balloon payment of the remaining unpaid principal and interest, at the conclusion of the term of the loan as determined in the promissory note.
- c. The Participant may extend the maturity of the loan and reamortize the payments over the remaining term of the loan. In no event shall the amount of the adjusted installment payment be less than the amount of the installment payment provided under the promissory note. In the case of a leave of absence described in item 8 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above. In the

case of a leave of absence described in item 7 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above, augmented by the time the Participant was actually in United States military service.

10. Default. The Administrator will treat a loan in default if:

- a. any scheduled payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the Participant missed the scheduled payment; or
- b. the Participant makes or furnishes any false representation or statement to the Plan.

The Participant will have the opportunity to repay the loan, resume current status of the loan by paying any missed payment plus interest or, if distribution is available under the Plan, request distribution of the note. If the loan remains in default, the Administrator will offset the Participant's vested account balances by the outstanding balance of the loan to the extent permitted by law. The Administrator will treat the note as repaid to the extent of any permissible offset. Pending final disposition of the note, the Participant remains obligated for any unpaid principal and accrued interest.

* * * * *

ADOPTION OF LOAN PROGRAM

The Administrator of City of Arvada Municipal Judge Retirement Plan adopts this Loan Program on the date specified below.

Date: _____

By: _____
Administrator

CITY OF ARVADA MUNICIPAL JUDGE RETIREMENT PLAN

APPLICATION FOR PARTICIPANT LOAN

Participant Information

Name _____

Address _____

Last 4 digits of Social Security Number _____

I hereby apply for a loan from the Plan. In support of this loan application, I attach such information which the Administrator may require to determine whether I qualify for the loan. I also authorize the Administrator to secure any credit reports to determine my creditworthiness and ability to repay the loan.

1. Loan amount. The amount of the loan is \$ _____ for a period of _____ months (if longer than 60 months, the purpose of the loan must be to acquire your principal residence).

2. Marital status. I am: (check one) ☐ married ☐ not married

3. Representations. I understand the Administrator will make any loan in reliance on the statements on this APPLICATION FOR PARTICIPANT LOAN which I certify are correct and complete. If any statement proves false, then the Plan may declare my indebtedness immediately due.

4. Acknowledgement/Authorization

In applying for this loan, I acknowledge that I have read the section of the Summary Plan Description governing Plan loans and have been furnished with a copy of the Participant Loan Program established by the Plan.

I hereby authorize the Administrator to verify the statements in this application and to obtain any information the Plan or its authorized representative may require in connection with this application.

Date of execution: _____

Signature of Administrator

Signature of Participant

CITY OF ARVADA MUNICIPAL JUDGE RETIREMENT PLAN

PROMISSORY NOTE
(Fixed Interest Rate)

Participant (BORROWER): _____

1. Payment Schedule. Your Payment Schedule will be:

Number of Months	Amount of Payments	When Payments are Due
_____	_____	_____

Prepayment: If you pay your loan off early, you will not have to pay a penalty.

Security Interest: You are giving a security interest in your account in the plan.

See below for any additional information about non-payment and default.

2. Promissory Note

For value received, I, the undersigned BORROWER, promises to pay City of Arvada Municipal Judge Retirement Plan, the sum of _____ dollars \$_____, together with interest on the unpaid balance at the rate of _____% per annum, payable in _____ equal monthly payments of \$_____ each, including interest. The first payment is due on _____, with like payments due on the same date of each month thereafter until the BORROWER has made all payments under this Note.

The BORROWER will make all payments by agreeing to payroll deduction or payment by check or by making payments at such other place as the HOLDER designates. If not sooner paid, this Note in any event is due and payable _____.

At the option of the Administrator until payment in full or maturity, upon default, all monies payable under this Note are due and immediately payable. The Note is in default if any payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the BORROWER missed the scheduled payment. Also, all monies payable under this Note are due and immediately payable upon termination of the Plan.

The BORROWER may prepay the loan without penalty. Each payment first applies to the payment of accrued interest and the balance of each payment applies to the payment of principal.

The BORROWER secures this loan by a pledge and irrevocable assignment of his/her vested interest in City of Arvada Municipal Judge Retirement Plan.

If the BORROWER does not pay this Note when due, the BORROWER promises to pay all costs of collection and reasonable attorneys' fees incurred by the HOLDER of this Note on account of such collection, whether or not the HOLDER files suit on this Note.

3. Acknowledgement/Authorization

Date of execution: _____

 Signature of Administrator

 Witness

 Signature of Participant (BORROWER)

CITY OF ARVADA MUNICIPAL JUDGE RETIREMENT PLAN

IRREVOCABLE PLEDGE AND ASSIGNMENT

Participant (BORROWER): _____

1. Pledge. In consideration of a loan to me of \$ _____, from City of Arvada Municipal Judge Retirement Plan (the "Plan"), as evidenced by a copy of the Promissory Note attached to this pledge, I hereby irrevocably pledge and assign to the Plan, or to its successor or successors, 50% of my vested account balances, at any time existing under the Plan, but not less than 50% of my vested account balances determined on the date of the loan which is subject to this pledge, to the extent necessary to satisfy such loan, any unpaid interest on such loan, all reasonable attorneys' fees necessary for collection of this obligation and all costs of collection. Failure by me to repay this loan when due or to pay any installment or interest when due will authorize the duly authorized representatives of the Plan to foreclose on this security or to bring a lawsuit to collect the outstanding indebtedness and interest on the indebtedness.

2. Acknowledgement/Authorization. This Irrevocable Pledge and Assignment shall bind my heirs, personal representatives or other legal representatives.

Date of execution: _____

Signature of Administrator

Witness

Signature of Participant (BORROWER)



REPORT TO CITY COUNCIL PUBLIC HEARING

AGENDA ITEM
10.C.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: CB21-042 An Ordinance Amending Section 38-34, Definitions and Standards, Section 38-63, Emergencies, and Section 38-65, Exceptions, of Article II, Noise Control, of Chapter 38, Environment, of the Arvada City Code (Ordinance No. 4789)

Report in Brief

The changes to the Land Development Code adopted by the City Council in May 2020 changed zoning districts. Some of these changes require updates to other portions of the code in order to accommodate the needs, interests and welfare of the residents, business owners and customers within the community. Among the updates that have been brought to the attention of the Arvada team are revisions to the Noise Control Ordinance in order to allow for snow removal to occur after and/or before normal business hours. Without certain amendments, business owners are subject to enforcement actions by the City should they use power equipment to conduct snow removal operations in order to allow safe access to businesses within mixed-use districts, which may include residential units or are adjacent to residential neighborhoods.

In order to address the need to conduct the necessary operations in response to emergencies and weather-related events, the Arvada team has proposed amendments to the City's Noise Control Ordinance. These amendments are intended to balance the needs of the adjacent residents to be protected against excessive noise with the needs of business owners to use equipment to remove snow from their premises after and/or before normal business hours.

The Arvada team recommends that the City Council approve CB21-042, An Ordinance Amending Section 38-34, Definitions and Standards, Section 38-63, Emergencies, and Section 38-65, Exceptions, of Article II, Noise Control, of Chapter 38, Environment, of the Arvada City Code, on final reading, numbered 4789 and ordered published by title only.

Financial Impact

There is no financial impact associated with the recommended action.

Background

On May 18, 2020, the City Council adopted the updated Land Development Code (LDC). The objectives associated with the adoption of the updated code included, among other considerations, the elimination of under-utilized zoning districts, creation of the Residential Neighborhood (RN) zoning district to reflect the characteristics of existing neighborhoods, creation of the Commercial, General (CG) zoning district to accommodate retail, commercial and office uses, revisions to parking standards for commercial and residential development and development of new design standards for specific zoning districts.

One of the revisions included the development of Mixed-Use (MX) zoning districts to allow for development flexibility in response to market changes and redevelopment opportunities. This revision included districts to address different land use characteristics throughout the City, specifically Neighborhood, Suburban, Urban, and Transit Mixed-Use Districts.

Mixed-Use districts often include neighborhoods of single family or multifamily dwellings with a mix of commercial, office and/or civic uses. These areas may include more vertical and high density development adjacent to businesses and institutions such as schools and civic offices. Many of the businesses operate during business hours that could be open as early as 6 AM

and close as late as 10 PM. In general, the normal operations of businesses and civic institutions within the MX zoning districts do not generate conflicts between business activity and the nearby residents.

Conflicts have been noted in certain situations wherein the needs of businesses generate complaints from nearby residents. An example that came to the attention of Arvada team members was associated with the operation of mechanical snow removal equipment. A business was the focus of complaints from nearby residents in response to the use of mechanical snow removal equipment. The business owner was using the equipment in order to allow for the safe use of the property for tenants and customers the morning following a snow storm. In response to the complaint, the City's code team issued a warning to the business owner. The business owner contacted a city council member and expressed concern that the ordinance did not allow for the safe use of his property by tenants and customers the following day.

In response to the concerns of the business owner, team members representing the City Manager's Office, Community and Economic Development and the City Attorney's Office collaborated to review potential changes to the City's Noise Control Ordinance. The team believed that amendments could be proposed that would allow for a level of noise in order to conduct certain operations during specific circumstances in a manner that balances the needs of business owners with the needs of nearby residents within MX districts.

Discussion

Following collaborative discussions among the team members described herein, amendments to the Noise Control Ordinance were drafted to address the needs of business owners and residents. The proposed amendment to Section 38-63 of the Ordinance exempts for enforcement purposes any *noise caused in the performance of emergency work for the immediate safety, health, or welfare of the community or individuals of the community, or to restore property to a safe condition.*

If adopted, this amendment would allow a property owner to conduct after-hours operations in order to address safety conditions associated with the safe use of the property.

The proposed amendment also addresses the needs of nearby residents through the balance of changes to Section 38-63 which states that *nothing in this section shall be construed to permit law enforcement, ambulance, fire, snow plows, or other emergency personnel to make excessive noise in the performance of their duties when such noise is clearly unnecessary.*

Section 38-65 of the proposed Ordinance includes amendments that exempt noise caused by public employees or others acting in support of public works contracts in order to complete the repair, construction or improvement of a public facility.

The concerns of adjacent residential neighbors who could be impacted by noise generated by private property owners are further addressed by the following text within Section 38-65, which states that *property owners doing maintenance of their property for purposes of safety and compliance with the Arvada City Code are exempt from the provisions of this chapter as long as the noise is reasonable based on the work being completed and the noise level remains within the permissible levels found at Section 38-91.* Section 38-91 establishes noise levels that provide measures which would be used by code enforcement in order to determine whether or not the noise generated from the activity is reasonable.

The proposed Ordinance amends the Noise Ordinance to allow for limited after-hours activities which may be required to conduct emergency work necessary to provide for safe access to a business owner's property. After-hours snow removal is a relatively rare occurrence in Arvada. Allowing for acceptable noise levels in association with snow removal and other emergency repairs should balance the needs of business owners with the needs of nearby residents.

Public Contact

Posting of the City Council agenda.

Commission Recommendation

N/A.

Strategic Alignment

The proposed action aligns with the following Principle included in the Community and Economic Development Priority Area of the City Council Strategic Plan:

Supports the community's vision by cultivating an environment that attracts and retains private-sector investment, a talented workforce and an engaged business community.

Alternative Courses of Action

N/A.

Recommendation for Action

The Arvada team recommends that the City Council approve CB21-042, An Ordinance Amending Section 38-34, Definitions and Standards, Section 38-63, Emergencies, and Section 38-65, Exceptions, of Article II, Noise Control, of Chapter 38, Environment, of the Arvada City Code, on final reading, numbered 4789 and ordered published by title only.

Suggested Motion:

I move that CB21-042, An Ordinance Amending Section 38-34, Definitions and Standards, Section 38-63, Emergencies, and Section 38-65, Exceptions, of Article II, Noise Control, of Chapter 38, Environment, of the Arvada City Code, be (approved on final reading, numbered 4789 and ordered published by title only) (rejected).

Prepared by:
Mark Deven, City Manager

Reviewed by:
Gail Walker, Legal Specialist-Contracts 11/12/2021

Approved by:

Emily Grogg, Senior Assistant City Attorney	11/15/2021
Rachel Morris, City Attorney	11/19/2021
Lorie Gillis, Deputy City Manager	11/23/2021
Mark Deven, City Manager	11/23/2021

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. 21-042
ORDINANCE NO. 4789

AN ORDINANCE AMENDING SECTION 38-34, DEFINITIONS AND STANDARDS, SECTION 38-63, EMERGENCIES, AND SECTION 38-65, EXCEPTIONS, OF ARTICLE II, NOISE CONTROL, OF CHAPTER 38, ENVIRONMENT, OF THE ARVADA CITY CODE

WHEREAS, the City Council finds that a reasonable and enforceable noise control ordinance is essential to public health, comfort, convenience, safety, and welfare of the residents and business owners of the city; and

WHEREAS, the City Council recognizes that revisions to the Land Development Code adopted on May 18, 2020 changed zoning districts that require updating in other portions of the code.

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

Section 1. Section 38-34, Definitions and Standards, of Article II, Noise Control, of Chapter 38, Noise Control, of the Arvada City Code is hereby amended as follows; all defined words not listed here remain unchanged:

“Sec. 38-34. Definitions and standards.

Commercial district means the following:

- (1) An area where offices, clinics and the facilities needed to serve them are located;
- (2) An area with local shopping and service establishments;
- (3) A tourist-oriented area where hotels, motels, and gasoline stations are located;
- (4) A business strip along a main street containing offices, retail businesses, or commercial enterprises;
- (5) Other commercial enterprises and activities which do not involve the manufacturing, processing or fabrication of any commodity. The term "commercial district" shall include, but not be limited to, any parcel of land zoned as CG or PUD with only commercial uses as provided by the zoning ordinance of the city.

Emergency vehicle means a motor vehicle used in response to hazards involving public safety concerns or to protect persons or property from an imminent exposure to danger and/or unsafe conditions.

Emergency work means work made necessary to restore property to a safe condition in response to hazards involving public safety concerns or work required to protect persons or property from imminent exposure to danger and/or unsafe conditions.

Heavy industrial district means an area in which enterprise and activities which involve the manufacturing, processing or fabrication of any commodity are located. Heavy industrial

district shall include, but not be limited to, any parcel of land zoned as IG under the zoning ordinance of the city.

Light industrial district means an area in which enterprises and activities that involve the manufacturing, processing, or fabrication of any commodity of a nonoffensive nature is located. Light industrial district shall include, but not be limited to, any parcel of land zoned as IL zoning district under the zoning ordinance of the city.

Residential or mixed-use district means an area of single or multifamily dwellings or horizontal or vertical development with a mix of commercial, office, residential, and/or civic uses and shall include areas where multiple-unit dwellings, high-rise apartments and high-density residential districts are located. Residential district shall also include, but is not limited to, hospitals, nursing homes, homes for the aged, schools, courts and similar institutional facilities. Residential and mixed-use districts shall include, but not be limited to, land zoned as RA, RN, R6, R13, R24, MX-S, MX-U, MX-T, or PUD with any residential use of the zoning ordinance of the city.”

The remaining portions of Section 38-34 shall remain unchanged.

Section 2. Section 38-63, Emergencies, of Article II, Noise Control, of Chapter 38, Noise Control, of the Arvada City Code is hereby amended in its entirety to read as follows:

“Sec. 38-63. Emergencies and weather related events.

Noise caused in the performance of emergency work for the immediate safety, health, or welfare of the community or individuals of the community, or to restore property to a safe condition in response to hazards involving public safety concerns shall not be subject to the provisions of this chapter. Nothing in this section shall be construed to permit law enforcement, ambulance, fire, snow plows, or other emergency personnel to make excessive noise in the performance of their duties when such noise is clearly unnecessary. Snow removal and other cleanup after weather related events necessary to remedy a safety hazard in compliance with Arvada City Code shall be exempt from the provisions of this chapter.”

Section 3. Section 38-65, Exceptions, of Article II, Noise Control, of Chapter 38, Noise Control, of the Arvada City Code is hereby amended in its entirety to read as follows:

“Sec. 38-65. Exceptions.

Noise caused in the maintenance, construction, repair, or improvement of any public road or public facility by public employees, by any person acting pursuant to a public works contract, or by any person acting under the direction or control of an employee of any public agency, shall be exempt from the provisions of this chapter. Property owners doing maintenance of their property for purposes of safety and compliance with the Arvada City Code are exempt from the provisions of this chapter as long as the noise is reasonable based on the work being completed and the noise level remains within the permissible levels found at Section 38-91.”

Section 4. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each part or parts thereof irrespective of the fact that any part or parts be declared unconstitutional or invalid.

Section 5. Effective date. This ordinance shall take effect five days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 15th day of November, 2021.

PASSED, ADOPTED, AND APPROVED this 6th day of December, 2021.

Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

Publication Dates: November 18, 2021
 December 9, 2021

REDLINE/STRIKETHROUGH VERSION

FOR INFORMATION ONLY -- NOT PART OF THE ORDINANCE

Underlined indicates new material
~~Strikethrough~~ indicates deleted material

Sec. 38-34. Definitions and standards.

Commercial district means the following:

- (1) An area where offices, clinics and the facilities needed to serve them are located;
- (2) An area with local shopping and service establishments;
- (3) A tourist-oriented area where hotels, motels, and gasoline stations are located;
- (4) A business strip along a main street containing offices, retail businesses, or commercial enterprises;
- (5) Other commercial enterprises and activities which do not involve the manufacturing, processing or fabrication of any commodity. The term "commercial district" shall include, but not be limited to, any parcel of land zoned as ~~B-1, B-2, B-3, B-4, B-5, PUD-BP, P-1, PUD-CC, PUD-NC-C/OF, or PUD-NC-MU-C~~ CG or PUD with only commercial uses as provided by the zoning ordinance of the city.

Emergency vehicle means a motor vehicle used in response to ~~a public~~ hazards involving public safety concerns ~~calamity~~ or to protect persons or property from an imminent exposure to danger and/or unsafe conditions.

Emergency work means work made necessary to restore property to a safe condition in response to hazards involving public safety concerns ~~following a public calamity~~ or work required to protect persons or property from imminent exposure to danger and/or unsafe conditions.

Heavy industrial district means an area in which enterprise and activities which involve the manufacturing, processing or fabrication of any commodity are located. Heavy industrial district shall include, but not be limited to, any parcel of land zoned as ~~IG I-2, A-1, or C-1~~ under the zoning ordinance of the city.

Light industrial district means an area in which enterprises and activities that involve the manufacturing, processing, or fabrication of any commodity of a nonoffensive nature is located. Light industrial district shall include, but not be limited to, any parcel of land zoned as ~~I-1, PUD-I, or zoned for industrial use within the PUD-CC, PUD-NC-I/OF, PUD-NC-MU-C, or PUD-NC-SU~~ IL zoning district under the zoning ordinance of the city.

Residential or mixed-use district means an area of single or multifamily dwellings or horizontal or vertical development with a mix of commercial, office, residential, and/or civic uses and shall include areas where multiple-unit dwellings, high-rise apartments and high-density residential districts are located. Residential district shall also include, but is not limited to, hospitals, nursing homes, homes for the aged, schools, courts and similar institutional

facilities. Residential **and mixed-use** districts shall include, but not be limited to, land zoned as **RA, RN, R6, R13, R24, MX-S, MX-U, MX-T, or PUD with any residential use**~~A-1, R-E, R-L, R-SL, R-I, R-MD, R-M, or PUD-R~~ of the zoning ordinance of the city.

Sec. 38-63. Emergencies **and weather related events.**

Noise caused in the performance of emergency work for the immediate safety, health, or welfare of the community or individuals of the community, or to restore property to a safe condition **in response to hazards involving public safety concerns** ~~following a public calamity~~ shall not be subject to the provisions of this chapter. Nothing in this section shall be construed to permit law enforcement, ambulance, fire, **snow plows**, or other emergency personnel to make excessive noise in the performance of their duties when such noise is clearly unnecessary. **Snow removal and other cleanup after weather related events necessary to remedy a safety hazard in compliance with the Arvada City Code shall be exempt from the provisions of this chapter.**

Sec. 38-65. Exceptions.

Noise caused in the maintenance, construction, repair, or improvement of any public road or public facility by public employees, by any person acting pursuant to a public works contract, or by any person acting under the direction or control of an employee of any public agency, shall be exempt from the provisions of this chapter. **Property owners doing maintenance of their property for purposes of safety and compliance with the Arvada City Code are exempt from the provisions of this chapter as long as the noise is reasonable based on the work being completed and the noise level remains within the permissible levels found at Section 38-91.**



REPORT TO CITY COUNCIL PUBLIC HEARING

AGENDA ITEM
10.D.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: CB21-043 An Ordinance Approving a Lease Purchase Financing to Provide Funds for the Construction of a Replacement Aquatics Center on the Site of the Meyers Pool; Authorizing and Approving a Site Lease, a Lease Purchase Agreement, and Other Documentation in Connection with a Cooperative Financing with Jefferson County School District No. R-1; and Providing Other Details, Parameters and Authorization In Connection with the Lease Purchase Financing (Ordinance No. 4790)

Report in Brief

Meyers Pool is owned by the City of Arvada and, through an intergovernmental agreement, managed and operated by the Apex Park and Recreation District. Jeffco Public Schools is one of the largest users of Meyers Pool, which serves as home to five area schools and more than 900 student athletes. Meyers Pool is more than 40 years old, at the end of its useful life, and in need of replacement. A plan has been developed to keep the pool in operation until a new pool opens.

Based on mutually shared interests, elected officials from three agencies have come together to form an intergovernmental partnership to replace Meyers Pool. The partnership includes Jeffco Public Schools, Apex Park and Recreation District (Apex), and, the City of Arvada (Arvada). A steering committee, comprised of representatives from each agency, is leading the effort to replace Meyers Pool. The goal of this project is to build a facility to deliver aquatic services to Jeffco Public Schools boys and girls swimming and diving teams and the Jefferson County and Arvada swimming communities.

A feasibility study examining the projected operational revenues and expenses, staffing structure, market opportunities, and user preferences, including amenities and site for the new pool, has been completed. In addition, a recommended architectural program for the new pool has also been developed, based on extensive input from the aquatics community.

This Intergovernmental Agreement, signed by all parties, defines the roles and responsibilities of each partner, which are as follows:

City of Arvada:

- Provide land for the project;
- Finance 50% of the project expenses through an annual debt service payment; and
- Fund the majority of the capital maintenance and replacement plan as project owner.

Jeffco Public Schools:

- Provide land for the project (Warder Elementary School property);
- Lead agency in securing project financing;
- Finance 50% of project expenses through an annual debt service payment; and
- As an equity partner, it will not be charged any user fees.

Apex Park and Recreation District:

SUBJECT: CB21-043 An Ordinance Approving a Lease Purchase Financing to Provide Funds for the Construction of a Replacement Aquatics Center on the Site of the Meyers Pool; Authorizing and Approving a Site Lease, a Lease Purchase Agreement, and Other Documentation in Connection with a Cooperative Financing with Jefferson County School District No. R-1; and Providing Other Details, Parameters and Authorization In Connection with the Lease Purchase Financing (Ordinance No. 4790)

PAGE: 2
ITEM: 10.D.

- Manage and program day-to-day operations; and
- Fund operating deficits (operating deficits are expected).

The Arvada team recommends that the City Council approve CB21-043 An Ordinance Approving a Lease Purchase Financing to Provide Funds for the Construction of a Replacement Aquatics Center on the Site of the Meyers Pool; Authorizing and Approving a Site Lease, a Lease Purchase Agreement, and Other Documentation in Connection with a Cooperative Financing with Jefferson County School District No. R-1; and Providing Other Details, Parameters and Authorization In Connection with the Lease Purchase Financing, on final reading, numbered 4790 and ordered published by title only).

Financial Impact

The estimated cost to replace the pool is \$35 million, split 50/50 between the School District and the City. The funds will be raised through a direct debt placement that is scheduled to close in early December. The loan will be for 20 years with debt service payments two times per year, interest only on the first payment and principal and interest on the second. Total annual payments for the City will not exceed \$1,190,000. Sufficient funding is available out of the code section 98-101 CIP funds and has already been approved as part of the 2022 CIP Budget Update and the 2021-2030 10-year Financial Model.

Background

Based on the findings of the feasibility study and site analysis, efforts are focused on constructing the new facility, approximately 64,000 square feet in size, at the existing Meyers Pool parking lot site. Future parking would be sited where the existing aquatics center is currently located. The existing pool will be kept open while the new pool is under construction.

Implementing this goal requires the development of a “Meyers Pool-Warder Elementary School Campus Master Plan,” which will acknowledge both the needs of the expanded pool and the school. The campus masterplan will be used to guide the project as a portion of the Warder Elementary School Campus is required to support the parking needs of the new facility.

The existing Meyer’s Pool site was recommended for the new 50-meter pool based on the following site characteristics:

- This location has the highest population base of all sites examined, in a two-mile radius;
- The location is well known for aquatics activities;
- The site is on the east side of the service area where there are fewer recreation amenities available;
- The site is located near several schools; and
- The operating plan, which projects estimated revenue and expenses for a new facility, produced conclusions that are acceptable to the Apex Parks and Recreation District.

Jeffco Public Schools and Arvada will develop the “Meyer’s Pool-Warder Elementary School Campus Master Plan.” The campus masterplan will reflect the larger replacement 50-meter pool, including additional parking, while also preserving and enhancing the campus-like feel that currently exists at this location.

Based on information generated by the community and stakeholder engagement efforts, market analysis, project input and demand analysis, the new facility will include:

- A new 50-meter pool with on-deck seating for 300-400;
- A separate warmer water and shallower pool that will support a variety of community uses and programming;
- Spectator seating for 800, locker rooms for men, women and officials, along with universal changing rooms;

SUBJECT: CB21-043 An Ordinance Approving a Lease Purchase Financing to Provide Funds for the Construction of a Replacement Aquatics Center on the Site of the Meyers Pool; Authorizing and Approving a Site Lease, a Lease Purchase Agreement, and Other Documentation in Connection with a Cooperative Financing with Jefferson County School District No. R-1; and Providing Other Details, Parameters and Authorization In Connection with the Lease Purchase Financing (Ordinance No. 4790)

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ITEM: 10.D.

- A mechanical room, lobby, and office space; and,
- Support space, including additional parking for a facility that would be approximately 50% larger than the existing facility.

Discussion

This Intergovernmental Agreement further defines the roles and responsibilities of the partners, as follows:

- Jeffco Public Schools will operate as lead in securing project financing, including developing an annual debt service schedule;
- Jeffco Public Schools and Arvada would each be responsible for funding 50% of the total project cost;
- Arvada would operate as lead in soliciting design and construction services, and serve in the project manager role, with Apex and Jeffco Public School operating as co-leads;
- Apex would operate as lead in developing and implementing an operating plan, including a revenue plan, staffing plan, and an annual budget and program of service;
- Arvada will develop a capital maintenance and replacement plan, with the City creating a capital maintenance reserve fund of \$1.5 million over the first five years of the Agreement, or by December 31, 2026; and
- Jeffco Public Schools, Arvada and Apex jointly publish an annual financial and program report and meet quarterly to discuss facility operations.

The conditions associated with the Intergovernmental Agreement described herein reflect seven years of discussions between the three public agencies, comments from user groups and other community stakeholders, and the need to replace an aging community asset that provides highly valued community activities for a wide range of recreational and competitive aquatic participants. Users of all ages, abilities and interests will have the opportunity to utilize the new facility that will be constructed.

As outlined in the Intergovernmental Agreement approved by all three project partners, Jeffco Schools has secured financing for this project. This ordinance authorizes Arvada's participation in the financing plan. Arvada's participation in the financing plan will support timely initiation of the capital project.

Public Contact

Posting of the City Council agenda. In addition, there have been several community meetings conducted by the partner agencies over the last seven years and previous discussions with the Arvada City Council, Jefferson County School District R-1 Board of Education and the Apex Park and Recreation District during public meetings.

Commission Recommendation

N/A

Strategic Alignment

Approval of this ordinance aligns with the Vibrant Community and Neighborhoods Priority Area within the City Council Strategic Plan; specifically, Milestone 3F which states:

By December 2022, replace Meyers Pool with a new 50-meter natatorium.

Alternative Courses of Action

SUBJECT: CB21-043 An Ordinance Approving a Lease Purchase Financing to Provide Funds for the Construction of a Replacement Aquatics Center on the Site of the Meyers Pool; Authorizing and Approving a Site Lease, a Lease Purchase Agreement, and Other Documentation in Connection with a Cooperative Financing with Jefferson County School District No. R-1; and Providing Other Details, Parameters and Authorization In Connection with the Lease Purchase Financing (Ordinance No. 4790)

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N/A.

Recommendation for Action

The Arvada team recommends that the City Council approve CB21-043 An Ordinance Approving a Lease Purchase Financing to Provide Funds for the Construction of a Replacement Aquatics Center on the Site of the Meyers Pool; Authorizing and Approving a Site Lease, a Lease Purchase Agreement, and Other Documentation in Connection with a Cooperative Financing with Jefferson County School District No. R-1; and Providing Other Details, Parameters and Authorization In Connection with the Lease Purchase Financing, on final reading, numbered 4790 and ordered published by title only.

Suggested Motion:

I move that CB21-043 An Ordinance Approving a Lease Purchase Financing to Provide Funds for the Construction of a Replacement Aquatics Center on the Site of the Meyers Pool; Authorizing and Approving a Site Lease, a Lease Purchase Agreement, and Other Documentation in Connection with a Cooperative Financing with Jefferson County School District No. R-1; and Providing Other Details, Parameters and Authorization In Connection with the Lease Purchase Financing be (approved on final reading, numbered 4790 and ordered published by title only) (rejected)

Prepared by:
Rosa Kougl, Executive Assistant

Reviewed by:

Approved by:

Gordon Reusink, Director of Vibrant Community and Neighborhoods	11/12/2021
Bryan Archer, Director of Finance	11/17/2021
Gail Walker, Legal Specialist-Contracts	11/18/2021
Kylie Justus, Assistant City Attorney	11/18/2021
Rachel Morris, City Attorney	11/19/2021
Lorie Gillis, Deputy City Manager	11/23/2021
Mark Deven, City Manager	11/23/2021

Enclosure, exhibits & attachments required to support the report

COUNCIL BILL NO. 21-043
ORDINANCE NO. 21-4790

AN ORDINANCE APPROVING A LEASE PURCHASE FINANCING TO PROVIDE FUNDS FOR THE CONSTRUCTION OF A REPLACEMENT AQUATICS CENTER ON THE SITE OF THE MEYERS POOL; AUTHORIZING AND APPROVING A SITE LEASE, A LEASE PURCHASE AGREEMENT, AND OTHER DOCUMENTATION IN CONNECTION WITH A COOPERATIVE FINANCING WITH JEFFERSON COUNTY SCHOOL DISTRICT NO. R-1; AND PROVIDING OTHER DETAILS, PARAMETERS AND AUTHORIZATION IN CONNECTION WITH THE LEASE PURCHASE FINANCING.

WHEREAS, the City of Arvada, Colorado (the “City”) is a home rule municipality and political subdivision of the State of Colorado (the “State”), duly organized and operating under the home-rule charter of the City (the “Charter”), the State Constitution (the “Constitution”) and the laws of the State; and

WHEREAS, the George J. Meyers Swimming Center (the “Meyers Pool”) is a City owned aquatics facility that was constructed in 1979 and based upon engineering studies is in significant need of repair or replacement; and

WHEREAS, the Meyers Pool is located at 7900 Carr Drive on approximately 7 acres (the “Pool Site”), adjacent to the Warder Elementary School campus of Jefferson County School District No. 1 (the “School District”) and the School District is one of the largest users of the Meyers Pool for various school purposes, including but not limited to swim team use; and

WHEREAS, the Meyers Pool has historically been operated by Apex Park and Recreation District (“Apex”), and based upon their shared interests, the City, the School District and Apex have worked cooperatively and most recently entered into an intergovernmental agreement for a replacement project for Meyers Pool (the “Pool IGA”); and

WHEREAS, as contemplated in the Pool IGA and related meetings, the School District and the City are to share equally in financing the capital costs to construct a replacement aquatics facility, including but not limited to parking and related site improvements (the “Replacement Aquatics Center”); and

WHEREAS, the School District has solicited for and obtained proposals from banks and related financial institutions for a loan structured as an annual appropriation lease purchase financing (collectively referred to as the “Annual Lease Structure”) to finance the estimated costs to construct the Replacement Aquatics Center and the lowest cost loan proposal from a commercial bank (the “Lender”) has been presented to the City staff and has been determined to be to the best advantage of the City; and

WHEREAS, the City is authorized pursuant to Section 31-15-801, Colorado Revised Statutes (“C.R.S.”) to enter into long-term rental or leasehold agreements and pursuant to Chapter II,

Section 2.2 of the Charter has all of the powers granted to home rule cities by the Constitution; and

WHEREAS, the Arvada City Council has determined that it is in the best interests of the City and its residents to construct the Replacement Aquatics Center on the existing Pool Site (which site, together with the Replacement Aquatics Center to be constructed thereon, the “Leased Property”); and

WHEREAS, under the Annual Lease Structure, the City will convey to the Lender a long-term leasehold interest in the Pool Site pursuant to a Site Lease (the “Site Lease”) between the City, as lessor, and the Lender, as lessee, and thereafter, the Lender will sublease the Leased Property back to the City and the School District on a joint basis, with the amortized loan repayment to shared equally between, but subject to annual appropriation by, the governing bodies of the City and the School District, respectively, pursuant to a Lease Purchase Agreement (the “Financing Lease”), to extend over a period not to exceed 20 years (which period will not exceed the useful life of the Replacement Aquatics Center); and

WHEREAS, the interests of the City under the Financing Lease are to expire on December 31 of any City fiscal year (each a “Fiscal Year”) if Arvada City Council has, by such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Base Rentals (as defined in the Financing Lease) and Additional Rentals (as defined in the Financing Lease) estimated to be payable in the next ensuing Fiscal Year, and such Base Rentals and Additional Rentals payable by the City shall constitute currently appropriated expenditures of the City and shall not constitute a debt or multiple fiscal year direct or indirect obligation whatsoever of the City or a mandatory charge or requirement against the City in any Fiscal Year beyond the Fiscal Year for which such payments have been appropriated; and

WHEREAS, the Replacement Aquatics Center will be constructed with loan proceeds to be deposited into a custodial account established at the Lender and requested by the City and the School District, collectively, pursuant to an agreement by and between the City, the School District and the Lender (the “Escrow Agreement”); and

WHEREAS, there have been presented to the City and made available to Arvada City Council at or prior to this meeting, among other things, information relating to the Annual Lease Structure as well as copies of the proposed forms of the Site Lease, the Financing Lease, and the Escrow Agreement; and

WHEREAS, Arvada City Council is desirous of authorizing, approving and directing the execution of the agreements and instruments described above and the transactions evidenced thereby and otherwise proceed with the Annual Lease Structure.

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

Section 1. Site Lease Authorization. The Arvada City Council hereby approves the conveyance to the Lender of a leasehold interest in the Pool Site, pursuant to the terms of the Site

Lease and subject to the provisions of Section 3 hereof. The Site Lease, in substantially the form and with substantially the content presented at this meeting, is in all respects approved, authorized and confirmed, and the Mayor or Mayor pro tem is authorized and directed to execute the Site Lease in substantially the form and with substantially the same content as the form thereof presented at this meeting, for and on behalf of the City, but with such changes therein as the Mayor may deem necessary or appropriate, as evidenced by the execution thereof, including incorporation of the terms to be determined by the Mayor in accordance with the provisions hereof.

Section 2. Financing Lease Authorization. The Financing Lease, in substantially the form and with substantially the content presented at this meeting, is in all respects approved, authorized and confirmed, and the Mayor or Mayor pro tem is authorized and directed to execute the Financing Lease in substantially the form and with substantially the same content as the form thereof presented at this meeting, for and on behalf of the City, but with such changes therein as the Mayor may deem necessary or appropriate, as evidenced by the execution thereof, including incorporation of the terms to be determined by the Mayor in accordance with the provisions hereof.

Section 3. Parameters Relating to Lease Financing. The maximum annual Base Rentals to be paid by the City in any particular year shall not exceed \$1,190,000 (which amount does not include the scheduled Base Rentals to be paid by the School District and which, in the event that the Board of Education of the School District fails to appropriate, for whatever reason, the City will be required to consider for appropriation) and shall not be payable beyond calendar year 2041. The net effective interest rate for the Financing Lease shall not exceed 2.50% per annum. The term of the Site Lease shall not extend beyond calendar year 2051.

Section 4. Execution of Escrow Agreement and Miscellaneous Documents. The Mayor or other appropriate member of Arvada City Council (each an “Authorized Official”), City Clerk or, in the absence thereof, his or her designee, are hereby authorized and directed to attest all signatures and acts of any official of Arvada City Council or the City in connection with the matters authorized by this Ordinance, and to place the seal of the City on the Site Lease and the Financing Lease and all other additional certificates, documents and other papers associated with the transactions, closing, and other matters authorized by this Ordinance. The Authorized Officials and other officials, employees and agents of the City are hereby authorized to execute and deliver for and on behalf of the City the Escrow Agreement and any and all additional agreements, certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized or contemplated by this Ordinance.

Section 5. Obligations of the City. No provision of this Ordinance, the Site Lease or the Financing Lease shall be construed as creating or constituting a general obligation or multiple-fiscal year direct or indirect indebtedness or other financial obligation whatsoever of the City nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Financing Lease shall be in effect. The term of the Financing Lease shall not extend beyond one year, subject to annual renewal, and the City shall have no obligation to make any payment except in connection with the payment of the Base Rentals and Additional

Rentals in accordance with the provisions of the Financing Lease. The City is not conveying or selling the Pool Site to the Lender by entering into the agreements described herein.

Section 6. Declarations and Findings. Arvada City Council hereby determines and declares that the Base Rentals represent the fair value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Financing Lease) represents the fair purchase price of the Leased Property. Arvada City Council hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic or practical compulsion to appropriate moneys to make payments under the Financing Lease or to exercise its option to purchase the Leased Property pursuant to the Financing Lease. In making such determinations, the Arvada City Council has given consideration to the current market value of the Leased Property, the cost of acquiring, constructing, improving or equipping property similar to the Leased Property, the uses and purposes for which the Leased Property is being and will be employed by the City, the benefit to the citizens and residents of the City by reason of the use of the Leased Property pursuant to the terms and provisions of the Financing Lease, the option of the City to purchase the Leased Property, and the expected eventual vesting of full title to the Leased Property in the City. Arvada City Council hereby determines and declares that the leasing of the Leased Property pursuant to the Financing Lease will result in facilities of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition of the Leased Property were performed, by the City other than pursuant to the Financing Lease. Arvada City Council hereby determines and declares that the duration of the Financing Lease, including all optional renewal terms, authorized under this Ordinance, does not exceed the weighted average useful life of the Leased Property.

Section 7. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this Ordinance and such statutes. Any such inconsistency or conflict is intended by the Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 8. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by Arvada City Council or by the officers and employees of the City directed toward the Annual Lease Structure and the financing contemplated for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 9. Repealer. All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 10. Publication; Effective Date. This Ordinance shall be published as provided in the Charter and shall be in full force and effect five days after final publication.

[Signatures begin on the next page.]

INTRODUCED, READ AND ORDERED PUBLISHED this 15th day of November, 2021.

APPROVED AND ADOPTED this 6th day of December, 2021.

Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:
Rachel A. Morris, City Attorney

By: _____

Publication Dates: November 18, 2021
 December 9, 2021

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of December __, 2021, by and between **JEFFERSON COUNTY SCHOOL DISTRICT NO. R-1** in Jefferson and Broomfield Counties, Colorado (the “School District”), a duly organized and validly existing school district, political subdivision and body corporate of the State of Colorado (the “State”) and the **CITY OF ARVADA**, Colorado (the “City”) a home-rule municipal corporation and body politic of the State (the School District and the City collectively, the “Joint Lessees”), and **BANK OF THE SAN JUANS, A DIVISION OF GLACIER BANK**, being a member of the Federal Deposit Insurance Corporation and an eligible public depository under the Colorado Public Deposit Protection Act, having an office and place of business in the State, as escrow agent (the “Escrow Agent”) and in its capacity as Lessor as described hereafter.

WHEREAS, the School District, the City and the Bank of the San Juans, a Division of Glacier Bank acting as lessor (“Lessor”) have entered into a Lease Purchase Agreement dated as of the date hereof (the “Lease”), and the Lease provides for the lease by Lessor to Joint Lessees of certain property and public improvements related to a replacement aquatic facility as more specifically defined in the Lease (the “Project”) (all capitalized terms not otherwise defined herein shall have the meanings set forth in the Lease); and

WHEREAS, to provide for the acquisition, construction and installation of the Project, the Lessor has established an account for deposit of moneys, to be available within three (3) business days of written notice, for periodic draws requested by the Joint Lessees for the payment of the costs of such acquisition, construction and installation of the Project, as well as for the payment of the costs of issuance related to the lease financing; and

WHEREAS, Lessor and Joint Lessees now desire to provide for the safekeeping, investment and disbursement of such monies advanced by Lessor;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein set forth, the parties hereto agree as follows:

Section 1. There is hereby created and established with the Escrow Agent an irrevocable escrow account designated for Project use (the “Project Account”), to be held in the custody of Escrow Agent separate and apart from other funds of Escrow Agent or Joint Lessees.

Section 2. The Lessor, as of the date hereof deposits into the Project Account the sum of \$35,210,000, representing the aggregate principal amount of the base rental repayment obligation of Joint Lessees under the Lease. A portion of such sum deposited into the Project Account equal to \$210,000 is hereby allocated, to the extent necessary, to the costs of issuance related to the financing.

Section 3. Monies held in the Project Account shall be promptly invested and reinvested by the Escrow Agent, at the direction of the Joint Lessees, in any security or deposit account authorized by law and in accordance with the investment policies of the Joint Lessees. No investment shall be made in a security maturing later than the date on which Joint Lessees reasonably anticipates needing such funds for the payment of the costs of the Project. The Joint

Lessees shall notify the Escrow Agent as to the dates on which funds are needed for disbursement, and the estimated amount of each such disbursement, and the Escrow Agent may rely upon this information in connection with all investment or reinvestment of funds. All interest earnings from such investment shall be held in the Project Account and invested as directed by the Joint Lessees, subject to application as provided herein.

Not less than monthly or more often as the Joint Lessees or the Lessor may request, the Escrow Agent shall give notice and provide financial reports to the Joint Lessees and the Lessor of the amounts on deposit in the Escrow Account.

Section 4. The Escrow Agent shall disburse funds from the Project Account upon receipt of a written request and certification from Joint Lessees, filed with the Escrow Agent and the Lessor (who shall notify the Joint Lessees of its disapproval of any such request within three (3) business days or otherwise approve such request) in substantially the form attached as Exhibit A hereto, setting forth the amount to be disbursed and the address, wire or transfer information to which such funds are to paid, as well as the following: (1) a brief description of the purpose of the payment; (2) a statement that the expenditure for which funds are requested was or will be properly applied in connection with the acquisition, construction or installation of the Project or for the costs of issuance related to the lease financing, and that the amounts being requested pursuant to the proposed disbursement were not subject to a previous draw; (3) a statement that no Event of Default or Event of Nonappropriation has occurred and is continuing under the Lease; and (4) after payment of the amount requested thereby, the money remaining in the Project Account will be sufficient to pay all remaining construction costs relating to the Project. The request shall contain as attachments copies of all bills, receipts, invoices, or other documents received by Joint Lessees related to the Project since the last disbursement hereunder. Joint Lessees agree to submit to the Escrow Agent and Lessor such disbursement request in form and substance satisfactory to the Escrow Agent and Lessor and such other documents and certificates as the Escrow Agent and Lessor may reasonably request to evidence the proper expenditure of the monies in the Project Account for the purposes of acquiring, constructing and installing the Project. The Escrow Agent has no duty to ascertain the correctness of any documents submitted in connection with any direction to disburse funds. The Joint Lessees and Lessor hereby agree, to the extent permitted by law, to hold harmless the Escrow Agent against any and all claims, losses, damages, liabilities, costs and expenses, including litigation, arising hereunder that might be imposed or incurred for any acts or omissions done in good faith, willful default or gross negligence excepted. The Escrow Agent shall promptly disburse funds upon receipt of a request and approval from the Lessor; provided that such disbursement shall not be required to be made any earlier than the expiration of the period during which the Lessor may disapprove a draw request as provided above in this Section 4.

Section 5. Upon making the disbursements as provided in Section 4 of this Agreement and notification by the Joint Lessees to the Escrow Agent that the Project has been completed, the Escrow Agent shall pay any balance remaining on deposit in the Project Account to the Lessor, who shall apply such amounts as directed by Joint Lessees for the reduction of Base Rentals under the Lease.

Section 6. In the event that an Event of Default or an Event of Nonappropriation occurs under the Lease prior to completion of the Project, the Escrow Agent shall forthwith disburse all monies on deposit in the Project Account at the sole direction of the Lessor.

Section 7. The Joint Lessees shall pay the excess (if any) of the actual costs of the Project under the Lease Purchase Agreement over the amount deposited by Lessor in the Project Account and interest earnings thereon.

Section 8. The Joint Lessees shall from time to time, subject to any agreement then in effect with the Escrow Agent, pay the Escrow Agent compensation for its services and reimburse the Escrow Agent for all its reasonable expenditures hereunder, including but not limited to advances to and fees and expenses of accountants, agents, appraisers, consultants, legal counsel or other experts employed by it in the observance and performance of its rights and obligations hereunder

Section 9. In the event of the Escrow Agent's failure to account for any of the funds received by it, said funds and interest thereon shall be and remain the property of Joint Lessees in trust for the purposes set forth in this Agreement. Such funds shall be impressed with a trust for the amount thereof and Joint Lessees shall be entitled to a preferred claim upon such assets until such identification is made.

Section 10. The parties hereto agree that the transactions described herein may be conducted, and related documents may be stored, by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 11. All notices, instructions and other communications required or permitted to be given to or made hereunder, including requisitions of funds from the Escrow Agent, shall be in writing and shall be personally delivered or sent by certified mail (return receipt requested), postage prepaid, or by confirmed facsimile or email, if to the Lessor at ejones@banksanjuans.com; fax (970)382-0742 and if to the Escrow Agent at ejones@banksanjuans.com, fax (970)382-0742.

Section 12. This Agreement may be modified or amended only with the written consent of all parties hereto.

Section 13. This Agreement shall terminate when all transfers required to be made with respect to the Project Account by the Escrow Agent under the provisions hereof shall have been made. In the event that all amounts held by the Escrow Agent hereunder shall have not been expended as provided therein by the date that is three years from the date of this Agreement, this Agreement shall terminate and such unexpended amounts shall be remitted at the direction of the Lessor.

Section 14. If any one or more of the covenants or agreements provided in this Agreement on the part of the Escrow Agent or Joint Lessees to be performed shall be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be

deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 15. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

Section 16. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

[The balance of this page is intentionally blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ____ day of December, 2021.

JEFFERSON COUNTY SCHOOL DISTRICT NO. R-1, as a Joint Lessee

By: _____
President, Board of Education

CITY OF ARVADA, as a Joint Lessee

By: _____
Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED as to Form:

Rachel A. Morris, City Attorney

By: _____

BANK OF THE SAN JUANS, A DIVISION OF GLACIER BANK, as Escrow Agent

By: _____

Name: _____

Title: _____

BANK OF THE SAN JUANS, A DIVISION OF GLACIER BANK as Lessor

By: _____

Name: _____

Title: _____

EXHIBIT A
FORM OF REQUISITION

Bank of the San Juans,
a Division of Glacier Bank
as Escrow Agent
1710 Main Avenue
Durango, CO 80301

Bank of the San Juans,
a Division of Glacier Bank
as Lessor
1710 Main Avenue
Durango, CO 80301

Ladies and Gentlemen:

This requisition is submitted pursuant to Section 4 of the Escrow Agreement dated as of December __, 2021 (the "Escrow Agreement") by and among the Jefferson County School District No. R-1 (the "School District") and the City of Arvada (the "City", and collectively with the School District the "Joint Lessees"), Bank of the San Juans, a Division of Glacier Bank, (the "Lessor"), and Bank of the San Juans, a Division of Glacier Bank, acting as escrow agent (the "Escrow Agent"). Capitalized terms used herein and not otherwise defined shall have the same meanings, respectively, as in the Escrow Agreement or the Lease Purchase Agreement dated as of December __, 2021 (the "Lease") by and between the Joint Lessees and the Lessor.

We hereby request payment from the Project Account held by the Escrow Agent under the Escrow Agreement of the amount of \$_____, to be paid to _____, at _____ [address].

In support of such request we hereby certify:

1. the purpose of such payment is _____,
which purpose falls within the following category:

- ☐ Costs of issuance associated with the lease financing.
- ☐ Costs associated with the acquisition, construction or installation of fixtures related to the Project.
- ☐ Costs associated with furniture and equipment related to the Project (which are not permitted to exceed an aggregate amount of \$210,000.)

2. the expenditure(s) for which such funds are requested was (were) or will be properly applied in connection with the acquisition, construction or installation of the

Project or for the costs of issuance related to the lease financing, and the amounts being requested were not subject to a previous draw;

3. no Event of Default or Event of Nonappropriation has occurred and is continuing under the Lease;

4. after payment of the amount(s) requested hereby, the money remaining in the Project Account will be sufficient to pay all remaining construction costs relating to the Project; and

5. we have attached copies of all bills, receipts, invoices, or other documents received by or on behalf of the Joint Lessees from the contractor, architect, engineer or Project vendor since the last disbursement of funds from the Project Account.

JEFFERSON COUNTY SCHOOL DISTRICT
NO. R-1, as Joint Lessee

By: _____
Authorized Officer

CITY OF ARVADA, as Joint Lessee

By: _____
Authorized Officer

We hereby approve the above Requisition Request.

BANK OF THE SAN JUANS, A DIVISION
OF GLACIER BANK, as Lessor

By: _____
Authorized Officer

As of the date of the Escrow Agreement, (i) an Authorized Officer for the City is the City Manager, the Deputy City Manager or the Director of Financing and (ii) an Authorized Officer for the School District is the Superintendent, the Chief Operations Officer or the Chief Financial Officer.

AFTER RECORDATION PLEASE RETURN TO:

Kutak Rock LLP
1801 California Street, Suite 3000
Denver, Colorado 80202
Attention: Thomas M. Peltz, Esq.

LEASE PURCHASE AGREEMENT

between

BANK OF THE SAN JUANS, A DIVISION OF GLACIER BANK,
as Lessor,

and

CITY OF ARVADA, COLORADO,

AND

JEFFERSON COUNTY SCHOOL DISTRICT NO. 1,
IN JEFFERSON COUNTY, COLORADO
as Lessees

Dated as of December __, 2021

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LEASE PURCHASE AGREEMENT

THIS LEASE PURCHASE AGREEMENT dated as of December __, 2021 (this “Lease”), between **BANK OF THE SAN JUANS, A DIVISION OF GLACIER BANK** (together with its successors and assigns, the “Lender”), as lessor, and **CITY OF ARVADA, COLORADO** (the “City”), a home rule municipality and political subdivision of the State of Colorado (the “State”), and **JEFFERSON COUNTY SCHOOL DISTRICT NO. 1**, (the “School District” and, together with the City, the “Lessees”), a duly and regularly created, organized and existing school district, political subdivision and body corporate duly organized and existing under the laws of the State, as lessees.

WITNESSETH:

WHEREAS, the George J. Meyers Swimming Center (the “Meyers Pool”) is a City-owned aquatics facility located at 7900 Carr Drive (the “Pool Site”) that was constructed in 1979 and is in need of replacement (the construction of a replacement aquatics facility is referred to herein as the “Project”); and

WHEREAS, the School District is one of the largest users of the Meyers Pool for various school purposes, including but not limited to swim team use; and

WHEREAS, the Meyers Pool has historically been operated by Apex Park and Recreation District (“Apex”), and based upon their shared interests, the City, the School District and Apex have worked cooperatively and have entered into an intergovernmental agreement concerning the completion and financing of the Project (the “Pool IGA”); and

WHEREAS, as contemplated in the Pool IGA and related meetings, the School District and the City are to share equally in financing the capital costs of the Project; and

WHEREAS, in order to generate moneys to finance the costs of constructing the Project, the City Council of the City (the “Council”) has determined that the City shall enter into that certain Site Lease, dated as of the date of this Lease, pursuant to which the City is to convey a leasehold interest in the Pool Site and the Project to be constructed thereon (as described in Exhibit A hereto and referred to herein as the “Leased Property”) for a lump-sum payment, and, together with the School District, sublease such property back from the Lender pursuant to the term and provisions of this Lease; and

WHEREAS, the City is a home rule municipality and political subdivision of the State, duly organized and operating under the home-rule charter of the City (the “Charter”), the State Constitution (the “Constitution”) and the laws of the State; and

WHEREAS, the School District is a duly and regularly created, organized and existing school district, political subdivision and body corporate duly organized and existing under the laws of the State; and

WHEREAS, pursuant to the Site Lease, the City has leased the Leased Property to the Lender, as authorized under the Charter and Section 31-15-801 of the Colorado Revised Statutes, as amended (“C.R.S.”); and

WHEREAS, the City is authorized, under the Charter and C.R.S. § 31-15-801, to lease the Leased Property from the Lender and to execute, deliver and perform its obligations under this Lease; and

WHEREAS, the School District is authorized, under C.R.S. § 22-32-110(1)(b), to lease the Leased Property from the Lender and to execute, deliver and perform its obligations under this Lease; and

WHEREAS, the obligation of the Lessees to pay Base Rentals and Additional Rentals (both as hereinafter defined) hereunder shall be from year-to-year only; shall constitute currently budgeted expenditures of the Lessees; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Lessees within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness, nor a mandatory payment obligation of the Lessees in any ensuing fiscal year beyond any fiscal year during which this Lease shall be in effect; and

WHEREAS, proceeds to be applied to the costs of the Project are to be disbursed from a custodial project account established pursuant to an Escrow Agreement dated as of the date thereof (the “Escrow Agreement”), by and among the City, the School District, the Lender and the escrow agent named therein; and

WHEREAS, the funding of the Project and the execution, performance and delivery of this Lease, have been authorized, approved and directed by the Council by an Ordinance finally passed and adopted by the Council; and

WHEREAS, the funding of the Project and the execution, performance and delivery of this Lease, have been authorized, approved and directed by the Board of Education of the School District (the “School Board”) by a resolution finally passed and adopted by the School Board;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Terms Defined in Preamble and Recitals. The following terms shall have the meanings set forth in the preamble and recitals hereto:

Apex	City
Constitution	Council
C.R.S.	Escrow Agreement
Lease	Leased Property

Lender	Lessees
Pool IGA	Pool Site
Project	School Board
School District	State

Section 1.02. Additional Definitions. The following additional terms shall have the meanings specified below:

“Additional Rentals” means the cost of all (a) reasonable expenses and fees of the Lender related to the performance of the provisions of this Lease or otherwise incurred at the request of the Lessees, (b) taxes, if any, insurance premiums, utility charges, maintenance, upkeep, repair, improvement and replacement in respect of the Leased Property to the extent not otherwise caused to be paid when due by Apex, and (c) all other charges and costs (together with all interest and penalties that may accrue thereon) in the event that the Lessees shall fail to pay the same, as specifically set forth herein which the Lessees assume or agree to pay hereunder. Additional Rentals do not include Base Rentals.

“Authorized Officer of the Lessees” means, with respect to the City, any person authorized by resolution or ordinance of the Council to perform any act or execute any document and, with respect to the School District, any person authorized by resolution of the School Board to perform any act or execute any document.

“Base Rentals” means the payments payable by the Lessees during the Lease Term pursuant to Section 6.02 of this Lease and as set forth in Exhibit B, as it may be amended hereunder from time to time, which constitute the payments payable by the Lessees for and in consideration of the right to use the Leased Property during the Lease Term. In the event that Exhibit B sets forth separate schedules of Base Rentals payable with respect to one or more separate portions of the Leased Property, such payments will be combined for purposes of Section 6.02, but may be treated as separate schedules for other purposes of this Lease.

“Base Rental Payment Dates” means semi-annual payments on June 15 and December 15 of each year, commencing June 15, 2022.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks in New York, New York or Denver, Colorado are authorized by law to remain closed.

“Counsel” means an attorney at law or law firm experienced in matters of municipal law (who may be counsel for the Lender or the Lessees) who is satisfactory to the Lessees and the Lender.

“Event of Default” means one or more events of default as defined in Section 13.01 of this Lease.

“Event of Nonappropriation” means a termination of this Lease determined by Lessee Nonappropriation by both the City and the School District. The term also means notice under Section 4.01 of this Lease of the Lessees’ collective intention to terminate and an event described in Section 6.05 of this Lease relating to the failure by the Lessees to appropriate amounts due as Additional Rentals in excess of the amounts estimated to become due.

“*Fiscal Year*” means the respective fiscal or budget years of the City and the School District, which for the City begins on January 1 and ends on December 31 of each calendar year and for the School District begins on each July 1 and ends on June 30 of the following calendar year.

“*Force Majeure*” means, without limitation, the following, acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; epidemic or pandemic; or any other cause or event not within the control of the Lessees; provided however that the COVID-19 pandemic shall not be considered an event of force majeure.

“*Hazardous Substance*” means any hazardous substance, pollutant or contaminant, as such terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, *et seq.*, Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, *et seq.*, and any applicable State law or regulations promulgated under either.

“*Insurance Consultant*” means an independent person or firm acceptable to the Lessees and the Lender experienced in providing the specific type of insurance in question and capable of making an evaluation of the actuarial risk of loss from the types of events customarily covered by such insurance policies.

“*Lease Remedy*” or “*Lease Remedies*” means any or all remedial steps provided in Section 13.02 of this Lease whenever an Event of Default hereunder has happened and is continuing.

“*Lease Term*” means the time during which the Lessees are the lessees of the Leased Property under this Lease, including the Original Term and all Renewal Terms as provided in and subject to Article IV and Sections 6.01, 6.02 and 6.05 of this Lease; certain provisions of this Lease survive the termination of the Lease Term, as provided in Section 4.02 of this Lease.

“*Leased Property*” means the property described in Exhibit A attached hereto, together with the Project and all other facilities, improvements or fixtures now or hereafter located thereon.

“*Lessee Nonappropriation*” means the failure by either the City or the School District for any reason to duly enact by the last day of such Lessee’s Fiscal Year an appropriation measure for the ensuing Fiscal Year which includes (a) by specific line-item reference amounts authorized and directed to be used to pay all Base Rentals and (b) sufficient amounts to pay such Additional Rentals as are estimated to become due, as provided in Section 6.05 of this Lease.

“*Net Proceeds*” when used with respect to any performance or payment bond proceeds, or proceeds of insurance, including self-insurance, required by this Lease, or proceeds from any condemnation award, or any proceeds resulting from default or breaches of warranty under any contract relating to the Leased Property or proceeds from any Lease Remedy, means the amount

remaining after deducting from such proceeds (a) all expenses (including, without limitation, attorneys' fees and costs) incurred in the collection of such proceeds or award; and (b) all other fees, expenses and payments due to the Lender.

"Original Term" means, with respect to the Lease Term as of the dated date of this Lease, the period ending on December 31, 2021 with respect to the City and the period ending on June 30, 2022 with respect to the School District.

"Opinion of Counsel" means a written opinion of Counsel.

"Permitted Encumbrances" means, as of any particular time, those encumbrances included as Exhibit B to the Site Lease.

"Purchase Option Price" means the amount payable, at the option of the Lessees, for the purpose of terminating this Lease with respect to the Leased Property and purchasing the Leased Property pursuant to Article XI of this Lease. The Purchase Option Price shall equal the balance of the Base Rentals principal component which has not been paid, plus interest accruing on the outstanding principal balance as provided in Exhibit B-III hereto from the last date on which Base Rentals were paid to the date on which the option to purchase is exercised.

"Renewal Term" means any optional renewal of the Lease Term for the next Fiscal Year applicable to the Lessees, respectively, as provided in Article IV of this Lease.

"Revenues" means (a) all amounts payable by or on behalf of the Lessees with respect to the Leased Property pursuant to this Lease including, but not limited to, all Base Rentals, Purchase Option Prices and Net Proceeds, but not including Additional Rentals; and (b) all other revenues derived from this Lease, excluding Additional Rentals.

"Scheduled Lease Term" means the scheduled term of this Lease which is anticipated to renew through the last day of the month on which the final Base Rentals are scheduled to be paid in accordance with Exhibit B hereto.

"Site Lease" means the Site Lease dated of even date herewith, whereby the City conveys to the Lender a leasehold interest in the Pool Site where the Project is to be located and a legal interest in existing and future improvements thereon.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants as follows:

(a) The City is a duly and regularly created, organized and existing home rule municipality and political subdivision of the State, duly organized and operating under the Charter, the Constitution and the laws of the State.

(b) Pursuant to the Site Lease, the City has leased the Leased Property to the Lender, as authorized by C.R.S. § 31-15-801.

(c) The City is authorized, under C.R.S. § 31-15-801, to lease the Leased Property from the Lender and to execute, deliver and perform its obligations under this Lease.

(d) The lease of the Leased Property from the Lender and the construction of the Project pursuant to this Lease and the Escrow Agreement serve a public purpose and are in the best interests of the City and its residents.

(e) The execution, delivery and performance of this Lease and the Escrow Agreement by the City has been duly authorized by the City.

(f) This Lease and the Escrow Agreement are enforceable against the City in accordance with their terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

(g) The execution, delivery and performance of the terms of this Lease and the Escrow Agreement by the City does not and will not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitute a default under any of the foregoing or, except as specifically provided in this Lease, the Escrow Agreement or the Site Lease, result in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the City.

(h) There is no litigation or proceeding pending or to the best of its knowledge threatened against the City or any other Person affecting the right of the City to execute, deliver or perform its obligations of the City under this Lease or the Escrow Agreement.

(i) The City will recognize economic and other benefits by the construction of the Project and the leasing of the Leased Property pursuant to this Lease; the City expects that the Leased Property will adequately serve the needs for which it is being leased throughout the Scheduled Lease Term.

(j) The Base Rentals payable in each year during the Lease Term are not more than the fair value of the City's use of the Leased Property during such Fiscal Year of the City. The Base Rentals and Additional Rentals payable in each Fiscal Year of the City during the Lease Term do not exceed a reasonable amount so as to place the City under an economic compulsion (i) to continue this Lease beyond any Fiscal Year of the City, (ii) not to exercise its right to terminate this Lease at any time through an Event of Nonappropriation or (iii) to exercise any of its options to purchase the Leased Property hereunder. The Purchase Option Price is the City's best estimate of the fair purchase price of the Leased Property at the time of exercise of the Lessee's option to purchase the

Leased Property by paying the Purchase Option Price. The Scheduled Lease Term does not exceed the weighted average useful life of the Project or any other real property improvements currently located on the Leased Property. In making the representations, covenants and warranties set forth above in this subsection, the City has given due consideration to the Project, the purposes for which the Leased Property will be used by the City, the benefits to the City from the use of the Leased Property, the Lessees' options to purchase the Leased Property hereunder and the terms of this Lease governing the use of, and the Lessees' options to purchase, the Leased Property.

(k) The City presently intends and expects to continue this Lease annually until all legal interests to the Leased Property are acquired by the Lessees pursuant to this Lease; but this representation does not obligate or otherwise bind the City.

(l) The City is not aware of any current violation of any requirement of law or the presence of any Hazardous Substance relating to the Leased Property.

(m) The City has appropriated sufficient moneys in its General Fund to pay the Base Rentals payable in the City's current Fiscal Year and the Additional Rentals estimated to be payable in the City's current Fiscal Year.

(n) To the best of the City's knowledge, after due inquiry, the real property on which the Leased Property is located is not in a flood hazard area and has never been subject to material damage from flooding.

(o) The City is the owner in fee title to the real property on which the Leased Property is located. No lien or encumbrance on the property materially impairs the Lessees' use of the Leased Property or the Project for the purposes for which they are, or may reasonably be expected to be, held; provided however, the fee title of the City is subject to a reversionary interest set forth in the Jefferson County Commissioner's Deed which limits uses of the Leased Property for purposes other than are currently intended or reasonably expected by the City.

(p) The City, together with the School District and Apex, shall maintain and provide upon request by the Lender an inventory of all furniture, fixtures and equipment that make up part of the Leased Property.

(q) To the extent required by the Pool IGA, the City has complied or will comply with any public bidding requirements that may be applicable to this Lease and the construction of the Project.

(r) All taxes, assessments or impositions of any kind with respect to the Leased Property, except current taxes, have been paid in full.

(s) The City warrants that it will not make, do, execute or suffer, any act or thing whereby the City's interests in the Leased Property and in any property now or hereafter included in the Project shall be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Lease.

(t) The Leased Property is properly zoned for the purpose of the Project.

(u) The City will obtain or cause to be obtained all licenses, permits and other approvals of any other governmental entity having jurisdiction over the City or the Leased Property that are necessary for the Project.

(v) Fee Title to the Leased Property is and shall remain in the City, or a permitted assignee of the City, subject to the rights of the Lender hereunder and under the Site Lease.

Section 2.02. Representations, Covenants and Warranties of the School District.

The School District represents, covenants and warrants as follows:

(a) The School District is a duly and regularly created, organized and existing school district, political subdivision and body corporate duly organized and existing under the laws of the State.

(b) The School District is authorized, under C.R.S. § 22-32-110(1)(b), to lease the Leased Property from the Lender and to execute, deliver and perform its obligations under this Lease.

(c) The lease of the Leased Property from the Lender and the construction of the Project pursuant to this Lease and the Escrow Agreement serve a public purpose and are in the best interests of the School District and its residents.

(d) The execution, delivery and performance of this Lease and the Escrow Agreement by the School District has been duly authorized by the School District.

(e) This Lease and the Escrow Agreement are enforceable against the School District in accordance with their terms, limited only by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, by the exercise by the State and its governmental bodies of the police power inherent in the sovereignty of the State and by the exercise by the United States of America of the powers delegated to it by the Constitution of the United States of America.

(f) The execution, delivery and performance of the terms of this Lease and the Escrow Agreement by the School District does not and will not conflict with or result in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the School District is now a party or by which the School District is bound, or constitute a default under any of the foregoing or, except as specifically provided in this Lease or the Escrow Agreement, result in the creation or imposition of a lien or encumbrance whatsoever upon any of the property or assets of the School District.

(g) There is no litigation or proceeding pending or to the best of its knowledge threatened against the School District or any other Person affecting the right of the School District to execute, deliver or perform its obligations of the School District under this Lease or the Escrow Agreement.

(h) The School District will recognize economic and other benefits by the construction of the Project and the leasing of the Leased Property pursuant to this Lease; the School District expects that the Leased Property will adequately serve the needs for which it is being leased throughout the Scheduled Lease Term.

(i) The Base Rentals payable in each Fiscal Year of the School District during the Lease Term are not more than the fair value of the School District's use of the Leased Property during such Fiscal Year of the School District. The Base Rentals and Additional Rentals payable in each Fiscal Year during the Lease Term do not exceed a reasonable amount so as to place the School District under an economic compulsion (i) to continue this Lease beyond any Fiscal Year of the School District, (ii) not to exercise its right to terminate this Lease at any time through an Event of Nonappropriation or (iii) to exercise any of its options to purchase the Leased Property hereunder. The Purchase Option Price is the School District's best estimate of the fair purchase price of the Leased Property at the time of exercise of the Lessees' option to purchase the Leased Property by paying the Purchase Option Price. The Scheduled Lease Term does not exceed the weighted average useful life of the Project or any other real property improvements currently located on the Leased Property. In making the representations, covenants and warranties set forth above in this subsection, the School District has given due consideration to the Project, the purposes for which the Leased Property will be used by the School District, the benefits to the School District from the use of the Leased Property, the Lessees' options to purchase the Leased Property hereunder and the terms of this Lease governing the use of, and the Lessees' options to purchase, the Leased Property.

(j) The School District presently intends and expects to continue this Lease annually until all legal interests to the Leased Property are acquired by the Lessees pursuant to this Lease; but this representation does not obligate or otherwise bind the School District.

(k) The School District is not aware of any current violation of any requirement of law or the presence of any Hazardous Substance relating to the Leased Property.

(l) The School District has appropriated sufficient moneys in its General Fund to pay the Base Rentals payable in the School District's current Fiscal Year and the Additional Rentals estimated to be payable in the School District's current Fiscal Year.

(m) The School District, together with the City and Apex, shall maintain and provide upon request by the Lender an inventory of all furniture, fixtures and equipment that make up part of the Leased Property.

(n) To the extent required by the Pool IGA, the School District has complied or will comply with any public bidding requirements that may be applicable to this Lease and the construction of the Project.

(o) The School District warrants that it will not make, do, execute or suffer, any act or thing whereby the School District's interests in the Leased Property and in any property now or hereafter included in the Project shall be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Lease.

Section 2.03. Representations, Covenants and Warranties of the Lender. The Lender represents, covenants and warrants as follows:

(a) The Lender has all requisite power to acquire legal interests in the Leased Property and to execute, deliver, enter into and perform the transactions contemplated by this Lease and the Site Lease and to carry out its obligations under this Lease and the Site Lease, and has duly executed and delivered this Lease and all other documents related to this Lease.

(b) Except as specifically provided in the Site Lease or this Lease, the Lender will not pledge or assign its right, title and interest in and to any of its rights under this Lease or assign, pledge, mortgage, encumber or grant a security interest in its right, title and interest in, to and under this Lease or the Leased Property, except for Permitted Encumbrances.

(c) To the best knowledge of the Lender, neither the execution and delivery of this Lease or the Site Lease nor the fulfillment of or compliance with the terms and conditions hereof and thereof, nor the consummation of the transactions contemplated hereby and thereby, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Lender is now a party or by which the Lender is bound, or constitutes a default under any of the foregoing.

(d) Except as specifically provided in this Lease and the Site Lease, the Lender will not assign its duties and obligations under this Lease or the Site Lease to any other person, firm or Lender, so as to impair or violate the representations, covenants and warranties contained in this Section 2.03.

(e) To the best knowledge of the Lender, there is no litigation or proceeding pending or threatened against the Lender or any other person affecting the right of the Lender to execute this Lease or the Site Lease and to perform its obligations hereunder and thereunder.

(f) The Lender acknowledges that the Base Rentals and Additional Rentals hereunder during the Original Term and all of the Renewal Terms, if any, shall be paid from then currently budgeted expenditures of the Lessees to the extent not otherwise caused to be paid by Apex, using any legally available funds of the Lessees. The Lessees' obligations to pay Base Rentals, Additional Rentals or any other payments provided for under this Lease during the Original Term and all of the Renewal Terms, if any, shall be subject to the Lessees' annual right to renew this Lease (as further provided in Article IV and Sections 6.02 and 6.05 hereof), and shall not constitute a mandatory charge, requirement or liability in any ensuing Fiscal Year beyond the then current Fiscal

Year. No provision of this Lease shall be construed or interpreted as a delegation of governmental powers or as creating indebtedness or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City or the School District within the meaning of any constitutional or statutory debt limitation, including without limitation, Article XI, Sections 1, 2 and 6, and Article X, Section 20, of the Colorado Constitution. This Lease shall not directly or indirectly obligate the Lessees to make any payments of Base Rentals or Additional Rentals beyond the funds legally available to the Lessees for their respective, then-current Fiscal Years. The Lessees shall be under no obligation whatsoever to exercise their option to purchase the Leased Property. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of City or School District moneys, nor shall any provision of this Lease restrict the future issuance of any bonds or obligations of the City or the School District payable from any class or source of moneys of the City or the School District. The Lender further acknowledges that the Lessees may elect not to renew this Lease by failure by both parties to budget and appropriate funds sufficient to meet their next Fiscal Year Base Rentals and Additional Rentals requirements, and that the acts of budgeting and appropriating funds are legislative acts and, as such, are solely within the discretion of the Council and School Board.

ARTICLE III

LEASE OF LEASED PROPERTY

The Lender demises and leases the Leased Property, including any interest in the Leased Property, to the Lessees, and the Lessees lease the Leased Property, including any interest in the Leased Property, from the Lender, in accordance with the provisions of this Lease, subject only to Permitted Encumbrances, to have and to hold for the Lease Term. Upon the occurrence of a Lessee Nonappropriation by either the City or the School District, the term Lessees as used in this Article shall mean the entity for which Lessee Nonappropriation has not occurred.

ARTICLE IV

LEASE TERM

Section 4.01. Duration of Lease Term; Lessees' Annual Right to Renew Lease. The Lease Term shall commence as of the date hereof and continue through the last day of the Original Term. Subject to the provisions of Section 4.02 hereof, the Lease Term may be renewed at the end of the Original Term and at the end of each Renewal Term thereafter for a term of twelve months coinciding with the next succeeding Fiscal Year applicable to the Lessees.

The Lessees shall have the right, both collectively and respectively, to annually renew the Lease Term, provided that (a) the City shall give written notice to the Lender and the School District not less than thirty (30) days prior to the end of its Fiscal Year (which is currently December 31st of each year) of the City's intention not to renew this Lease at the end of the then-current Fiscal Year of the City and (b) the School District shall give written notice to the Lender and the City not less than thirty (30) days prior to the end of its Fiscal Year (which is currently June 30th of each year) of the School District's intention not to renew this Lease at the end of the

then-current Fiscal Year of the School District. A Lessee Nonappropriation by both the City and the School District shall be considered an Event of Nonappropriation under this Lease. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except for the amount of Base Rentals and Additional Rentals to be paid during such Renewal Term. The Lease Term, including the Original Term and all Renewal Terms, does not exceed the weighted average useful life of the Leased Property or the Project.

Except as otherwise provided in Section 4.02 hereof, the exercise of the Lessees' annual option to renew this Lease shall be conclusively determined by whether or not the Council and the School Board have, on or before the last day of each Lessee's respective Fiscal Years, duly enacted an appropriation resolution for the ensuing Fiscal Year which includes (a) by specific line item reference sufficient amounts authorized and directed to be used to pay all Base Rentals and (b) sufficient amounts to pay such Additional Rentals as are estimated to become, all as further provided in Section 6.05 of this Lease. In the event a Lessee Nonappropriation occurs for either the City or the School District, the Lessee for which such nonappropriation has not occurred shall thereafter appropriate for the balance of the amounts needed to pay all Base Rentals coming due on the succeeding Base Rental Payment Date and any Additional Rentals for the then-current Renewal Term or a Lessee Nonappropriation shall occur with respect to such remaining Lessee as well.

The officers of the City and the School District, respectively, at any time charged with the responsibility of formulating budget proposals are hereby directed to include in the annual budget proposals submitted to the Council and the School Board, items for all payments required under this Lease for the ensuing Fiscal Year, until such time (if any) as the Council or the School Board may each determine to renew or not to renew this Lease; it being the intention of the Council and the School Board that any decision to renew or not to renew this Lease shall be made solely by the Council or the School Board and not by any other official of the Lessees.

Section 4.02. Termination of Lease Term. The Lease Term shall terminate upon the earliest of any of the following events:

- (a) the last day of the Original Term or any Renewal Term during which there has occurred an Event of Nonappropriation pursuant to Section 4.01 and Article VI of this Lease (provided that the Lease Term will be deemed to have been renewed and, therefore, not terminated if the Event of Nonappropriation is cured as provided in Section 6.05 hereof); or
- (b) the conveyance of all of the Leased Property to the City upon payment of the Purchase Option Price or all Base Rentals and Additional Rentals as provided in Section 11.02(a) and (b) of this Lease; or
- (c) an Event of Default and termination of this Lease under Article XIII of this Lease.

An election by both Lessees not to renew the Lease Term shall terminate all unaccrued obligations of the Lessees under this Lease, and shall terminate the Lessees' rights of possession under this Lease at the end of the last day of the Original Term or any Renewal Term for which

this Lease shall be in effect (except to the extent of the holdover provisions of Section 13.02(d)(i) hereof, and except for any conveyance pursuant to Article XI of this Lease). Except for an event described in subparagraph (b) above, upon termination of this Lease, the Lessees agree to peaceful delivery of the Leased Property to the Lender or its assigns.

ARTICLE V

ENJOYMENT OF LEASED PROPERTY

Section 5.01. Lender's Covenant of Quiet Enjoyment. The Lender hereby covenants that the Lessees shall during the Lease Term peaceably and quietly have, hold and enjoy the Leased Property without suit, trouble or hindrance from the Lender, except as expressly required or permitted by this Lease. The Lender shall, at the request of the Lessees and at the cost of the Lessees, join and cooperate fully in any legal action in which the Lessees assert their rights to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Leased Property. In addition, the Lessees may at their own expense join in any legal action affecting its possession and enjoyment of the Leased Property and shall be joined in any action affecting their liabilities hereunder. Notwithstanding the foregoing or anything to the contrary herein, the Lender shall have the right to litigate its own interests under this Lease as it deems necessary.

The Lessees also hereby consent to the inspection by the Lender of all books, accounts and records maintained by the Lessees with respect to the Leased Property and this Lease.

Section 5.02. Lessees' Need for the Leased Property; Determinations as to Fair Value and Fair Purchase Price. The Lessees have determined and hereby determine that they have a current need for the Leased Property. It is the present intention and expectation of the Lessees that this Lease will be renewed annually until the Lender's interests in the Site Lease are released and unencumbered title to the Leased Property is acquired by the City pursuant to this Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the Lessees. The Lessees have determined and hereby determine that the Base Rentals under this Lease during the Lease Term for the Leased Property represent the fair value of their respective uses of the Leased Property and that the Purchase Option Price for the Leased Property will represent the fair purchase price of the Lender's leasehold interest in the Leased Property at the time of the exercise of the option. The Lessees have determined and hereby determine that the Base Rentals do not exceed a reasonable amount so as to place the Lessees under an economic compulsion to renew this Lease or to exercise its option to purchase the Lender's leasehold interest in the Leased Property hereunder. In making such determinations, the Lessees have given consideration to the estimated current value of the Leased Property, the uses and purposes for which the Leased Property will be employed by the Lessees, the benefit to the citizens and inhabitants of the City and School District by reason of the use and occupancy of the Leased Property pursuant to the terms and provisions of this Lease, the Lessees' option to purchase the Lender's leasehold interest in the Leased Property and the expected eventual vesting of unencumbered title to the Leased Property in the City. The Lessees hereby determine and declare that the period during which the Lessees have an option to purchase the Lender's leasehold interest in the Leased Property (i.e., the entire maximum Lease Term for the Leased Property) does not exceed the weighted average useful life of the Leased Property.

ARTICLE VI

PAYMENTS BY THE LESSEES

Section 6.01. Payments to Be Paid from Currently Budgeted Expenditures of the Lessees. The City, the School District and the Lender acknowledge and agree that the Base Rentals and Additional Rentals hereunder during the Original Term and all of the Renewal Terms, if any, shall be paid from then currently budgeted expenditures of the City and the School District, respectively, using any legally available funds of the City and the School District. The Lessees' obligations to pay Base Rentals, Additional Rentals or any other payments provided for under this Lease during the Original Term and all of the Renewal Terms, if any, shall be subject to the Lessees' annual right to renew this Lease (as further provided in Article IV and Sections 6.02 and 6.05 hereof), and shall not constitute a mandatory charge, requirement or liability in any ensuing City or School District Fiscal Year beyond the then current Fiscal Year. No provision of this Lease shall be construed or interpreted as a delegation of governmental powers or as creating indebtedness or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City or the School District within the meaning of any constitutional or statutory debt limitation, including without limitation, Article XI, Sections 1, 2 and 6, and Article X, Section 20, of the Colorado Constitution. This Lease shall not directly or indirectly obligate the City or the School District to make any payments of Base Rentals or Additional Rentals beyond the funds legally available to the City or the School District for their then-current Fiscal Years. Neither the City nor the School District shall be under any obligation whatsoever to exercise their option to purchase the Leased Property. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of City or School District moneys, nor shall any provision of this Lease restrict the future issuance of any bonds or obligations of the City or the School District payable from any class or source of moneys of the City or the School District.

Section 6.02. Base Rentals and Additional Rentals.

(a) The Lessees shall pay all Base Rentals directly to the Lender during the Original Term and all Renewal Terms, on the Base Rental Payment Dates and in the amounts set forth in Exhibit B schedules (which are set forth for the City in Exhibit B-I, for the District in Exhibit B-II and for the Lessee for which a Lessee Nonappropriation has not occurred in Exhibit B-III), which schedules are attached hereto and made a part hereof, as it may be amended from time to time hereunder. Any Base Rental not received by the Lender on or before its due date will bear interest on the amount past due at the rate of 8% per annum from its due date, calculated on the basis of a 360-day year comprised of twelve 30-day months.

(b) The Lessees may, at any time during the Lease Term, pay the then-applicable Purchase Option Price related to the Leased Property for the purpose of terminating this Lease and purchasing the Leased Property shown on Exhibit A, as further provided in Article XI of this Lease. The Lessees shall give the Lender notice of its intention to exercise its option not less than thirty (30) days in advance of the date of exercise and shall deposit with the Lender on or prior to the day such right is exercised an amount equal to the Purchase Option Price.

The Lessees shall pay Additional Rentals during the Original Term and all Renewal Terms, if any, as herein provided. All Additional Rentals shall be paid by the Lessees on a timely basis directly to the person or entity to which such Additional Rentals are owed.

(c) In the event that, as a result of an intentional act or omission of the Lessees, it is determined that any of the interest component of Base Rentals may not be excluded from gross income for purposes of federal income taxation, the Lessees agree to pay to the Lender promptly after any such determination and on each Base Rental Payment Date thereafter an additional amount determined by the Lender to compensate the Lender for the reasonable, documented loss of such excludability (including without limitation, compensation relating to interest penalties or additions to tax), which determination shall be conclusive absent manifest error.

Section 6.03. Interest Component. A portion of each payment of Base Rentals is paid as, and represents payment of, interest, and Exhibit B hereto, as may be amended from time to time hereunder, sets forth the interest component of each payment of Base Rentals.

Section 6.04. Manner of Payment. The Base Rentals and, if paid, the Purchase Option Price, shall be paid by the Lessees directly to the Lender by certified funds via wire transfer or check, which payment instructions shall be provided by the Lender to the Lessees, and which may be changed from time to time by the Lender upon written notice to the Lessees, or other method of payment acceptable to the Lender in lawful money of the United States of America. The obligation of the Lessees to pay the Base Rentals and Additional Rentals, during the Original Term and each Renewal Term, shall be absolute and unconditional, payable from all legally available sources, and payment of the Base Rentals and Additional Rentals shall not be abated through accident or unforeseen circumstances, or for any other reason, including without limitation, failure to complete the construction of the Project, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Leased Property, commercial frustration of purpose, or failure of the Lender to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease, it being the intention of the parties that the payments required by this Lease will be paid in full when due without any delay or diminution whatsoever, subject only to the special and limited nature of the Lessees' obligation to make payments hereunder as set forth in Section 6.01 above, and further subject to the Lessees' rights under Section 8.03 hereof. Notwithstanding any dispute between the Lessees and Lender, the Lessees shall, during the Original Term and all Renewal Terms, make all payments of Base Rentals and Additional Rentals when due and shall not withhold any Base Rentals or Additional Rentals pending final resolution of such dispute (except to the extent permitted by Section 8.03 hereof with respect to certain Additional Rentals), nor shall the Lessees assert any right of set-off or counterclaim against its obligation to make such payments required hereunder. No action or inaction on the part of the Lender shall affect the Lessees' obligation to pay all Base Rentals and Additional Rentals (except to the extent provided by Section 8.03 hereof with respect to certain Additional Rentals), during the Lease Term.

Section 6.05. Nonappropriation. In the event that the Council or the School Board shall not specifically budget and appropriate, on or before the last day of such Lessee's Fiscal

Year, moneys to pay all Base Rentals and the reasonably estimated Additional Rentals coming due for the next Renewal Term as provided in Section 4.01 hereof and this Article, a Lessee Nonappropriation shall be deemed to have occurred, subject, however, to each of the following provisions:

(a) Following a Lessee Nonappropriation by the City, the School District shall be given the opportunity to make a supplemental appropriation adequate to pay all Base Rentals coming due on the succeeding Base Rental Payment Date and all Additional Rentals estimated to become due prior to the end of the Renewal Term, thereby preventing the occurrence of a Lessee Nonappropriation by the School District which would cause an Event of Nonappropriation to occur. Not less than sixty (60) days following a Lessee Nonappropriation by the City, the School District shall provide the Lender with a written acknowledgement that appropriation has or is intended to be made by the School District for payment of all remaining Base Rentals and reasonably estimated Additional Rentals due during the Renewal Term. For each School District Fiscal Year thereafter, the School District must appropriate funds adequate to pay the aggregate amount of Base Rentals for the upcoming Fiscal Year (as set forth in EXHIBIT B-III), as well as the reasonably estimated Additional Rentals coming due for the next Renewal Term as provided in Section 4.01 hereof and this Article, in order to avoid an Event of Nonappropriation under this Lease.

(b) Following a Lessee Nonappropriation by the School District, the City shall be given the opportunity to make a supplemental appropriation adequate to pay all Base Rentals coming due on the succeeding Base Rental Payment Date and all Additional Rentals estimated to become due prior to the end of the Renewal Term, thereby preventing the occurrence of a Lessee Nonappropriation by the City which would cause an Event of Nonappropriation to occur. Not less than sixty (60) days following a Lessee Nonappropriation by the School District, the City shall provide the Lender with a written acknowledgement that appropriation has or is intended to be made by the City for payment of all remaining Base Rentals and reasonably estimated Additional Rentals due during the Renewal Term. For each City Fiscal Year thereafter, the City must appropriate funds adequate to pay the aggregate amount of Base Rentals for the upcoming Fiscal Year (as set forth in EXHIBIT B-III), as well as the reasonably estimated Additional Rentals coming due for the next Renewal Term as provided in Section 4.01 hereof and this Article, in order to avoid an Event of Nonappropriation under this Lease.

(c) The Lender may declare an Event of Nonappropriation on any earlier date on which the Lender receives specific written notice from both the City and the School District that Lessee Nonappropriation by both Lessees, respectively, is to occur.

(d) Absent such notice from the Lessees, the Lender shall give written notice to the Lessees of any Event of Nonappropriation declared by the Lender following the Lender's receipt of the City or the School District's adopted budgets for an applicable Fiscal Years; but any failure of the Lender to give such written notice shall not prevent the Lender from declaring an Event of Nonappropriation or from taking any remedial action which would otherwise be available to the Lender.

(e) The Lender shall waive any Event of Nonappropriation which is cured by the Lessees within ten days of the giving of notice as provided in (d) above, by inclusion in one or more duly enacted appropriation measures, (i) by specific line items, amounts authorized and directed to be used to pay all Base Rentals and (ii) sufficient amounts to pay reasonably estimated Additional Rentals coming due for the Renewal Term in question.

In the event that during any Renewal Term, any Additional Rentals shall become due which were not included in or covered by a duly enacted appropriation resolution (including an appropriation by the remaining Lessee upon the occurrence of a Lessee Nonappropriation) in the event that moneys are not specifically budgeted and appropriated to pay such Additional Rentals within forty-five (45) days subsequent to the date upon which such Additional Rentals are due, an Event of Nonappropriation shall be deemed to have occurred, upon notice by the Lender to the Lessees to such effect (subject to waiver by the Lender as hereinbefore provided).

Notwithstanding any provision to the contrary herein, if an Event of Nonappropriation occurs, the Lessees' rights of possession of the Leased Property under this Lease shall terminate at the end of the last day of the Renewal Term for which this Lease shall be in effect, and the Lessees shall not be obligated to make payment of the Base Rentals, Additional Rentals or any other payments provided for herein which accrue after the end of the last day of the Renewal Term for which this Lease shall be in effect; provided, however, that, subject to the limitations of Sections 6.01 and 14.03 hereof, the Lessees shall continue to be liable for Base Rentals and Additional Rentals allocable to any period during which the Lessees shall continue to occupy, use or retain possession of the Leased Property, beginning with the first day of the Renewal Term in respect of which the Event of Nonappropriation occurs. The Lessees shall in all events vacate or surrender possession of the Leased Property by the tenth Business Day of the Renewal Term in respect of which the Event of Nonappropriation has occurred.

After the tenth Business Day of the Renewal Term in respect of which an Event of Nonappropriation has occurred, the Lender may proceed to exercise all or any Lease Remedies. All property, funds and rights acquired by the Lender upon the termination of this Lease by reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Lender, shall be held by the Lender.

ARTICLE VII

TITLE TO THE LEASED PROPERTY; LIMITATIONS ON ENCUMBRANCES

Section 7.01. Fee Title to the Leased Property. Fee Title to the Leased Property shall remain in the City, subject to the Site Lease and this Lease.

Except as expressly set forth in this Lease or the Site Lease, the Lessees shall have no right or interest in the Leased Property or any additions and modifications thereto or replacements thereof.

Section 7.02. No Encumbrance, Mortgage or Pledge of Leased Property. Except as may be permitted by this Lease, the Lessees shall not permit any mechanic's or other lien to remain against the Leased Property; provided that, if the Lessees shall first notify the Lender of the intention of the Lessees to do so, the Lessees, collectively or individually, may in good faith contest any mechanic's or other lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom if the Lessees shall notify the Lender that, in the Opinion of Counsel, by nonpayment of any such items the Lender's title to or interest in the Leased Property will not be materially endangered, or the Leased Property or any part thereof will not be subject to loss or forfeiture, otherwise the Lessees shall promptly pay and cause to be satisfied and discharged all such unpaid items (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such items). The Lender will cooperate fully with the Lessees in any such contest, upon the request and at the expense of the Lessees. Except as may be permitted by this Lease, neither the Lessees nor the Lender shall directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, except Permitted Encumbrances. The Lessees and the Lender shall promptly, at their own respective expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which each shall respectively have created, incurred, or suffered to exist.

ARTICLE VIII

MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES

Section 8.01. Maintenance of the Leased Property by the Lessees. Subject to all requirements of the Pool IGA, the Lessees agree that at all times during the Lease Term the Lessees will maintain, preserve and keep all portions of the Leased Property or cause the Leased Property to be maintained, preserved and kept, in good repair, working order and condition, and that the Lessees will from time to time make or cause to be made all necessary and proper repairs, except as otherwise provided in Sections 9.02 and 10.03 of this Lease. The Lender shall not have any responsibility for such maintenance or repairs or for the making of any additions, modifications or replacements to the Leased Property.

Section 8.02. Modification of the Leased Property, Installation of Furnishings and Machinery of the Lessees. The Lessees shall have the privilege of making or causing to be made substitutions, additions, modifications and improvements to any portion of the Leased Property, at their own cost and expense; and the same shall be the property of the Lender and, subject to this Lease, shall be included under the terms of this Lease and the Site Lease; provided, however, that such substitutions, additions, modifications and improvements shall not in any way damage the Leased Property or cause the Leased Property to be used for purposes other than lawful governmental or proprietary functions of the Lessees (except to the extent of subleasing permitted under Section 12.01 hereof); and provided that the Leased Property, as improved or altered, upon completion of such substitutions, additions, modifications and improvements, shall be of a value not less than the value of the Leased Property immediately prior to making such substitutions, additions, modifications and improvements.

The Lessees may also, from time to time in their sole discretions and at their own expense, respectively, install or cause to be installed machinery, equipment, and other tangible personal property in or on any Leased Property. All such machinery, equipment, and other tangible personal property shall remain the sole property of the City (or as otherwise provided in the Pool IGA) in which the Lender shall have not any interests; provided, however, that title to any such machinery, equipment, and other tangible personal property which becomes permanently affixed to any Leased Property shall be in the name of the Lender and shall be included under the terms of this Lease, in the event the Lender shall reasonably determine that such Leased Property would be materially damaged or impaired by the removal of such machinery, equipment, or other tangible personal property.

Section 8.03. Taxes, Other Governmental Charges and Utility Charges. In the event that the Leased Property or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the Lessees shall pay the amount of all such taxes, assessments and governmental charges when due, as Additional Rentals. In the event that the Lender has exercised any remedy upon an Event of Default or an Event of Nonappropriation, the Lessees agree that, to the extent permitted by law, they shall treat the Project as property owned by the City for the purposes of City taxation, assessments or other governmental charges. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the Lessees shall be obligated to provide for Additional Rentals only for such installments as are required to be paid during the upcoming Renewal Term. Except for Permitted Encumbrances, the Lessees shall not allow any liens for taxes, assessments or governmental charges to exist with respect to the Leased Property or any portion thereof (including, without limitation, any taxes levied upon the Leased Property or any portion thereof which, if not paid, will become a charge on the rentals and receipts from the Leased Property or any portion thereof, or any interest therein, including the interest of the Lender), or the rentals and revenues derived therefrom or hereunder. The Lessees shall also pay as Additional Rentals, as the same respectively become due, all utility and other charges incurred in the maintenance and upkeep of the Leased Property.

Section 8.04. Provisions Regarding Liability, Property and Worker's Compensation Insurance. Upon the delivery and acceptance of the Leased Property as provided in this Lease, and subject to any additional requirements of the Pool IGA, the Lessees shall, at their own expense, provide or cause to be provided casualty and property insurance to be carried and maintained with respect to the Leased Property in an amount equal to the lesser of the next succeeding Purchase Option Price or the maximum insurable value of the Leased Property. Such insurance policy may have a deductible clause in an amount not to exceed \$250,000 or such greater amount as is approved in writing by the Lender. The Lessees may, in their discretion, insure the Leased Property under blanket insurance policies which insure not only the Leased Property, but other property as well, as long as such blanket insurance policies otherwise comply with the requirements hereof. Any property damage insurance policy required by this Section 8.04 shall be so written or endorsed, to the extent permissible, as to show the Lender as loss payee and/or additional insured, and to make losses exceeding \$250,000, if any, payable to the Lessees and the Lender, as their respective interests may appear. To the extent that any casualty and property insurance lump sum Net Proceeds are received or held by the Lessees in excess of \$250,000, such moneys shall be deposited as provided in Section 9.02 of this Lease.

During the construction of the Project and in lieu of the insurance required in the preceding paragraph, builders' risk completed value insurance insuring the Project against fire, lightning and all other risks covered by the extended coverage endorsement then in use in the State to the full insurable value of the Project (subject to reasonable loss deductible clauses), but in no event shall such amount be less than the amount necessary to prevent the application of any co insurance provisions, issued by such insurance company or companies authorized to do business in the State as may be selected by the Lessees. Such policy or policies of insurance shall name the Lessees and the Lender as insureds and loss payees, and all payments received under such policy or policies by the Lessees shall be paid over to the Lender subject to the provisions set forth herein.

Upon the execution and delivery of this Lease, the Lessees shall, at their own expense, cause public liability insurance, including blanket contractual liability or specific contractual liability insurance for this Lease and public officials' errors and omissions coverage, to be carried and maintained with respect to the activities to be undertaken by the Lessees and their officers, officials, agents and employees in connection with the use and possession of the Leased Property. All such policies (other than errors and omissions) shall show the Lessees and all officers and employees thereof and, to the extent permissible, the Lender as additional insureds. Such coverage shall be in amounts not less than the limits of liability per occurrence set by the Colorado Governmental Immunity Act as the same may from time to time be amended, to a \$1,000,000 annual aggregate, for claims to which the defense of sovereign immunity applies. The public liability insurance required by this Section 8.04 may be by blanket insurance policy or policies.

The Lessees shall, at their own expense, cause worker's compensation insurance to be procured and maintained covering the Lessees' respective employees working in or on the Leased Property. Such insurance, if issued by a private carrier, shall contain a provision that such coverage shall not be canceled without 10 days' prior written notice to the Lessees and the Lender. A certificate issued by the Colorado State Insurance Fund or a private carrier evidencing such coverage shall be provided by the Lessees and the Lender. The worker's compensation insurance required by this Section may be by blanket insurance policy or policies.

If, at any time during the term of this Lease, it is determined that any part of the Leased Property is located in a flood zone, as determined in accordance with 12 CFR Chapter 1, Part 22 or its successor (the "Flood Insurance Regulations"), the Lessees, at their own expense, shall obtain and maintain for the entire term of this Lease flood insurance covering the Leased Property in such form and amount as is required under the Flood Insurance Regulations. If at any time during the term of this Lease, the Lessees shall fail to maintain such adequate flood insurance, the Lender may, to the extent permitted by law, purchase such insurance on behalf of the Lessees, and the cost thereof shall be deemed an Additional Rental payable by the Lessees as provided in Section 6.04 of this Lease. The Lessees shall provide evidence of the renewal or replacement of such flood insurance at least fifteen (15) days prior to its expiration.

If the Lessees shall insure against similar risks by self-insurance, the Lessees, at their election and in accordance with the standards of the State relating thereto, may in lieu of obtaining policies for casualty and property, and public liability insurance coverage as required by this Section 8.04 provide one or more such coverages by a self-insurance fund so long as the

Lessees provide an annual certification to the Lender that the reserves therein are adequate as determined by, in the case of public liability and workers' compensation insurance, the Lessees' selected risk manager or Insurance Consultant.

Each property and liability insurance policy provided for in this Section 8.04 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interests of the Lender without first giving written notice thereof to the Lender at least thirty (30) days in advance of such cancellation or modification. In the event that the Lessees have received such notice of cancellation or modification, they shall immediately furnish to the Lender a new insurance policy or certificate evidencing such policy replacing the cancelled or modified policy and effective on or before the effective date of such cancellation or modification.

The Lessees shall, at their own expense and at the direction of the Lender, cause a policy of title insurance to be procured, insuring the Lender's leasehold interest under the Site Lease, in the amount equal to Lender Rental Payment (as defined in the Site Lease), on the standard ALTA forms, subject only to such exceptions as will be acceptable to the Lender, with such endorsements and affirmative coverages as may be reasonably required by the Lender, and otherwise in form and substance satisfactory to the Lender and issued by a company acceptable to the Lender and authorized to issue such insurance in the State.

The Lessees shall provide certified copies of all insurance policies required under this Section 8.04 or certificates of insurance with appropriate endorsements attached evidencing compliance with this Section 8.04 and such other documentation with respect to insurance required under this Section 8.04 as may be requested by the Lender. A certificate of insurance will be acceptable evidence of insurance at closing, with the understanding that the Lessees shall furnish the policy or endorsements within forty-five (45) days after closing. No agent or employee of the Lessees shall have the power to adjust or settle any loss with respect to the Leased Property in excess of the applicable deductible, whether or not covered by insurance, without the written consent of the Lender.

To the extent that the Lessees do not provide or cause to be provided public liability insurance coverages identified in this Section 8.04 and for which the Lender is to be identified as an additional insured, the Lender, in its capacity as Lessor under this Lease, shall be entitled to obtain such insurance coverage and the Lessees shall pay, as Additional Rentals, the costs directly associated with such coverage obtained by the Lender.

Section 8.05. Granting of Easements. As long as no Event of Nonappropriation or Event of Default shall have happened and be continuing, the Lender shall at any time or times, but only upon the request of the City, grant easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property or rights included in this Lease, free from this Lease and any security interest or other encumbrance created hereunder or thereunder, and the Lender shall release existing easements, licenses, rights-of-way, and other rights and privileges with respect to such property or rights, with or without consideration, and shall execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other grant or privilege upon receipt of: (a) a copy of the instrument of grant or release; (b) a

written application signed by an Authorized Officer of the City requesting such instrument and stating that such grant or release will not adversely affect the rental value of the Leased Property, impair the effective use of the Leased Property or interfere with the operation of the Leased Property; and (c) an Opinion of a firm of nationally recognized bond counsel reasonably acceptable to the Lender and the City (“Bond Counsel”) stating that such grant or release will not have an adverse effect on the excludability from federal income taxation on interest payments due under this Lease.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 9.01. Damage, Destruction and Condemnation. If, during the Lease Term (a) the Leased Property or any portion thereof shall be destroyed (in whole or in part), or damaged by fire or other casualty; or (b) title to, or the temporary or permanent use of, the Leased Property or any portion thereof or the estate of the Lessees or the Lender in the Leased Property or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority; or (c) a breach of warranty or a material defect in the construction, manufacture or design of the Leased Property shall become apparent; or (d) title to or the use of all or any portion of the Leased Property shall be lost by reason of a defect in title thereto; then the Lessees shall be obligated to continue to pay the amounts specified in Section 6.02 of this Lease (subject to Section 6.01 hereof).

Section 9.02. Obligation of the Lessees to Repair and Replace the Leased Property. Subject to any additional requirements of the Pool IGA, the Lessees and, to the extent such Net Proceeds are within its control, the Lender, shall cause the Net Proceeds of any insurance policies, performance bonds or condemnation awards to be deposited in a separate trust fund held by the Lender. Subject to the receipt of the certificate required by the preceding sentence, all Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Leased Property by the Lessees upon receipt of requisitions acceptable to the Lender signed by an Authorized Officer of the Lessees stating with respect to each payment to be made; (a) the requisition number; (b) the name and address of the person, firm or corporation to whom payment is due; (c) the amount to be paid; and (d) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation.

Section 9.03. Insufficiency of Net Proceeds. If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) shall be insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Leased Property required under Section 9.02 of this Lease, the Lessees may elect to:

- (a) complete the work or replace such Leased Property (or portion thereof) with similar property of a value equal to or in excess of such Leased Property or portion

thereof and pay as Additional Rentals, to the extent amounts for Additional Rentals which have been specifically appropriated by the Lessees are available for payment of such cost, any cost in excess of the amount of the Net Proceeds, and the Lessees agree that, if by reason of any such insufficiency of the Net Proceeds, the Lessees shall make any payments pursuant to the provisions of this Section 9.03(a), the Lessees shall not be entitled to any reimbursement therefor from the Lender, nor shall the Lessees be entitled to any diminution of the Base Rentals and Additional Rentals payable under Section 6.02 of this Lease; or

(b) apply the Net Proceeds to the payment of the Purchase Option Price in accordance with Article XI of this Lease. In the event of an insufficiency of the Net Proceeds for such purpose, the Lessees shall, subject to the limitations of Section 6.01 hereof, pay such amounts as may be necessary to equal that portion of the Purchase Option Price which is attributed to the Leased Property for which the Net Proceeds have been received (as certified to the Lender by the Lessees); and in the event the Net Proceeds shall exceed such portion of the Purchase Option Price, such excess shall be retained by the Lessees; or

(c) if either Lessee does not timely budget and appropriate sufficient funds to proceed under either (a) or (b) above, a Lessee Nonappropriation will be deemed to have occurred and, subject to the other Lessee's right to cure, the Lender may pursue remedies available to it following an Event of Nonappropriation. Within two months of the occurrence of a Lessee Nonappropriation, the Lessee that has not failed to appropriate shall be given the opportunity to make a supplemental appropriation adequate to proceed under either (a) or (b) above. Should both Lessees determine not to appropriate such funds, an Event of Nonappropriation will be deemed to have occurred and Lender may retain the Net Proceeds and pursue other remedies for an Event of Nonappropriation as provided herein.

The above referenced election shall be made by the Lessees within thirty (30) days of the occurrence of an event specified in Section 9.01 of this Lease. If the Lessees elect to replace the Leased Property with similar property pursuant to subparagraph (a) above, the City shall give notice thereof to Lender prior to such substitution.

Section 9.04. Cooperation of the Lender. At the expense of the Lessees, the Lessees shall cooperate fully with the Lender in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 9.01 of this Lease and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Property or any action with respect to the Leased Property or any portion thereof and in the enforcement of all warranties relating to the Leased Property. In no event shall the Lender voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or any portion thereof without the written consent of the Lessees.

Section 9.05. Condemnation by the City. The City agrees that, to the extent permitted by law, in the event it brings an eminent domain or condemnation proceeding with respect to all

or any portion of the Leased Property, the fair market value of the condemned portion of the Leased Property shall be not less than the Purchase Option Price.

ARTICLE X

DISCLAIMER OF WARRANTIES; OTHER COVENANTS

Section 10.01. Disclaimer of Warranties. THE LENDER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE LEASED PROPERTY OR THE PROJECT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR THE PROJECT. THE LESSEES HEREBY ACKNOWLEDGE AND DECLARE THAT THE LESSEES ARE SOLELY RESPONSIBLE FOR THE USE, CONSTRUCTION, IMPROVEMENT, EQUIPPING, MAINTENANCE AND OPERATION OF THE LEASED PROPERTY AND THE PROJECT, AND THAT THE LENDER DOES NOT HAVE ANY RESPONSIBILITY THEREFOR. For the purpose of enabling the Lessees to discharge such responsibility, the Lender constitutes and appoints the Lessees as its attorney in fact for the purpose of constructing, improving, equipping, maintaining and operating the Leased Property, and asserting and enforcing, at the sole cost and expense of the Lessees, all constructor's or manufacturer's warranties and guaranties, express or implied, with respect to the Project and the Leased Property, as well as any claims or rights the Lender may have in respect of the Project or the Leased Property against any manufacturer, supplier, contractor or other person. Lender has not participated and will not participate in the design or construction of any buildings or improvements located at or on the Leased Property, and will not undertake any such activities during the Lease Term. In no event shall the Lender be liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or use by the Lessees of any item, product or service provided for herein.

Section 10.02. Further Assurances and Corrective Instruments. The Lender and the Lessees agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be, or for otherwise carrying out the intention hereof.

Section 10.03. Compliance with Requirements. During the Lease Term, the Lessees and the Lender shall observe and comply promptly to the extent possible with all current and future orders of all courts having jurisdiction over the Leased Property or any portion thereof, provided that the Lessees and the Lender may contest or appeal such orders so long as they are in compliance with such orders during the contest or appeal period, and all current and future requirements of all insurance companies writing policies covering the Leased Property or any portion thereof.

Section 10.04. Tax Covenant. The Lessees will not use or permit others to use the Leased Property in a manner that would cause the interest component of the Base Rentals to be included in gross income for federal income tax purposes or to be an item of tax preference for

purposes of the federal alternative minimum tax imposed on individuals and corporations (except, with respect to corporations, as such interest is required to be taken into account in determining “adjusted net book income” for the purpose of computing the alternative minimum tax imposed on such corporations).

Section 10.05. Immunity. In the exercise of the powers of the Lender by its employees and agents under this Lease, including (without limiting the foregoing) the application of moneys and the investment of funds, the Lender shall not be accountable to the Lessees for any action taken or omitted with respect to this Lease by it or its employees and agents reasonably believed by it or them to be authorized or within the discretion or rights or powers conferred under this Lease. The Lender and its employees and agents shall be protected in its or their actions taken in reliance upon any paper or documents believed by it or them to be genuine and consistent with their rights or powers under this Lease, and it or they may conclusively rely upon the advice of Counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the Lessees for any claims based on this Lease against any employee or agent of the Lender alleging personal liability on the part of such person.

Subject to the limitations of Section 6.01 hereof and to the fullest extent permitted by law, the Lessees shall save the Lender and any of its employees or agents harmless against any liability resulting from acts or omissions of the Lessees in connection with any acts taken pursuant to this Lease as it relates to the Lessees and the Leased Property. To the fullest extent permitted by law, in connection with claims arising from: (a) the conduct, management, operation or use of, or from any work or thing done on, the Leased Property during the Lease Term; (b) any condition of the Leased Property; and (c) any act of negligence of the Lessees or of any of its agents, contractors or employees or any violation of law by the Lessees or breach of any covenant or warranty by the Lessees hereunder, the Lessees shall assert on the Lender’s behalf the defense that the Lessees, and not the Lender, is the sole “landowner” of the Leased Property within the meaning of C.R.S. § 13-21-115.

Subject to Section 10.08 hereof, notwithstanding anything to contrary herein, nothing in this Section 10.05 or otherwise contained in this Lease shall be construed in any way or applied in any manner as a compromise or waiver of the Lessees’ rights and protections under the Colorado Governmental Immunity Act.

Section 10.06. Access to Leased Property. The Lessees agree that the Lender, and any authorized representative of such parties, shall have the right at all reasonable times to examine and inspect the Leased Property and all of the Lessees’ books and records with respect thereto. The Lessees further agree that the Lender and any such representative shall have such rights of access to the Leased Property as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the Lessees to perform its obligations under this Lease; provided however that Lender shall have no responsibility for maintenance or repair of the Leased Property or any improvements thereon.

Section 10.07. Annual Budgets and Audited Financial Statements. The Lessees shall provide their respective annual budgets to the Lender, annually, within the initial fifteen (15) days of each Fiscal Year for each annual budget. Additionally, the Lessees shall provide their audited financial statements to the Lender, annually, within thirty (30) days of their acceptance

by the Council and the School Board, respectively. The Lessees shall provide such audited financial statements to be delivered to the Lender no later than 270 days after the close of their respective Fiscal Years. If the audited financial statements are publicly available on the Lessees' websites or on the Electronic Municipal Market Access ("EMMA") website maintained by the Municipal Securities Rulemaking Board, the requirement to provide the audited financial statements to the Lender will be satisfied if the City or the School District emails a link to the posted item to the Lender within such 270-day period. The electronic audit or link may be sent to the following email address (or such other address as the Lender supplies to the Lessees in writing): Ejones@banksanjuans.com.

Section 10.08. Environmental Covenant. The Lessees shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in, upon, under, over or from the Leased Property in violation of any federal or State environmental regulation, shall not permit any Hazardous Substance to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom in violation of any federal or State environmental regulation, shall cause all Hazardous Substances to be properly removed therefrom and properly disposed of in accordance with all applicable environmental regulations, shall not install or permit to be installed any underground storage tank therein or thereunder in violation of any environmental regulation and shall comply with all other environmental regulations which are applicable to the Leased Property.

Subject to the limitations of Section 6.01 hereof, in the event any Hazardous Substance is found upon, under, over or from the Leased Property in violation of any applicable environmental regulation or if any lien or claim for lien in favor of any governmental entity or agency as a result of any release of any Hazardous Substance is threatened, the Lessees, at their sole cost and expense as agreed upon between the City and the School District, shall, within ten days of such finding, deliver written notice thereof to the Lender and shall promptly remove such Hazardous Substances and prevent the imposition of any liens against the Leased Property for the cleanup of any Hazardous Substances. Such removal shall be conducted and completed in compliance with all applicable federal, State and local laws, regulations, rules, ordinances and policies in accordance with the orders and directives of all federal, state and local governmental authorities.

The Lessees further agree to reimburse the Lender, to the fullest extent permitted by law, for any and all claims, demands, judgments, penalties, liabilities, costs, damages and expenses, including court costs and attorneys' fees directly or indirectly incurred by the Lender in any action against or involving the Lender, resulting from any breach of the foregoing covenants or the representations and warranties in Sections 2.01(l) and 2.02(k) hereof, or from the discovery of any Hazardous Substance, in, upon, under or over, or emanating from, the Leased Property.

The representations and warranties in Sections 2.01(l) and 2.02(k) hereof and the covenants of this Section 10.08 shall be deemed to be for the benefit of the Lender and any successors and assigns of the Lender.

ARTICLE XI

PURCHASE AND CONVEYANCE OF THE LEASED PROPERTY

Section 11.01. Purchase Option. The Lessees shall have the option to purchase the Leased Property and terminate this Lease, but only if they are not then in default under this Lease. The Lessees may exercise this option by complying with one of the conditions set forth in Section 11.02. The Lessees shall give the Lender notice of their intention to exercise this option not less than thirty (30) days in advance of the date of exercise. If the Lessees shall have given notice to the Lender of their intention to purchase the Leased Property, but shall not have deposited the amounts with the Lender on the date specified in such notice, the Lessees shall continue to pay Base Rentals as if no such notice had been given.

Section 11.02. Conveyance of the Leased Property. The Lender shall transfer and convey the Leased Property to the City in the manner provided for in Section 11.03 of this Lease; provided, however, that prior to such transfer and conveyance, either:

- (a) the Lessees shall have paid the then applicable Purchase Option Price; or
- (b) an Event of Default shall not have occurred and be continuing and the Lessees shall have paid all Base Rentals set forth in Exhibit B hereto and all then-current Additional Rentals required to be paid hereunder, in which case the Lender shall transfer and convey the Leased Property to the City.

The Lessees are hereby granted the option to terminate this Lease and to purchase the Leased Property upon payment by the Lessees of the then applicable Purchase Option Price. It is the intent of this Section to provide for and allow the release of the Leased Property shown on Exhibit A subject to this Lease if the Lessees have fulfilled all payment obligations with respect hereto and are not then in default hereunder.

The conveyance of the Leased Property pursuant to this Article shall, at the direction of the Lessees, recognize the proportionate Base Rentals payments made by the Lessees up to the date of such conveyance and, as of the effective date of this Lease, is intended by the Lessees to recognize an equity interest in the use of the Leased Property for the School District established by intergovernmental agreement, license or other legal interest.

Section 11.03. Manner of Conveyance. At the closing of any purchase or other conveyance of the Leased Property pursuant to Section 11.02 of this Lease, the Lender shall execute and deliver to the City such bills of sale and other necessary documents assigning, transferring and conveying good and marketable title to the Leased Property, as they then exist, subject to the following: (a) Permitted Encumbrances, other than this Lease; (b) all liens, encumbrances and restrictions created or suffered to exist by the Lender as required or permitted by this Lease or arising as a result of any action taken or omitted to be taken by the Lender as required or permitted by this Lease; and (c) any lien or encumbrance created by action of the Lessees.

ARTICLE XII

ASSIGNMENT, SUBLEASING AND USE BY LESSEES

Section 12.01. Assignment and Subleasing of the Lease. This Lease may not be assigned by the Lessees for any reason other than to a successor by operation of law. However, the Leased Property may be subleased to any other person or entity, as a whole or in part, by the City or the School District, respectively, with the Lender's prior written consent, which consent shall not be unreasonably withheld, subject, however, to each of the following conditions:

- (a) this Lease, and the obligations of the Lessees hereunder, shall, at all times during the Lease Term remain obligations of the Lessees subject to Section 6.01 of this Lease, and the Lessees shall maintain its obligations to the Lender, notwithstanding any sublease;
- (b) the Lessees shall furnish or cause to be furnished to the Lender a copy of any sublease agreement;
- (c) receipt by the Lender of an Opinion of Bond Counsel that such sublease by either or both of the Lessees shall not violate the Constitution or laws of the State; and
- (d) receipt by the Lender of an Opinion of Bond Counsel that such sublease by either or both of the Lessees shall not have an adverse effect on the excludability from federal income taxation on interest payments due under this Lease.

For purposes of this Section 12.01, the temporary use of the Leased Property or Project under the Lessees' community use of facilities policies or similar procedures shall not constitute an assignment or subletting in violation of this section.

ARTICLE XIII

EVENTS OF DEFAULT AND REMEDIES

Section 13.01. Events of Default Defined. Any one of the following shall be an "Event of Default" under this Lease:

- (a) failure by either the City or the School District, subject to Lessee Nonappropriation by one of said Lessees but not both, to pay any Base Rentals or Additional Rentals during the Lease Term after the same becomes due which has not otherwise been subsequently cured by payment made by the non-defaulting party
- (b) failure by either the City or the School District to carry any insurance required under Section 8.04, and failure to cure within 10 days after written notice given to the Lessees by the Lender, specifying such failure and requesting that it be remedied;
- (c) failure by the Lessees to vacate or surrender possession of the Leased Property by the tenth Business Day of the Renewal Term in respect of which an Event of Nonappropriation has occurred;

(d) failure by the Lessees to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, under the Escrow Agreement or under any certificates executed and delivered by the Lessees in connection with the execution and delivery of this Lease, other than as referred to in (a), (b) or (c), for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied shall be given to the Lessees by the Lender, unless the Lender shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period, the Lender shall not withhold its consent to an extension of such time if corrective action is instituted by the Lessees within the applicable period and diligently pursued until the default is corrected. Such consent by the Lender shall not be unreasonably withheld; or

(e) either or both Lessees (i) files a petition or application seeking reorganization, arrangement under federal bankruptcy law, or other debtor relief under the laws of the State or (ii) is the subject of such a petition or application which is not contested by the respective Lessee, or otherwise dismissed or discharged, within thirty (30) days.

The foregoing provisions of this Section 13.01 are subject to the following limitations: (a) the Lessees shall be obligated to pay the Base Rentals and Additional Rentals only during the Original Term or current Renewal Term, except as otherwise expressly provided in this Lease; and (b) if, by reason of Force Majeure, the Lessees shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the Lessees contained in Article VI of this Lease, the Lessees shall not be deemed in default during the continuance of such inability. The Lessees agree, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the Lessees from carrying out its agreement; provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Lessees.

Section 13.02. Remedies on Default. Whenever any Event of Default referred to in Section 13.01 of this Lease shall have happened and be continuing, the Lender may, without any further demand or notice, take one or any combination of the following remedial steps:

(a) The Lender may terminate the Lease Term and give notice to the Lessees to vacate and surrender possession of the Leased Property within ten Business Days of such notice; and pursue Judgment for Possession and a Writ of Restitution under C.R.S. § 13-40-101 *et seq.* if possession is not timely surrendered.

(b) The Lender may proceed to foreclose through the courts on or otherwise sell, trade-in, repossess or liquidate the Lessees' interests in the Leased Property, or any part thereof in any lawful manner; provided, however, that the Lender may not recover from the Lessees any deficiency which may exist following the liquidation of the Lessees' respective interests in the Leased Property in excess of Base Rentals and Additional Rentals for the then-current Fiscal Years and in excess of amounts payable under subparagraph (d) of this Section 13.02.

(c) The Lender may lease or sublease the Leased Property or any portion thereof or sell any interest the Lender has in the Leased Property.

(d) The Lender may recover from the Lessees:

(i) the portion of Base Rentals and Additional Rentals which would otherwise have been payable hereunder, during any period in which the Lessees continue to occupy, use or possess the Leased Property; and

(ii) Base Rentals and Additional Rentals which would otherwise have been payable by the Lessees hereunder during the remainder, after the Lessees vacate and surrender possession of the Leased Property, of the Renewal Term in which such Event of Default occurs.

(e) The Lender may take whatever action at law or in equity may appear necessary or desirable to enforce its rights in and to the Leased Property under this Lease.

Section 13.03. Limitations on Remedies. A judgment requiring a payment of money may be entered against the Lessees by reason of an Event of Default only as to the Lessees' liabilities described in paragraph (d) of Section 13.02 of this Lease. A judgment requiring a payment of money may be entered against the Lessees by reason of an Event of Nonappropriation only to the extent that the Lessees fail to vacate and surrender possession of the Leased Property as required by Section 6.05 of this Lease, and only as to the liabilities described in paragraph (d)(i) of Section 13.02 of this Lease. The remedy described in paragraph (d)(ii) of Section 13.02 of this Lease is not available for an Event of Default consisting of failure by the Lessees to vacate and surrender possession of the Leased Property within ten Business Days following notice of an Event of Nonappropriation.

Section 13.04. No Remedy Exclusive. Subject to Section 13.03 hereof, no remedy herein conferred upon or reserved to the Lender is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved in this Article XIII, it shall not be necessary to give any notice, other than such notice as may be required in this Article XIII.

Section 13.05. Waivers. The Lender may waive any Event of Default under this Lease and its consequences. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. With respect to all of the remedies provided for in this Article XIII, the Lessees hereby waive any damages occasioned by the Lender's repossession of the Leased Property upon the occurrence of an Event of Default.

Section 13.06. Agreement to Pay Attorneys' Fees and Expenses. To the extent permitted by law and subject to the provisions of Section 6.01 hereof, in the event that any party

hereto shall default under any of the provisions hereof and the nondefaulting party shall employ attorneys or incur other expenses for the collection of Base Rentals and Additional Rentals, or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it shall on demand therefor pay to the nondefaulting party the fees of such attorneys and such other expenses so incurred by the nondefaulting party, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.

ARTICLE XIV

MISCELLANEOUS

Section 14.01. Sovereign Powers of Lessees. Nothing in this Lease shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers of the Lessees. Nothing in this Lease shall be construed to require the Lessees to occupy and operate the Leased Property other than as lessee, or to require the Lessees to exercise their right to purchase the Leased Property as provided in Article XI hereof.

Section 14.02. Notices. All notices, certificates or other communications required or permitted by the Lease shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by (a) electronic transmission with read receipt requested (it shall be deemed received on the transmission date if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission); or (b) certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing, to the other party or parties (such notice or notification shall be deemed to have been given when deposited in the United States mail). Notice shall be addressed as follows:

if to the City:	City of Arvada, Colorado 8101 Ralston Rd. Arvada, Colorado 80002 Attention: City Manager, with Copy to: City Attorney;
if to the School District:	Jefferson County School District No. R-1 1829 Denver West Dr. #27 Golden, Colorado 80401 Attention: Chief Operations Officer, with Copy to: School District Attorney;
and if to the Lender:	Bank of the San Juans, a Division of Glacier Bank 1710 Main Avenue Durango, Colorado 81301 Attention: Eric Jones

The Lessees and the Lender may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 14.03. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Lender and the Lessees and their respective successors and assigns, subject, however, to the limitations contained in Article XII of this Lease.

Section 14.04. Amendments, Changes and Modifications. Except as otherwise provided in this Lease, this Lease may not be effectively amended, changed, modified or altered without the written consent of the parties hereto.

Section 14.05. Assignment and Transfer by Lender. This Lease shall be assignable and transferrable by the Lender, without the Lessees' consent, on prior written notice to the Lessees not less than thirty (30) days prior to the assignment and transfer date, but only to: (i) an affiliate of the Lender; or (ii) a "Bank" as defined in Section 3(a)(2) of the Securities Act of 1933 as amended (the "Securities Act"). The Lessees shall not be required to incur any expenses in connection with an assignment or transfer by the Lender.

Section 14.06. Net Lease. This Lease shall be deemed and construed to be a "triple net lease," and the Lessees shall, subject to Section 6.01 hereof, pay absolutely net during the Lease Term, the Base Rentals, Additional Rentals and all other payments required hereunder, free of any deductions, and without abatement, deduction or setoff (other than credits against Base Rentals expressly provided for in this Lease).

Section 14.07. No Rating, CUSIP Number or Securities Depository. The Lease has not, is not expected to be, rated by a nationally recognized organization which regularly rates such obligations, assigned a CUSIP number or registered with or made eligible for registration with any securities depository, including but not limited to the Depository Trust Company, New York, New York.

Section 14.08. Payments Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Lease.

Section 14.09. Severability. In the event that any provision of this Lease, other than the requirement of the Lessees to pay Base Rentals in accordance with Section 6.01 and the requirement of the Lender to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the Lessees under the conditions set forth in Article XI of this Lease, and the requirement that the obligation of the Lessees to pay Base Rentals, Additional Rentals and other amounts under this Lease are subject to the limitations of Section 6.01 hereof, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.10. No Merger. The Lender and the Lessees intend that the legal doctrine of merger shall have no application to this Lease and that neither the execution and delivery of the Site Lease by the Lessees and the Lender nor the exercise of any remedies under the Site Lease

or this Lease shall operate to terminate or extinguish the Site Lease or this Lease, except as specifically provided therein and herein.

Section 14.11. Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.12. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State, without regard to conflict of laws principles.

Section 14.13. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

Section 14.14. Role of the Lender. The Lender has not acted and will not act as a fiduciary for the Lessees or as the Lessees' agent or municipal advisor. The Lender has not and will not provide financial, legal, tax, accounting or other advice to the Lessees or to any financial advisor or placement agent engaged by the Lessees with respect to this Lease. The Lessees, their financial advisor(s), placement agent(s) or municipal advisor(s), if any, shall each seek and obtain its own financial, legal, tax, accounting and other advice with respect to this Lease from its own advisors (including as it relates to structure, timing, terms and similar matters).

Section 14.15. Lessees' Notice Filings Related to Lease for SEC Rule 15c2-12. In connection with the Lessees' compliance with any continuing disclosure undertakings (each, a "Continuing Disclosure Undertaking") entered into by the City or the School District on and after February 27, 2019, pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule"), the Lender acknowledges that the Lessees may be required to file with EMMA notice that the Lessees have incurred obligations under this Lease and notice of certain subsequent events reflecting financial difficulties in connection with this Lease. The Lessees agree that they shall not file or submit, or permit to be filed or submitted, with EMMA any documentation that includes the following unredacted sensitive or confidential information about the Lender or its affiliates: address and account information of the Lender or its affiliate, e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of the Lender or its affiliates, or any account information for any related escrow agreement, unless otherwise required for compliance with the Rule or otherwise required by law. The Lessees acknowledge that the Lender is not responsible for the Lessees' respective compliance or noncompliance with the Rule or any Continuing Disclosure Undertaking.

[Signature Page to Lease Purchase Agreement follows]

WITNESS the due execution hereof as of the day and the year first mentioned above.

BANK OF THE SAN JUANS, A DIVISION
OF GLACIER BANK, as Lessor

By: _____
Authorized Officer

[SEAL]

Attest:

CITY OF ARVADA, COLORADO,
as Lessee

By _____
Marc Williams, Mayor

By _____
City Clerk

Approved as to Form:
Rachel A. Morris, City Attorney

By: _____
Authorized Officer

[SEAL]

Attest:

JEFFERSON COUNTY SCHOOL DISTRICT
NO. 1, as Lessee

By _____
President, Board of Education

By _____
Secretary, Board of Education

[Signature Page to Lease Purchase Agreement]

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of December, 2021, by _____, as _____ of Bank of the San Juans, a Division of Glacier Bank.

Witness my hand and official seal.

[SEAL]

Notary Public

My Commission Expires:

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

This instrument was acknowledged before me this ____ day of December, 2021, by Marc Williams, as Mayor, and Kristen Rush, as City Clerk of the City of Arvada, Colorado.

WITNESS my hand and official seal.

Notary Public

[SEAL]

My Commission Expires:

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

 This instrument was acknowledged before me this ____ day of December, 2021, by Susan Harmon, as President, and Stephanie Schooley, as Secretary of the Board of Education of Jefferson County School District No. 1.

 WITNESS my hand and official seal.

[SEAL]

Notary Public

My Commission Expires:

EXHIBIT A
DESCRIPTION OF LEASED PROPERTY

REAL PROPERTY

Address

7900 Carr Drive
Arvada, CO 80005

Legal Description

A parcel of land in the Northeast $\frac{1}{4}$ of Section 34 and the Northwest $\frac{1}{4}$ of Section 35, Township 2 South, Range 69 West of the 6th P.M., being more particularly described in the Commissioner's Deed recorded June 15, 1977 in Book 3019 at Page 722 and re-recorded June 27, 1977 in Book 3026 at Page 296, TOGETHER with vacated Carr Street as described in Ordinance No. 1051 recorded May 2, 1973 in Book 2501 at Page 582 and recorded April 9, 1976 in Book 2839 at Page 285, County of Jefferson, State of Colorado

LEASED PROPERTY

Facilities

The Project comprising the Leased Property consists of a new aquatic facility, to replace the existing George J. Meyers Swimming Center and to be located at the property described above.

EXHIBIT B-I
CITY BASE RENTALS SCHEDULE

[PLEASE SEE ATTACHED]

EXHIBIT B-II
SCHOOL DISTRICT BASE RENTALS SCHEDULE
[PLEASE SEE ATTACHED]

EXHIBIT B-III
AGGREGATE BASE RENTALS SCHEDULE

[PLEASE SEE ATTACHED]

**EXHIBIT B-I
LEASE PURCHASE AGREEMENT**

between

BANK OF THE SAN JUANS, A DIVISION OF GLACIER BANK,
as Lessor,

and

CITY OF ARVADA, COLORADO,

AND

**JEFFERSON COUNTY SCHOOL DISTRICT NO. 1,
IN JEFFERSON COUNTY, COLORADO**
as Lessees

EXHIBIT B-I

CITY BASE RENTALS SCHEDULE

Aggregate Principal Amount: \$17,605,000.00

Interest Rate: 2.25%

Commencement Date: December 22, 2021

<i>Pmt #</i>	<i>Payment Date</i>	<i>Principal Balance</i>	<i>Principal Portion</i>	<i>Interest Portion</i>	<i>Total Payment</i>
		17,605,000.00			
1	Jun-15-2022	17,605,000.00	0.00	190,354.06	190,354.06
2	Dec-15-2022	17,605,000.00	0.00	198,056.25	198,056.25
3	Jun-15-2023	17,231,142.19	373,857.81	198,056.25	571,914.06
4	Dec-15-2023	16,853,078.48	378,063.71	193,850.35	571,914.06
5	Jun-15-2024	16,470,761.55	382,316.93	189,597.13	571,914.06
6	Dec-15-2024	16,084,143.56	386,617.99	185,296.07	571,914.06
7	Jun-15-2025	15,693,176.12	390,967.44	180,946.62	571,914.06
8	Dec-15-2025	15,297,810.29	395,365.83	176,548.23	571,914.06
9	Jun-15-2026	14,897,996.60	399,813.69	172,100.37	571,914.06
10	Dec-15-2026	14,493,685.00	404,311.60	167,602.46	571,914.06
11	Jun-15-2027	14,084,824.90	408,860.10	163,053.96	571,914.06
12	Dec-15-2027	13,671,365.12	413,459.78	158,454.28	571,914.06
13	Jun-15-2028	13,253,253.92	418,111.20	153,802.86	571,914.06
14	Dec-15-2028	12,830,438.97	422,814.95	149,099.11	571,914.06
15	Jun-15-2029	12,402,867.35	427,571.62	144,342.44	571,914.06
16	Dec-15-2029	11,970,485.55	432,381.80	139,532.26	571,914.06
17	Jun-15-2030	11,533,239.45	437,246.10	134,667.96	571,914.06
18	Dec-15-2030	11,091,074.33	442,165.12	129,748.94	571,914.06
19	Jun-15-2031	10,643,934.86	447,139.47	124,774.59	571,914.06
20	Dec-15-2031	10,191,765.07	452,169.79	119,744.27	571,914.06
21	Jun-15-2032	9,734,508.37	457,256.70	114,657.36	571,914.06
22	Dec-15-2032	9,272,107.53	462,400.84	109,513.22	571,914.06
23	Jun-15-2033	8,804,504.68	467,602.85	104,311.21	571,914.06
24	Dec-15-2033	8,331,641.30	472,863.38	99,050.68	571,914.06
25	Jun-15-2034	7,853,458.20	478,183.10	93,730.96	571,914.06
26	Dec-15-2034	7,369,895.54	483,562.66	88,351.40	571,914.06
27	Jun-15-2035	6,880,892.80	489,002.74	82,911.32	571,914.06
28	Dec-15-2035	6,386,388.78	494,504.02	77,410.04	571,914.06
29	Jun-15-2036	5,886,321.59	500,067.19	71,846.87	571,914.06
30	Dec-15-2036	5,380,628.65	505,692.94	66,221.12	571,914.06
31	Jun-15-2037	4,869,246.66	511,381.99	60,532.07	571,914.06
32	Dec-15-2037	4,352,111.62	517,135.04	54,779.02	571,914.06
33	Jun-15-2038	3,829,158.82	522,952.80	48,961.26	571,914.06
34	Dec-15-2038	3,300,322.80	528,836.02	43,078.04	571,914.06
35	Jun-15-2039	2,765,537.37	534,785.43	37,128.63	571,914.06
36	Dec-15-2039	2,224,735.61	540,801.76	31,112.30	571,914.06
37	Jun-15-2040	1,677,849.83	546,885.78	25,028.28	571,914.06
38	Dec-15-2040	1,124,811.58	553,038.25	18,875.81	571,914.06
39	Jun-15-2041	565,551.65	559,259.93	12,654.13	571,914.06
40	Dec-15-2041	0.00	565,551.65	6,362.41	571,914.06
TOTALS			17,605,000.00	4,516,144.59	22,121,144.59

**EXHIBIT B-II
LEASE PURCHASE AGREEMENT**

between

BANK OF THE SAN JUANS, A DIVISION OF GLACIER BANK,
as Lessor,

and

CITY OF ARVADA, COLORADO,

AND

**JEFFERSON COUNTY SCHOOL DISTRICT NO. 1,
IN JEFFERSON COUNTY, COLORADO**
as Lessees

EXHIBIT B-II

SCHOOL DISTRICT BASE RENTALS SCHEDULE

Aggregate Principal Amount: \$17,605,000.00

Interest Rate: 2.25%

Commencement Date: December 22, 2021

<i>Pmt #</i>	<i>Payment Date</i>	<i>Principal Balance</i>	<i>Principal Portion</i>	<i>Interest Portion</i>	<i>Total Payment</i>
		17,605,000.00			
1	Jun-15-2022	17,605,000.00	0.00	190,354.06	190,354.06
2	Dec-15-2022	17,605,000.00	0.00	198,056.25	198,056.25
3	Jun-15-2023	17,231,142.19	373,857.81	198,056.25	571,914.06
4	Dec-15-2023	16,853,078.48	378,063.71	193,850.35	571,914.06
5	Jun-15-2024	16,470,761.55	382,316.93	189,597.13	571,914.06
6	Dec-15-2024	16,084,143.56	386,617.99	185,296.07	571,914.06
7	Jun-15-2025	15,693,176.12	390,967.44	180,946.62	571,914.06
8	Dec-15-2025	15,297,810.29	395,365.83	176,548.23	571,914.06
9	Jun-15-2026	14,897,996.60	399,813.69	172,100.37	571,914.06
10	Dec-15-2026	14,493,685.00	404,311.60	167,602.46	571,914.06
11	Jun-15-2027	14,084,824.90	408,860.10	163,053.96	571,914.06
12	Dec-15-2027	13,671,365.12	413,459.78	158,454.28	571,914.06
13	Jun-15-2028	13,253,253.92	418,111.20	153,802.86	571,914.06
14	Dec-15-2028	12,830,438.97	422,814.95	149,099.11	571,914.06
15	Jun-15-2029	12,402,867.35	427,571.62	144,342.44	571,914.06
16	Dec-15-2029	11,970,485.55	432,381.80	139,532.26	571,914.06
17	Jun-15-2030	11,533,239.45	437,246.10	134,667.96	571,914.06
18	Dec-15-2030	11,091,074.33	442,165.12	129,748.94	571,914.06
19	Jun-15-2031	10,643,934.86	447,139.47	124,774.59	571,914.06
20	Dec-15-2031	10,191,765.07	452,169.79	119,744.27	571,914.06
21	Jun-15-2032	9,734,508.37	457,256.70	114,657.36	571,914.06
22	Dec-15-2032	9,272,107.53	462,400.84	109,513.22	571,914.06
23	Jun-15-2033	8,804,504.68	467,602.85	104,311.21	571,914.06
24	Dec-15-2033	8,331,641.30	472,863.38	99,050.68	571,914.06
25	Jun-15-2034	7,853,458.20	478,183.10	93,730.96	571,914.06
26	Dec-15-2034	7,369,895.54	483,562.66	88,351.40	571,914.06
27	Jun-15-2035	6,880,892.80	489,002.74	82,911.32	571,914.06
28	Dec-15-2035	6,386,388.78	494,504.02	77,410.04	571,914.06
29	Jun-15-2036	5,886,321.59	500,067.19	71,846.87	571,914.06
30	Dec-15-2036	5,380,628.65	505,692.94	66,221.12	571,914.06
31	Jun-15-2037	4,869,246.66	511,381.99	60,532.07	571,914.06
32	Dec-15-2037	4,352,111.62	517,135.04	54,779.02	571,914.06
33	Jun-15-2038	3,829,158.82	522,952.80	48,961.26	571,914.06
34	Dec-15-2038	3,300,322.80	528,836.02	43,078.04	571,914.06
35	Jun-15-2039	2,765,537.37	534,785.43	37,128.63	571,914.06
36	Dec-15-2039	2,224,735.61	540,801.76	31,112.30	571,914.06
37	Jun-15-2040	1,677,849.83	546,885.78	25,028.28	571,914.06
38	Dec-15-2040	1,124,811.58	553,038.25	18,875.81	571,914.06
39	Jun-15-2041	565,551.65	559,259.93	12,654.13	571,914.06
40	Dec-15-2041	0.00	565,551.65	6,362.41	571,914.06
TOTALS			17,605,000.00	4,516,144.59	22,121,144.59

**EXHIBIT B-III
LEASE PURCHASE AGREEMENT**

between

BANK OF THE SAN JUANS, A DIVISION OF GLACIER BANK,
as Lessor,

and

CITY OF ARVADA, COLORADO,

AND

**JEFFERSON COUNTY SCHOOL DISTRICT NO. 1,
IN JEFFERSON COUNTY, COLORADO**
as Lessees

]

EXHIBIT B-III

AGGREGATE BASE RENTALS SCHEDULE

Aggregate Principal Amount: \$35,210,000.00

Interest Rate: 2.25%

Commencement Date: December 22, 2021

<i>Pmt #</i>	<i>Payment Date</i>	<i>Principal Balance</i>	<i>Principal Portion</i>	<i>Interest Portion</i>	<i>Total Payment</i>
		35,210,000.00			
1	Jun-15-2022	35,210,000.00	0.00	380,708.12	380,708.12
2	Dec-15-2022	35,210,000.00	0.00	396,112.50	396,112.50
3	Jun-15-2023	34,462,284.38	747,715.62	396,112.50	1,143,828.12
4	Dec-15-2023	33,706,156.96	756,127.42	387,700.70	1,143,828.12
5	Jun-15-2024	32,941,523.10	764,633.86	379,194.26	1,143,828.12
6	Dec-15-2024	32,168,287.12	773,235.98	370,592.14	1,143,828.12
7	Jun-15-2025	31,386,352.24	781,934.88	361,893.24	1,143,828.12
8	Dec-15-2025	30,595,620.58	790,731.66	353,096.46	1,143,828.12
9	Jun-15-2026	29,795,993.20	799,627.38	344,200.74	1,143,828.12
10	Dec-15-2026	28,987,370.00	808,623.20	335,204.92	1,143,828.12
11	Jun-15-2027	28,169,649.80	817,720.20	326,107.92	1,143,828.12
12	Dec-15-2027	27,342,730.24	826,919.56	316,908.56	1,143,828.12
13	Jun-15-2028	26,506,507.84	836,222.40	307,605.72	1,143,828.12
14	Dec-15-2028	25,660,877.94	845,629.90	298,198.22	1,143,828.12
15	Jun-15-2029	24,805,734.70	855,143.24	288,684.88	1,143,828.12
16	Dec-15-2029	23,940,971.10	864,763.60	279,064.52	1,143,828.12
17	Jun-15-2030	23,066,478.90	874,492.20	269,335.92	1,143,828.12
18	Dec-15-2030	22,182,148.66	884,330.24	259,497.88	1,143,828.12
19	Jun-15-2031	21,287,869.72	894,278.94	249,549.18	1,143,828.12
20	Dec-15-2031	20,383,530.14	904,339.58	239,488.54	1,143,828.12
21	Jun-15-2032	19,469,016.74	914,513.40	229,314.72	1,143,828.12
22	Dec-15-2032	18,544,215.06	924,801.68	219,026.44	1,143,828.12
23	Jun-15-2033	17,609,009.36	935,205.70	208,622.42	1,143,828.12
24	Dec-15-2033	16,663,282.60	945,726.76	198,101.36	1,143,828.12
25	Jun-15-2034	15,706,916.40	956,366.20	187,461.92	1,143,828.12
26	Dec-15-2034	14,739,791.08	967,125.32	176,702.80	1,143,828.12
27	Jun-15-2035	13,761,785.60	978,005.48	165,822.64	1,143,828.12
28	Dec-15-2035	12,772,777.56	989,008.04	154,820.08	1,143,828.12
29	Jun-15-2036	11,772,643.18	1,000,134.38	143,693.74	1,143,828.12
30	Dec-15-2036	10,761,257.30	1,011,385.88	132,442.24	1,143,828.12
31	Jun-15-2037	9,738,493.32	1,022,763.98	121,064.14	1,143,828.12
32	Dec-15-2037	8,704,223.24	1,034,270.08	109,558.04	1,143,828.12
33	Jun-15-2038	7,658,317.64	1,045,905.60	97,922.52	1,143,828.12
34	Dec-15-2038	6,600,645.60	1,057,672.04	86,156.08	1,143,828.12
35	Jun-15-2039	5,531,074.74	1,069,570.86	74,257.26	1,143,828.12
36	Dec-15-2039	4,449,471.22	1,081,603.52	62,224.60	1,143,828.12
37	Jun-15-2040	3,355,699.66	1,093,771.56	50,056.56	1,143,828.12
38	Dec-15-2040	2,249,623.16	1,106,076.50	37,751.62	1,143,828.12
39	Jun-15-2041	1,131,103.30	1,118,519.86	25,308.26	1,143,828.12
40	Dec-15-2041	0.00	1,131,103.30	12,724.82	1,143,828.12
TOTALS			35,210,000.00	9,032,289.18	44,242,289.18

AFTER RECORDATION PLEASE RETURN TO:

Kutak Rock LLP
1801 California Street, Suite 3000
Denver, Colorado 80202
Attention: Thomas M. Peltz, Esq.

SITE LEASE

between

CITY OF ARVADA, COLORADO
as Lessor,

and

BANK OF THE SAN JUANS, A DIVISION OF GLACIER BANK
as Lessee

Dated as of December __ 2021

THIS SITE LEASE dated as of December __, 2021 (this “Site Lease”), between the **CITY OF ARVADA, COLORADO**, as lessor (the “City”), a Colorado home rule municipal corporation of the State of Colorado (the “State”), and **BANK OF THE SAN JUANS, A DIVISION OF GLACIER BANK**, as lessee (together with its successors and assigns, the “Lender”).

WITNESSETH:

WHEREAS, the City of Arvada, Colorado (the “City”) is a home rule municipality and political subdivision of the State of Colorado (the “State”), duly organized and operating under the home-rule charter of the City (the “Charter”), the State Constitution (the “Constitution”) and the laws of the State; and

WHEREAS, the George J. Meyers Swimming Center (the “Meyers Pool”) is a City-owned aquatics facility located at 7900 Carr Drive (the “Pool Site”) that was constructed in 1979 and is in need of replacement (the construction of a replacement aquatics facility is referred to herein as the “Project”); and

WHEREAS, Jefferson County School District No. R-1 (the “School District”) is one of the largest users of the Meyers Pool for various school purposes, including but not limited to swim team use; and

WHEREAS, the Meyers Pool has historically been operated by Apex Park and Recreation District (“Apex”), and based upon their shared interests, the City, the School District and Apex have worked cooperatively and have entered into an intergovernmental agreement concerning the completion and financing of the Project (the “Pool IGA”); and

WHEREAS, as contemplated in the Pool IGA and related meetings, the School District and the City are to share equally in financing the capital costs of the Project; and

WHEREAS, in order to generate moneys to finance a portion of the costs of the Project, the City Council of the City (the “Council”) has determined that the City shall convey a leasehold interest in the Pool Site described in Exhibit A attached hereto (such property, together with the Project to be constructed thereon, is referred to herein as the “Leased Property”) to the Lender for a lump-sum payment set forth in Section 3 hereof, and contemporaneously with the execution and delivery of this Site Lease, the Lender shall sublease the Leased Property back to the City and the School District on a joint basis pursuant to that certain Lease Purchase Agreement dated as of the date of this Site Lease (the “Lease Purchase Agreement”) between the Lender, as sublessor, and the City and School District, as joint sublessees; and

WHEREAS, the City is authorized pursuant to Section 31-15-801, Colorado Revised Statutes (“C.R.S.”) to enter into long-term rental or leasehold agreements, to lease the Leased Property to the Lender and to execute, deliver and perform its obligations under this Site Lease; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows;

Section 1. Definitions. Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them herein and in the Lease Purchase Agreement.

Section 2. Site Lease and Terms. The City hereby leases to the Lender and the Lender hereby leases from the City, on the terms and conditions hereinafter set forth, the Leased Property, which consists of the real property (including all improvements thereon, whether existing now or hereafter) described in Exhibit A attached hereto and made a part hereof, subject to permitted encumbrances as described in Exhibit B attached hereto, and such lease to the Lender is hereby deemed to be in the best interests of the City and its inhabitants.

The term of this Site Lease shall commence on the date hereof and shall end on December 31, 2051 (the "Site Lease Termination Date"), unless such term is sooner terminated as hereinafter provided. If, prior to the Site Lease Termination Date, all legal interests of the Lender in the Leased Property have been conveyed to the City pursuant to the Lease Purchase Agreement as a result of the City and School District's payment of (i) the related Purchase Option Price thereunder or (ii) all Base Rentals and Additional Rentals as provided in Section 11.02 of the Lease Purchase Agreement, then the term of this Site Lease shall end immediately thereafter.

Section 3. Rent and Payment. The Lender has paid to the City and the City hereby acknowledges receipt from the Lender as and for rental hereunder, paid in advance, the deposit of \$35,210,000 into an escrow account for funding of the Project and other good and valuable consideration (the "Lender Rental Payment"), as and for all rent due hereunder, and other good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, to have and to hold for the term of this Site Lease as provided herein. The City hereby determines that such amount is reasonable consideration for the leasing of the Leased Property to the Lender for the term of this Site Lease

Section 4. Purpose. The Lender shall use the Leased Property for the purpose of subletting the same to the City and School District pursuant to the Lease Purchase Agreement; provided, that upon the occurrence of an Event of Nonappropriation or an Event of Default under the Lease Purchase Agreement, the City and School District shall vacate the Leased Property as provided in the Lease Purchase Agreement, the Lender may exercise the remedies provided in the Lease Purchase Agreement and the Lender may use or sublet the Leased Property for any lawful purposes.

Section 5. Owner in Fee. The City covenants and represents that it is the owner in fee of the Leased Property, subject only to permitted encumbrances set forth in Exhibit B hereto, and the permitted encumbrances do not and shall not interfere in any material way with the Leased Property. As of the date of this Site Lease, the City warrants that it will not make, do, execute or suffer, any act or thing whereby the City's interest in any property now or hereafter included in the Leased Property will be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Site Lease and the Lease Purchase Agreement.

Section 6. Assignments and Subleases. This Site Lease shall be assignable and transferrable by the Lender in connection with an assignment or transfer of the Lender's interests in the Lease Purchase Agreement, without the City and School District's collective consent, on prior written notice to the City and School District not less than thirty (30) days' prior to the

assignment and transfer date, but only to: (i) an affiliate of the Lender; or (ii) a “Bank” as defined in Section 3(a)(2) of the Securities Act of 1933 as amended (the “Securities Act”). Neither the City nor the School District shall be required to incur any expenses in connection with an assignment or transfer by the Lender. Unless an Event of Nonappropriation or an Event of Default under the Lease Purchase Agreement shall have occurred and except as may otherwise be provided in the Lease Purchase Agreement, the Lender may not sublet the Leased Property without the written consent of the City and the School District.

In the event that (a) the Lease Purchase Agreement is terminated for any reason and (b) this Site Lease is not terminated, the Lender may sublease the Leased Property or any portion thereof, or sell an assignment of its interest in this Site Lease. Except as provided in this Site Lease or in the Lease Purchase Agreement, none of the City, the School District or the Lender will sell, mortgage or encumber the Leased Property or any portion thereof during the term of this Site Lease.

Section 7. Right of Entry. The City reserves the right, so long as no Event of Nonappropriation or Event of Default shall have occurred under the Lease Purchase Agreement, for any of its duly authorized representatives to enter upon the Leased Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 8. Termination. The Lender agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property and any improvements and structures built on the Leased Property to the City, and agrees that any fixtures, permanent improvements and structures existing upon the Leased Property, including any improvements and structures built on the Leased Property, at the time of the termination of this Site Lease shall remain thereon and all legal interests of the Lender thereto shall vest in the City. The Lender and any sublessee or assignee shall execute and deliver, upon request by the City, any instrument of transfer, conveyance or release necessary or appropriate to confirm the vesting of such legal interests in the City.

Section 9. Default. In the event the Lender shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Lender; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period, the City shall not withhold its consent to an extension of such time if corrective action is instituted by the Lender within the applicable period and diligently pursued until the default is corrected, and such consent by the City shall not be unreasonably withheld. The City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease Purchase Agreement shall be deemed to occur as a result thereof.

Section 10. Quiet Enjoyment and Acknowledgment of Ownership. The Lender at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy the Leased Property and any improvements and structures built on the Leased Property, subject to the provisions of the Lease Purchase Agreement, and the City hereby acknowledges that the Lender shall have a leasehold interest in the land comprising the Leased Property and in all fixtures, improvements and structures on the Leased Property, subject to the Lease Purchase Agreement.

Section 11. Waiver of Personal Liability. All liabilities under this Site Lease on the part of the Lender are solely liabilities of the Lender, and the City hereby releases each and every director, member, officer, employee and agent of the Lender of and from any personal or individual liability under this Site Lease. No director, member, officer, employee or agent of the Lender shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Lender hereunder.

Section 12. Taxes; Maintenance; Insurance. During the Lease Term of the Lease Purchase Agreement and in accordance with the provisions of the Lease Purchase Agreement, the City covenants and agrees to pay any and all assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon, and all maintenance costs and utility charges in connection with the Leased Property and any improvements thereon. In the event that the Lease Purchase Agreement is terminated for any reason and this Site Lease is not terminated, the City shall pay or cause to be paid when due all taxes and assessments imposed thereon, if any, and maintain the Leased Property in good condition. Any such payments that are to be made by the Lender are required to be made solely from the proceeds of any such subleasing or assignment of the Leased Property.

The provisions of the Lease Purchase Agreement shall govern with respect to the maintenance of insurance hereunder during the Lease Term of the Lease Purchase Agreement.

Section 13. Damage, Destruction or Condemnation. The provisions of the Lease Purchase Agreement shall govern with respect to any damage, destruction or condemnation of the Leased Property or any improvements and structures built on the Leased Property during the Lease Term of the Lease Purchase Agreement. In the event that (a) the Lease Purchase Agreement is terminated for any reason, (b) this Site Lease is not terminated and either (i) the Leased Property or any portion thereof are damaged or destroyed, in whole or in part, by fire or other casualty, or (ii) title to or use of the Leased Property or any part thereof shall be taken under the exercise of the power of eminent domain, the City, the School District and the Lender, or any sublessee, purchaser or assignee of the Leased Property from the Lender shall cause the Net Proceeds of any insurance claim or condemnation award to be applied in accordance with the provisions of Article IX of the Lease Purchase Agreement.

Section 14. Hazardous Substances. Except for customary materials necessary for construction, operation, cleaning and maintenance of the Leased Property, none of the City, the School District, the Lender or any sublessee or assignee of the Leased Property from the Lender shall cause or permit any Hazardous Substance (as defined in the Lease) to be brought upon, generated at, stored or kept or used in or about the Leased Property without prior written notice to the City, the School District and the Lender and all Hazardous Substances, including, customary materials necessary for construction, operation, cleaning and maintenance of the Leased Property, will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substance so brought upon or used or kept in or about the Leased Property. If the presence of Hazardous Substance on the Leased Property caused or permitted by the City or the School District, the Lender or any sublessee or assignee of the Leased Property from the Lender, as the case may be, results in contamination of the Leased Property, or if contamination of the Leased Property by Hazardous Substance otherwise occurs for which the City, the School District, the Lender or any sublessee or assignee of the Leased Property, as the case may be, is legally

liable for damage resulting therefrom, then the City, the School District, the Lender or any sublessee or assignee of the Leased Property from the Lender, as the case may be, shall reimburse the other party for its reasonable and necessary legal expenses to defend the parties hereto or assignees hereof that have not caused or permitted such contamination and are not so legally liable with respect to this Site Lease from claims for damages, penalties, fines, costs, liabilities or losses; provided that the cost of such defense, in the case of the City or the School District, shall be payable only if the cost of such defense has been annually appropriated by the City or the School District. This duty to reimburse legal expenses is not an indemnification. It is expressly understood that none of the City, the School District, the Lender or any sublessee or assignee is indemnifying any other person with respect to this Site Lease. Without limiting the foregoing, if the presence of any Hazardous Substance on the Leased Property caused or permitted by

(a) the Lender or any sublessee or assignee of the Leased Property from the Lender (other than the City or School District), as the case may be, results in any contamination of the Leased Property, the Lender or any sublessee or assignee of the Leased Property from the Lender, as the case may be, shall provide prior written notice to the City, the School District and the Lender and promptly take all actions, solely at the expense of the Lender or any sublessee or assignee of the Leased Property, as the case may be, as are necessary to effect remediation of the contamination in accordance with legal requirements; or

(b) the City or the School District, as the case may be, results in any contamination of the Leased Property, the City or the School District shall provide prior written notice to the Lender and promptly take all actions, solely at the expense of the City or the School District, which expenses shall constitute Additional Rentals, as are necessary to effect remediation of the contamination in accordance with legal requirements.

Section 15. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 16. No Merger. The City and the Lender intend that the legal doctrine of merger shall have no application to this Site Lease and that neither the execution and delivery of the Lease Purchase Agreement by the Lender and the City nor the exercise of any remedies under this Site Lease or the Lease Purchase Agreement shall operate to terminate or extinguish this Site Lease or the Lease Purchase Agreement, except as specifically provided herein and therein.

Section 17. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed shall be made by United States registered mail, return receipt requested, postage prepaid, at the addresses indicated in the Lease Purchase Agreement, or to such other addresses as the respective parties may from time to time designate in writing.

Section 18. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

Section 19. Execution. This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same Site Lease.

Section 20. Governing Law. This Site Lease shall be governed by and construed in accordance with the law of the State of Colorado.

Section 21. Amendment. This Site Lease may be amended only by a written document signed by the City and the Lender. Course of conduct, no matter how long, shall not constitute an amendment to this Site Lease.

Section 22. Electronic Transactions. The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

IN WITNESS WHEREOF, the City and the Lender have caused this Site Lease to be executed by their respective officers thereunto duly authorized, and the City has affixed its official seal hereto all as of the day and year first above written.

CITY OF ARVADA, COLORADO, as Lessor

By _____
Marc Williams, Mayor

Attest:

By _____
City Clerk

Approved as to form:
Rachel A. Morris, City Attorney

By _____

BANK OF THE SAN JUANS, A DIVISION
OF GLACIER BANK, as Lessee

By: _____
Name: _____
Title: _____

[Signature Page to Site Lease]

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

This instrument was acknowledged before me this ____ day of December, 2021, by Marc Williams, as Mayor, and Kristen Rush, as City Clerk of the City of Arvada, Colorado.

WITNESS my hand and official seal.

Notary Public

[SEAL]

My Commission Expires:

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of Decembr, 2021,
by _____, as _____ of Bank of The San Juans, a Division of Glacier Bank.

WITNESS my hand and official seal.

Notary Public

[SEAL]

My Commission Expires:

EXHIBIT A

DESCRIPTION OF THE LEASED PROPERTY

REAL PROPERTY

Address

7900 Carr Drive
Arvada, CO 80005

Legal Description

A parcel of land in the Northeast $\frac{1}{4}$ of Section 34 and the Northwest $\frac{1}{4}$ of Section 35, Township 2 South, Range 69 West of the 6th P.M., being more particularly described in the Commissioner's Deed recorded June 15, 1977 in Book 3019 at Page 722 and re-recorded June 27, 1977 in Book 3026 at Page 296, TOGETHER with vacated Carr Street as described in Ordinance No. 1051 recorded May 2, 1973 in Book 2501 at Page 582 and recorded April 9, 1976 in Book 2839 at Page 285, County of Jefferson, State of Colorado

LEASED PROPERTY

Facilities

The Project comprising the Leased Property consists of a new aquatic facility, to replace the existing George J. Meyers Swimming Center and to be located at the property described above.

EXHIBIT B

PERMITTED ENCUMBRANCES

Permitted Encumbrances means the following: (a) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pending contest pursuant to the provisions of Article VIII of the Lease; (b) this Site Lease and the Lease; (c) utility, access and other easements and rights of way, restrictions and exceptions which an Authorized Officer of the City certifies will not interfere with or impair the Leased Property, including rights or privileges in the nature of easements as provided in Section 8.06 of the Lease; (d) any financing statements filed to perfect security interests pursuant to this Site Lease or the Lease; (e) any encumbrance represented by financing statements in forms appropriate to perfect purchase money security interests given by the Lender in any of the Leased Property; (f) existing easements, covenants, restrictions, liens and encumbrances (if any) to which title to the Leased Property was subject when a leasehold interest therein was conveyed to the Lender described in the title policy provided by the City, or approved in writing by the Lender pursuant to this Site Lease or otherwise, and which do not interfere in any material way with the Leased Property; and (g) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Leased Property and as do not render the title unmarketable.



REPORT TO CITY COUNCIL PUBLIC HEARING

AGENDA ITEM
10.E.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: Major Modification for 7400 Simms Residential Privacy Fence, generally located at 7400 Simms Street

Report in Brief

Chris and Samantha Clopper are requesting approval of a major modification to increase the maximum height allowed for a solid fence within the front setback.

The subject property is located in the RN-12.5 (Residential Neighborhood 12,500) zone district and contains 19,783 square feet or 0.454 acres. The existing single-family residence was constructed in 1972 and a significant addition was constructed in 2007. The residence today contains approximately 3,200 square feet. There is an existing four-foot tall chain link fence in the location of the proposed six-foot solid fence. The residence is situated toward the rear of the lot and much of the southern side of the lot contains the access driveway, which results in the only yard space being in the front of the property. If the Major Modification request is approved, a fence permit will be required, which will be reviewed administratively.

The Arvada team recommends that the City Council approve the Major Modification with the amended condition for 7400 Simms residential privacy fence, generally located at 7400 Simms Street.

Financial Impact

The approval of the recommended action will have no financial impact.

Background

The subject property address is 7400 Simms Street and is located approximately at the intersection of Simms Street and W 73rd Place. The property takes access directly from Simms Street, which is designated as a major collector. The subject property and the adjacent property to the south, 7350 Simms Street, are the only two single-family residential properties in this section of Simms Street that take access from Simms Street and therefore have front yards facing Simms Street. The next closest single-family residential properties within the City that take access from Simms St. are located 0.5 miles to the north and 0.75 miles to the south. All other single-family residential properties along this section of Simms St. either have rear or side yards facing Simms St. and are therefore allowed to have six-foot solid fences either on the rear property line or six-feet back from the street side property line. The current owners and applicants have owned the property since July 26, 2021.

Discussion

It is the responsibility of the applicant to justify the requested land use application. The Planning Commission should make a recommendation to the City Council based on its findings regarding the approval criteria shown in the table(s) below and upon testimony heard during the public hearing as it applied to the criteria.

The Community and Economic Development team performed an analysis of the proposal, based on the approval criteria listed in Chapter 8 of the Land Development Code. This analysis generated the following findings:

	Finding	Rationale
Div. 8-3-11 Major Modification Approval Criteria		
1. The requested modification is consistent with the Comprehensive Plan and the stated purpose of the applicable zoning district.	Complies	The modification is consistent with the Comprehensive Plan Future Land Use Designation of Suburban Residential and the RN-12.5 zone district, which is intended to maintain the character of mature, established neighborhoods in locations where residents expect that the character be relatively stable. The proposed fence style and location would generally be in character with the established neighborhood.
2. The requested modification addresses a unique situation or incorporates creative site design.	Complies	The subject property is one of two single-family residential lots within approximately 1.25 miles that has a front yard facing Simms St. Further, the subject property is the only lot where the front yard is the vast majority of the useable yard area making the situation unique. The proposal also incorporates creative site design with a higher quality fence design than is typical.
3. The requested modification will not result in incompatible development.	Complies	The requested modification is consistent with existing fences along Simms St.
4. The requested modification will have no significant adverse impact on the health, safety or general welfare of surrounding property owners or the general public.	Complies	The proposed fence location retains clear lines of sight for vehicles on Simms St. to see a vehicle exiting the subject property and for a vehicle on the subject property to see traffic on Simms St. The modification would not have an adverse impact on the health, safety or general welfare of surrounding property owners or the general public.
5. Any adverse impacts resulting from the modification will be mitigated to the extent reasonably feasible.	Complies	There are no adverse impacts that would result from the modification. In addition, the proposed condition of approval would mitigate a possible future adverse impact to the City.

Public Contact

The required neighborhood meeting for this project took place virtually on October 14, 2021. The applicant, team members, and two neighbors were in attendance. The applicant presented their proposal and the neighbors asked questions about the process and what the fence would look like. Both neighbors were very supportive of the proposal. A summary of the meeting is attached.

Commission Recommendation

The Planning Commission voted 6 to 0 (1 absent) to recommend approval of the Major Modification with the amended condition of approval on November 16, 2021. Within the motion, the Planning Commission voted 6-0 (1 absent) to amend the condition of approval to strike the following language from page 7 of the staff report: *"the property owner will dedicate the necessary land in fee simple to the City for right-of-way purposes. The agreement shall also state that the property owner will"*

The final recommended condition reads as: *"The applicants shall execute a development agreement with the City stating that at the time Simms St. is improved to the full right-of-way width, the property owner will be solely responsible for the expense of relocating the six-foot solid fence at that time. The agreement shall be recorded prior to issuance of a fence permit."*

Strategic Alignment

The project is consistent with the principles stated within the Community and Economic Development Priority Area of the City Council Strategic Plan.

Alternative Courses of Action

N/A

Recommendation for Action

The Arvada team recommends that the City Council Approve a Major Modification for 7400 Simms Residential Privacy Fence, generally located at 7400 Simms Street with the amended condition stated on page 7 of the staff report.

Suggested Motion:

I move that a Major Modification for 7400 Simms Residential Privacy Fence, generally located at 7400 Simms Street, be (approved subject to the amended condition stated on page 7 of the staff report) (denied).

This motion is based on the findings of fact adopted by the Planning Commission (if approved).

This motion is based on the following findings of fact for denial: (Recite approval criteria you believe the evidence fails to satisfy and your reasons)

Prepared by:
Abigail Ogg, Administrative Specialist

Reviewed by:

Approved by:

Jonathan Moore, Planner I	11/17/2021
Josie Suk, Development Systems and Administrative Manager	11/19/2021
Robert Smetana, Manager of City Planning and Development	11/19/2021
Ryan Stachelski, Director of Community and Economic Development	11/19/2021
Gail Walker, Legal Specialist-Contracts	11/19/2021
Emily Grogg, Senior Assistant City Attorney	11/19/2021
Rachel Morris, City Attorney	11/22/2021
Lorie Gillis, Deputy City Manager	11/23/2021
Mark Deven, City Manager	11/23/2021

Enclosure, exhibits & attachments required to support the report

City of Arvada
Community and Economic Development Department
PUBLIC HEARING STAFF REPORT

7400 Simms Residential Privacy Fence
Major Modification
DA2021-0120

NATURE OF REQUEST

Chris and Samantha Clopper are requesting approval of a major modification to increase the maximum height allowed for a solid fence in the front setback.

The subject property is located in the RN-12.5 (Residential Neighborhood 12,500) zone district and contains 19,783 square feet or 0.454 acres. The existing single-family residence was constructed in 1972 and a significant addition was constructed in 2007. The residence today contains approximately 3,200 square feet. There is an existing four-foot tall chain link fence in the location of the proposed six-foot solid fence. The residence is situated toward the rear of the lot and much of the southern side of the lot contains the access driveway, which results in the only yard space being in the front of the property. If the Major Modification request is approved, a fence permit will be required, which would be reviewed administratively.

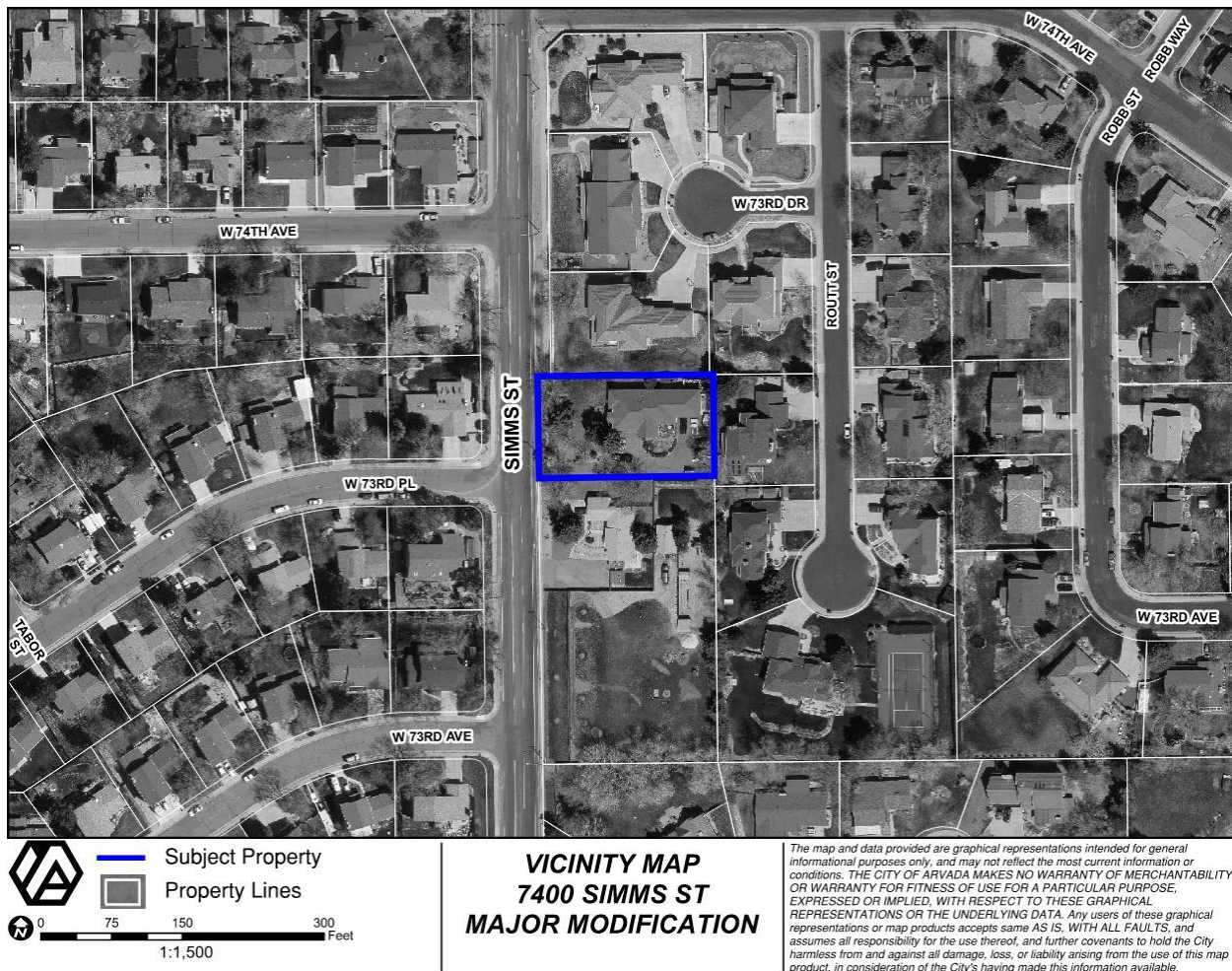
MAJOR MODIFICATIONS REQUESTED

The applicants are requesting a modifications to the Arvada Land Development Code (LDC) standards as part of this project. That modification is:

1. To increase the maximum height allowed for a solid fence in the front setback to six feet when LDC Division 4-7-2 restricts the height of solid fences in the front yard to three feet.

LOCATION AND HISTORY

The subject property address is 7400 Simms St. and is located approximately at the intersection of Simms St. and W 73rd Pl. The property takes access directly from Simms St, which is designated as a major collector. The subject property and the adjacent property to the south, 7350 Simms St., are the only two single-family residential properties in this section of Simms St. that take access from Simms St. and therefore have front yards facing Simms St. The next closest single-family residential properties within the City that take access from Simms St. are located 0.5 miles to the north and 0.75 miles to the south. All other single-family residential properties along this section of Simms St. either have rear or side yards facing Simms St. and are therefore allowed to have six-foot solid fences either on the rear property line or six-feet back from the street side property line. The current owners and applicants have owned the property since July 26, 2021.



NEIGHBORHOOD MEETING

Division 8-2-2 of the Land Development Code requires that at least one neighborhood meeting be held for projects that require public hearings before the Planning Commission and City Council.

The required neighborhood meeting for this project took place virtually on virtually on October 14, 2021. The applicant, staff, and two neighbors were in attendance.

The applicant presented their proposal and the neighbors asked questions about the process and what the fence would look like. Both neighbors were very supportive of the proposal. A summary of the meeting is attached.

PUBLIC NOTIFICATION

Division 8-2-4 of the Land Development Code requires public notification for all public hearings as follows:

Written Notice: At least 15 days prior to all public hearings, written notice must be mailed to all property owners within 500 feet of the subject property and to all homeowners associations and neighborhood associations with a known interest in the subject property. The applicant will provide an affidavit of mailing verifying this requirement has been met prior to the public hearing.

Posted Notice: At least 15 days prior to all public hearings, signs notifying the public of the hearing must be posted on the subject property. The applicant will provide a posting log verifying that this requirement has been met prior to the public hearing.

Published Notice: At least 15 days prior to all public hearings, notice of the hearing must be published in a newspaper of general circulation in the City. The required notice has been published.

DEVELOPMENT REVIEW TIMELINE

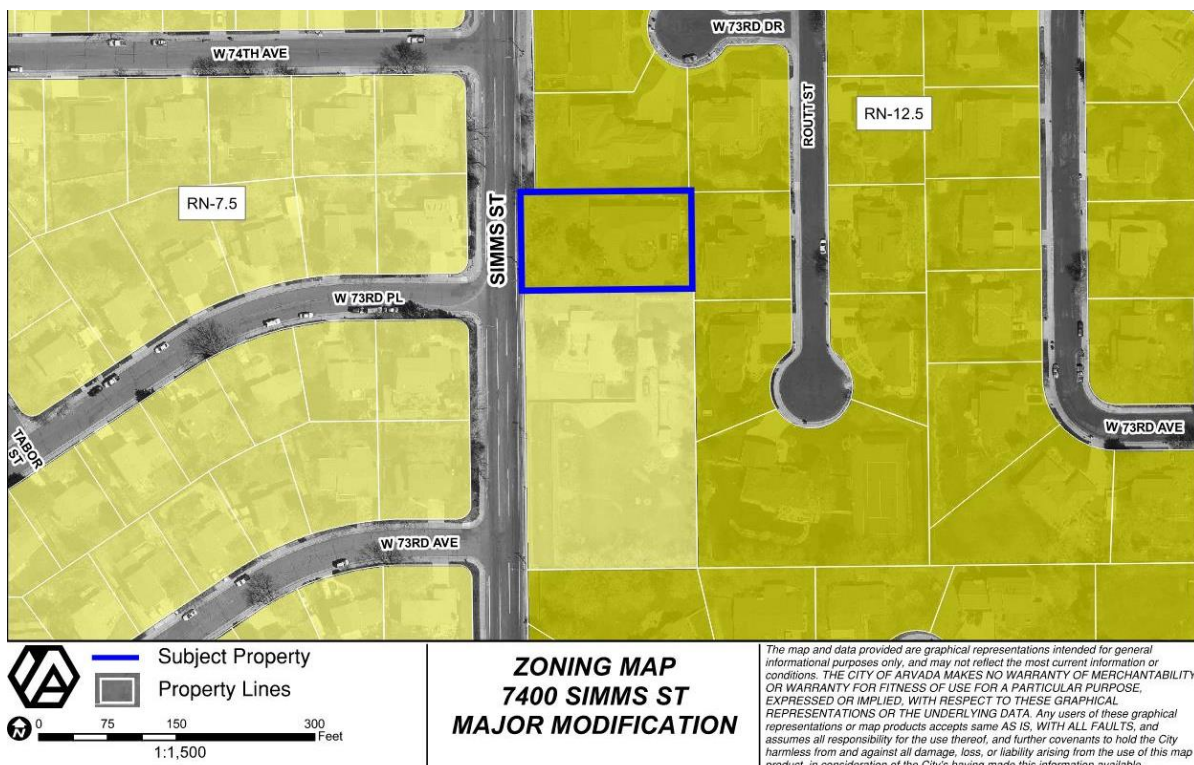
The development was placed on the public hearing review timeline, which typically requires three rounds of staff review. The first review took three weeks, after which staff determined that the plans included sufficient detail for the Planning Commission and City Council to review.

ALIGNMENT WITH CITY COUNCIL STRATEGIC PLAN

The project is consistent with the City Council Strategic Plan principles for the Community and Economic Development work system.

ZONING AND LAND USE

The subject property is currently zoned RN-12.5 (Residential Neighborhood 12,500).



Surrounding properties are zoned and utilized as follows:

Direction	Zoning	Actual Use
North	RN-12.5 (Residential Neighborhood 12,500)	Single-Family Residence
South	RN-7.5 (Residential Neighborhood 7,500)	Single-Family Residence
East	RN-12.5 (Residential Neighborhood 12,500)	Single-Family Residence
West (across Simms St)	RN-7.5 (Residential Neighborhood 7,500)	Single-Family Residence

PROJECT ANALYSIS

Compliance with the Comprehensive Plan

The subject property has a Comprehensive Plan Future Land Use Designation of Suburban Residential, which is intended for single-family residences, duplexes, and attached residences. The proposal generally complies with the Comprehensive Plan.

Setbacks

The existing building is set back 72.4 feet from the front property line and meets all setback requirements of the RN-12.5 zone district.

Landscaping

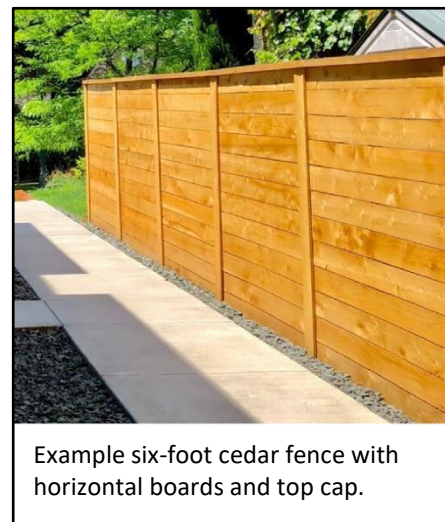
The property has more than the typical amount of landscaping in the front yard along Simms St., including four mature trees and approximately 12 evergreen shrubs.

Fencing

LDC Division 4-7-2 restricts the height of solid fences in the front yard to three feet. In this case, the front yard is the area between the façade of the building and Simms St, which is approximately 8,000 square feet or 40 percent of the total lot area.

The proposed location of the six-foot solid fence is approximately six-feet closer to Simms St. than the adjacent six-foot solid fence to the north. This is due to that fact that there is an existing 24-inch caliper mature tree and an irrigation line that prohibit locating the subject property fence from aligning with the adjacent fence to the north. The fence would be located nine feet back from the existing five-foot-wide attached sidewalk along Simms St.

The proposed fence design is a six-foot cedar fence with horizontal boards and top cap detail. The fence would encompass approximately 135 linear feet along Simms St., along the north side of the driveway, and along the south side of the driveway. There is an existing gate across the driveway approximately 60 feet back from Simms St.



Example six-foot cedar fence with horizontal boards and top cap.



Building Design

The proposal would not alter the existing building design.

Connectivity

The proposal would not alter the existing connectivity along Simms St. However, the subject property extends approximately 11 feet into the anticipated future right-of-way of Simms St. The long term vision of Simms St. is for a minimum right-of-way width of 76 feet, which would allow for a bike lane and detached sidewalk. When the adjacent subdivision to the north, Stonefield Estates Filing No. 2, was developed in 2004, land was dedicated along Simms St. to meet those standards.

The proposed fence location is within the area that is anticipated to be necessary for right-of-way in the future. However, there are no plans in the near future for the City to acquire right-of-way along this section of Simms St. Due to this circumstance, staff is recommending a condition of approval that the applicants execute a development agreement with the City stating that at the time Simms St. is improved to the full right-of-way width, the property owner will dedicate the necessary land in fee simple to the City for right-of-way purposes. The property owner will also be solely responsible for the expense of relocating the six-foot solid fence at that time.

Police and Fire Protection

There will not be an impact to police or fire protection services.

LAND DEVELOPMENT CODE APPROVAL CRITERIA

It is the responsibility of the applicant to justify the requested land use application. The Planning Commission should make a recommendation to the City Council based on its findings regarding the approval criteria shown in the table(s) below and upon testimony heard during the public hearing as it applied to the criteria.

Staff performed an analysis of the proposal, based on the approval criteria listed in Chapter 8 of the Land Development Code, and presents the following findings:

Div. 8-3-11 Major Modification Approval Criteria	Finding	Rationale
1. The requested modification is consistent with the Comprehensive Plan and the stated purpose of the applicable zoning district.	Complies	The modification is consistent with the Comprehensive Plan Future Land Use Designation of Suburban Residential and the RN-12.5 zone district, which is intended to maintain the character of mature, established neighborhoods in locations where residents expect that the character be relatively stable. The proposed fence style and location would generally be in character with the established neighborhood.
2. The requested modification addresses a unique situation or incorporates creative site design.	Complies	The subject property is one of two single-family residential lots within approximately 1.25 miles that has a front yard facing Simms St. Further, the subject property is the only lot where the front yard is the vast majority of the useable yard area making the situation unique. The proposal also incorporates creative site design with a higher quality fence design than is typical.
3. The requested modification will not result in incompatible development.	Complies	The requested modification is consistent with existing fences along Simms St.
4. The requested modification will have no significant adverse impact on the health, safety or general welfare of surrounding property owners or the general public.	Complies	The proposed fence location retains clear lines of sight for vehicles on Simms St. to see a vehicle exiting the subject property and for a vehicle on the subject property to see traffic on Simms St. The modification would not have an adverse impact on the health, safety or general welfare of surrounding property owners or the general public.
5. Any adverse impacts resulting from the modification will be mitigated to the extent reasonably feasible.	Complies	There are no adverse impacts that would result from the modification. In addition, the proposed condition of approval would mitigate a possible future adverse impact to the City.

STAFF RECOMMENDATION

Based upon project analysis and review of the Land Development Code approval criteria, staff recommends approval of the request. The general intent of prohibiting six-foot-tall solid fences in front yards is so neighborhoods retain a sense of openness for the community to enjoy walking through neighborhoods. In this circumstance, that sense of openness is anticipated to be achieved through the standard design of a major collector street. Additionally, it is typical in this neighborhood for a six-foot-tall privacy fence to be located on or near the property line abutting Simms St.

If the Planning Commission finds that the Major Modification request meets the approval criteria, then staff recommends that the following conditions be made part of the approval (*italicized text with strikethrough was removed from the condition by the Planning Commission at the public hearing on November 16, 2021*):

- The applicants shall execute a development agreement with the City stating that at the time Simms St. is improved to the full right-of-way width, ~~the property owner will dedicate the necessary land in fee simple to the City for right-of-way purposes. The agreement shall also state that~~ the property owner will be solely responsible for the expense of relocating the six-foot solid fence at that time. The agreement shall be recorded prior to issuance of a fence permit.

The Planning Commission may recommend denial of the request(s) if it cannot make affirmative findings of the approval criteria stated above.



City Council Hearing
December 6, 2021

7400 Simms Fence Major Modification Project No. DA2021-0120

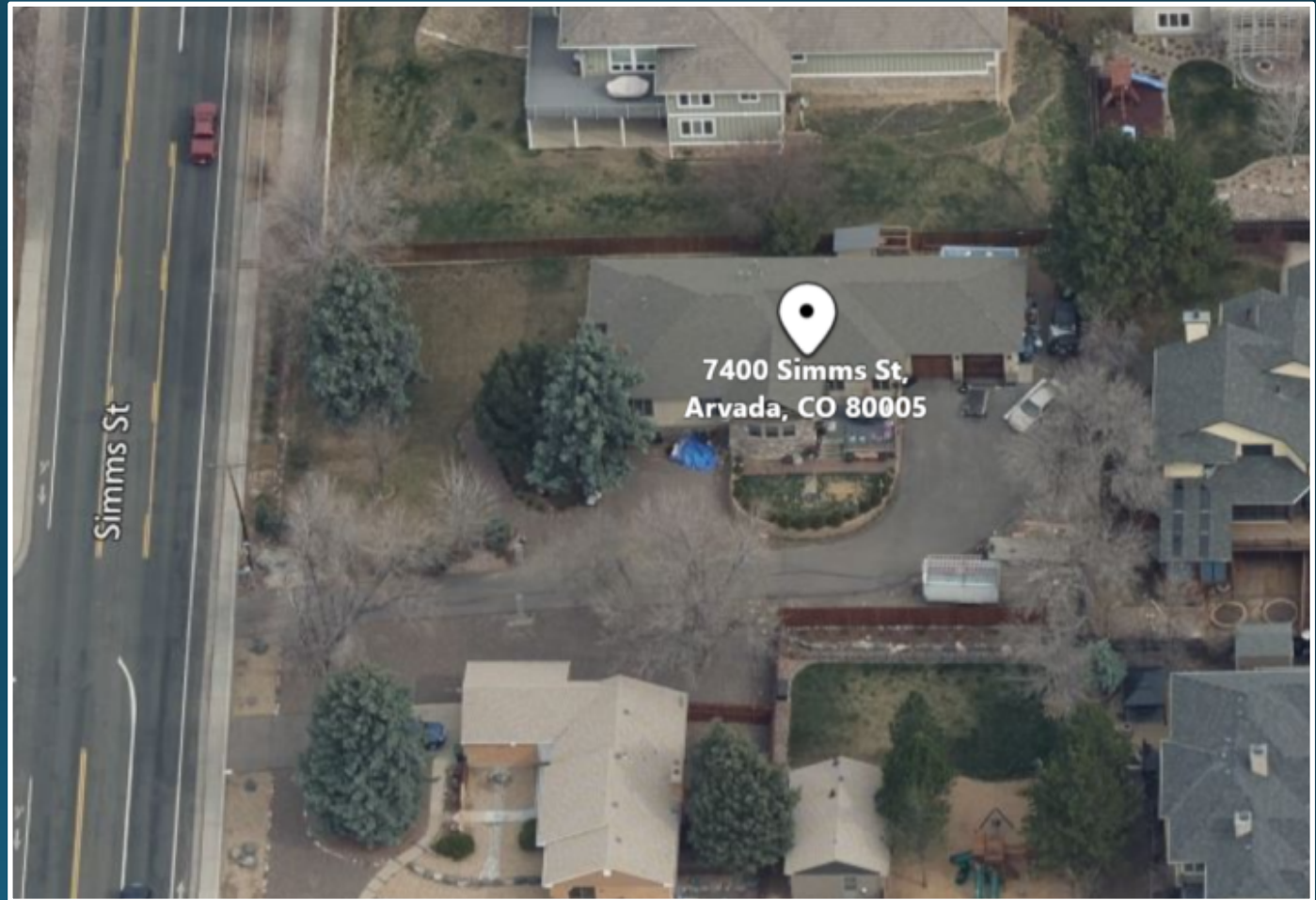
Project Location



7400 Simms Fence Major Modification
Project No. DA2021-0120

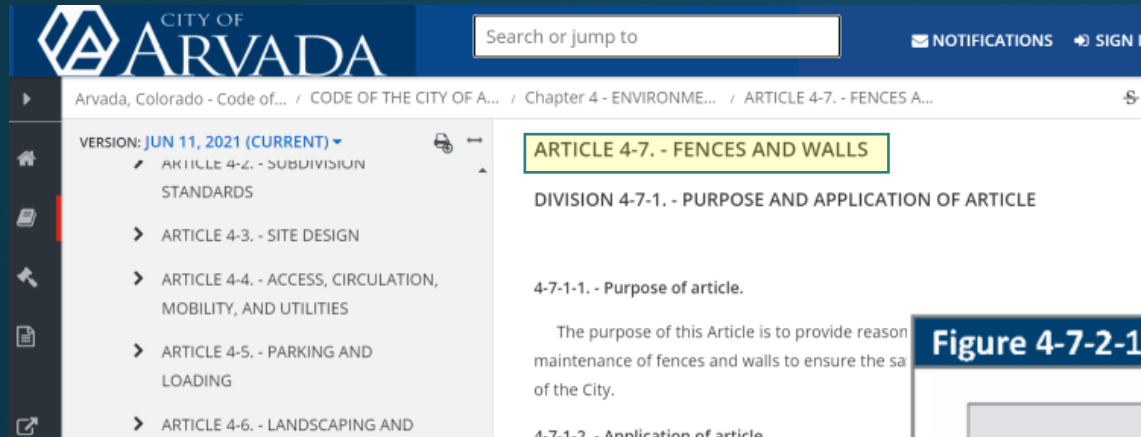
Project Fact Sheet

- Single Family Home with off-street parking only
- Acres: 0.45 (19,783 sq. ft.)
- Zone: Residential Neighborhood (RN) 12.5
- Subdivision: None
- Comp Plan Designation: SUBR
- Pre-App Proj. Number: PA2021-0167



7400 Simms Fence Major Modification
Project No. DA2021-0120

City of Arvada Fence Requirements



- 6-ft privacy fence is greater than 20% deviation from code, requiring Major Modification.

Figure 4-7-2-1B: General Fence Location

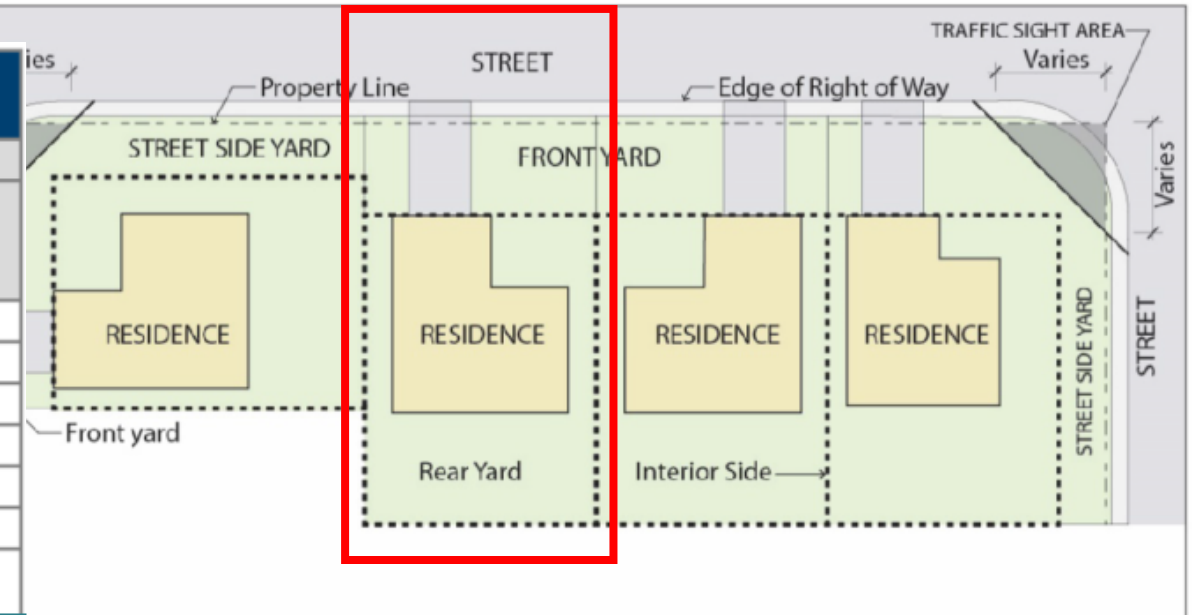


Table 4-7-2-1 : Maximum Height of Fences and Divisional Walls Within Required Setback Areas

Zoning District	Setback		
	Area 1 Front	Area 2 Street Side	Area 3 Rear & Interior Side
OS, RA, RN, R6, R13, R24, MX-N	3 ft. ²	3 ft. ^{2,3,4}	6 ft. ^{4,9}
MX-S, CG	3 ft. ²	3 ft. ^{2,5}	6 ft.
MX-U, MX-T	3 ft. ²	3 ft. ^{2,5}	6 ft.
OT Zoning Districts	3 ft. ^{5,6,7,8}	3 ft. ^{5,6,7,8}	3 ft. ⁸
IL	6 ft.	6 ft.	6 ft.
IG	6 ft.	8 ft.	8 ft.

TABLE NOTES:

¹ See Figure 4-7-2-1, Fence and Divisional Wall Location Diagram.

² Height may be increased to 4 ft. if the fence is at least 50 percent transparent when viewed at a perpendicular angle.

³ Height may be increased to 6 ft. (regardless of opacity) if the fence is set back at least 6 ft. from the property line or 6 ft. from the back of adjacent sidewalk, whichever is greater.

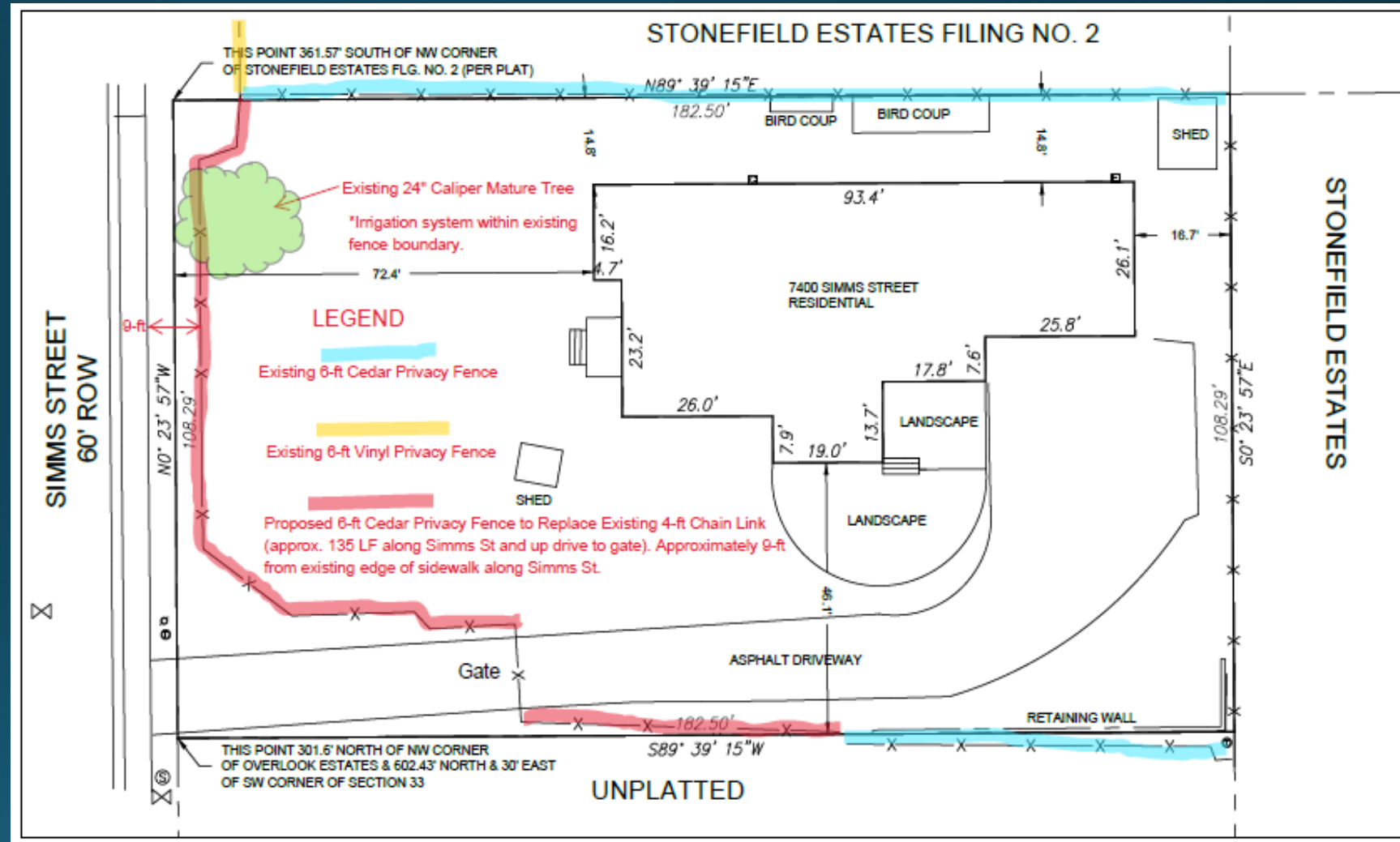
⁴ Height may be increased to 8 ft. for divisional walls that face arterial streets.

⁵ Height may be increased to 6 ft. if a minimum of 50% open for school yards.

7400 Simms Fence Major Modification
Project No. DA2021-0120

Project Overview & Goals

- Replace 135 ft of 4-ft tall chain link fence with 6-ft tall cedar privacy fence along Simms St and up driveway
 - Target install date late November 2021, pending City approval
- Maintain the look and feel of adjacent 6-ft privacy fences
- Improve privacy and safety for family.
- Reduce noise and light pollution from Simms St.
- Add value to property



7400 Simms Fence Major Modification
Project No. DA2021-0120

Proposed Fence Type

- Horizontal Cedar Fence with Top Cap
 - 6-inch Wide Boards
 - Vertical posts every 6-ft
 - 6-ft tall privacy
- Professionally installed



7400 Simms Fence Major Modification
Project No. DA2021-0120

Project Justification

- Unique property layout has vast majority (~80%) of usable yard space is within the designated Front Yard
- Will ensure immediate neighbors have input into the final design



7400 Simms Fence Major Modification
Project No. DA2021-0120

Project Justification

- Proposal will integrate into existing neighborhood design and maintain compatibility with existing feel:
 - Proposing to add approximately 100 linear feet of 6-ft privacy fence along Simms St which from 72nd north to RR tracks, would **only add 5% additional** 6-ft privacy fence



7400 Simms Fence Major Modification
Project No. DA2021-0120

A photograph of a residential property. In the center, a large, dark evergreen tree stands prominently. To its left, there are several deciduous trees with green and yellowing leaves. In the foreground, a wooden gazebo is visible. To the right, a utility pole with power lines is present. The sky is blue with wispy white clouds. The text "Questions?" is overlaid in the upper center.

Questions?

7400 Simms Fence Major Modification
Project No. DA2021-0120

Chris and Samantha Clopper
7400 Simms St, Arvada, CO 80005
970-231-4477

City of Arvada
Community and Economic Development
8101 Ralston Rd, Arvada, CO 80001
720-898-7435

RE: 7400 Simms Fence Major Modification; Project Number DA2021-0120

To Whom it May Concern:

This letter shall serve as the official Major Modification Project Overview letter regarding the proposed privacy fence along Simms St at the property of 7400 Simms St., Arvada, CO 80005. The zone district for the subject property is RN 12.5 with a comprehensive plan designation of SUBR, with a total lot size of 0.454 acres. The vast majority of the usable yard space at our new property is between the home and Simms St, but since the access to the property is directly from Simms St, this is officially considered as Area 1 Front yard. According to Table 4-7-2-1 in Chapter 4 of the Arvada City Code, this means that the fence may only be a 3-ft tall privacy fence, or 4-ft tall if greater than 50% is see through. Due to the location of the home and primary yard space along Simms St, we are requesting that a major modification be granted to improve safety for our young daughter and two dogs, privacy, and light/noise pollution reduction from Simms St.

We purchased our new home in July 2021 and are enjoying living in Arvada. The home was purchased with a 4-ft tall chain link fence set back approximately 9-ft from the existing sidewalk along the east side of Simms St. The requested privacy fence shall be constructed in the same alignment as the current chain link fence and will include approximately 135 linear feet (LF) of 6-ft tall cedar privacy fence along Simms St and perpendicular to Simms St along our driveway to a point aligning with the structure of our home (see site plan).

The proposed privacy fence is to be constructed of 6-inch-wide cedar planks with vertical posts approximately every 6-ft (see Figure 1 for example). We are proposing to maintain a consistent 6-ft tall fence height to match the adjacent property to the north, as to maintain the feel of the neighborhood along Simms St. A gate will be constructed at the location of the existing front gate, with access to the mail box. The current alignment of the chain link fence, and proposed alignment of the new privacy fence, are aligned in a way to go around an existing approximate 24-inch caliper mature tree in the yard, and to maintain existing sprinkler irrigation. This alignment maintains an approximate 9-ft offset from the current sidewalk.

Lastly, while we fully understand the need for City codes and ordinances, we believe that the unique layout of our property and the integration of the proposed fence to the existing 6-ft tall privacy fence along the adjacent property to the north warrants the approval of a major modification for a privacy fence. We truly believe our family will gain substantial health, safety, and general welfare from the proposed project and are prepared to spend upwards of \$10,000 on top of the purchase price of the home to achieve this. We have been in coordination with Denver Fence Guys and Denco Fence Co. for cost estimates and plan to move forward with construction as soon as realistically possible, pending approval of this request.

Please contact me at 970-231-4477 with any additional questions regarding this Major Modification application and request.

Best regards,



Chris and Samantha Clopper

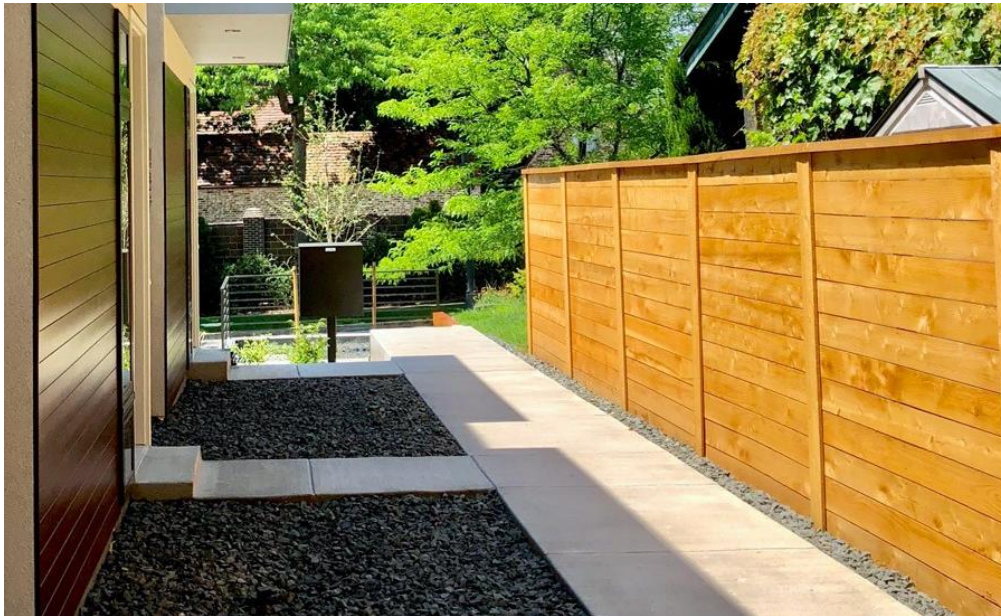


Figure 1. Example 6-ft tall cedar privacy fence with horizontal planks.

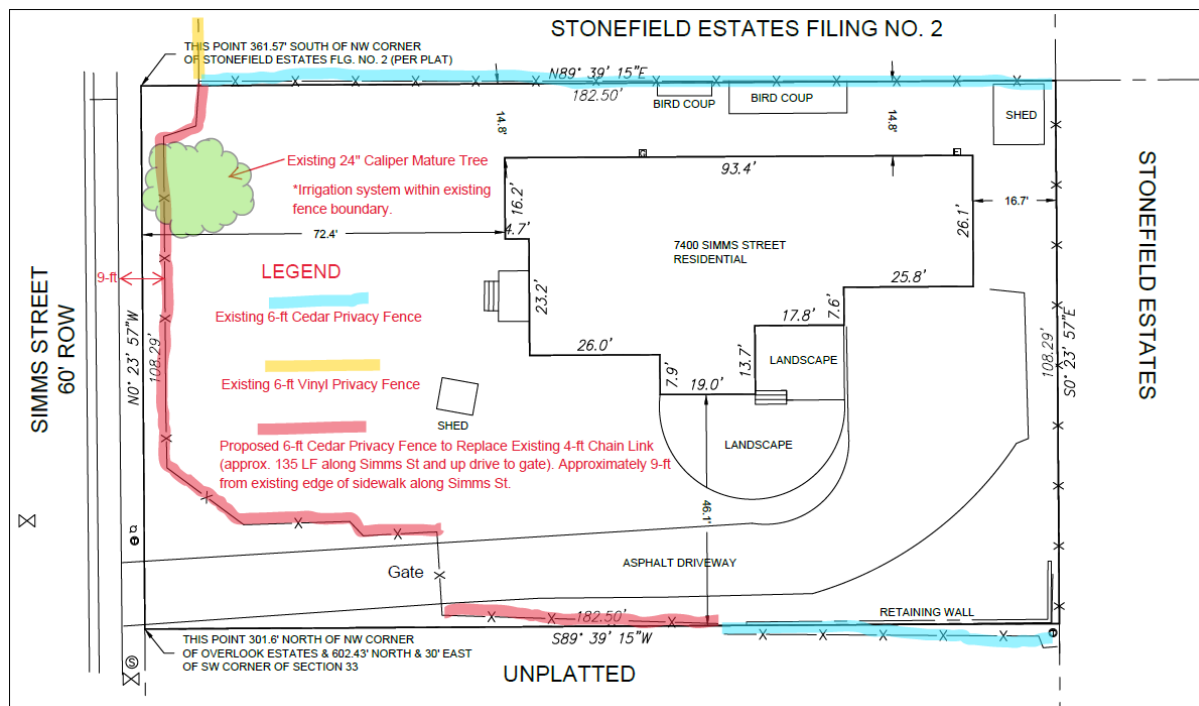


Figure 2. Proposed project site plan (full size plan submitted separately).

Chris and Samantha Clopper
7400 Simms St, Arvada, CO 80005
970-231-4477

City of Arvada
Community and Economic Development
8101 Ralston Rd, Arvada, CO 80001
720-898-7435

RE: 7400 Simms Fence Major Modification; Project Number DA2021-0120

To Whom it May Concern:

This letter shall serve as the official Major Modification Justification Letter regarding the proposed privacy fence along Simms St at the property of 7400 Simms St., Arvada, CO 80005.

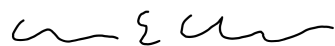
We, the new homeowners, are requesting the City's approval for the construction of a 6-ft tall cedar privacy fence along Simms St which is considered the front yard of our property, which exceeds 20 percent of the allowable height for a solid privacy fence in Area 1 Front yard of a property in Arvada as stated in Chapter 4 of the City Code (Table 4-7-2-1).

We believe that the proposed privacy fence adheres to the intent of the City Code and will not adversely change the feel or function of the neighborhood and will address the unique situation in which most of the usable yard space at the property is between the structure of the home and Simms St. Since the adjacent property to the north currently has a 6-ft tall privacy fence along Simms St, the proposed privacy fence will not result in incompatible development. We believe that the requested modification will not have any adverse impact on the health, safety, or general welfare of surrounding property owners or the public and will only increase the general health, safety, and welfare of our family.

The approval of this requested allowance for a 6-ft tall privacy fence will provide our family with added security for our young daughter and two dogs, increased privacy, and substantial noise/light pollution reduction from busy Simms St. Additionally, as part of this process, we are working with our immediate neighbors to make sure that any concerns are addressed as part of the fence layout.

Please contact me at 970-231-4477 with any additional questions regarding this Major Modification application and request.

Best regards,



Chris and Samantha Clopper

Proposed Fence Example:



6 ft Cedar Privacy With Horizontal Boards and Top Cap Detail

Fig. 1



Looking south towards neighbors 6 ft cedar privacy fence along Simms St from 7400 Simms St driveway

Fig. 3



Looking east towards neighbors 6 ft vinyl (white) and end post (stone) at tie-in from Simms St. Existing 4 ft chain link fence visible.

Alternative Fence Example:



5 ft Cedar Privacy With Horizontal Boards with 1 ft 50% open Top Section

Fig. 2



Looking north towards neighbors 6 ft vinyl (white) privacy fence along Simms St and sidewalk. Existing 4 ft chain link visible.

Fig. 4



Looking west towards neighbors 6 ft cedar interior fence and 6 ft vinyl fence along Simms St. Existing 4 ft chain link fence visible.

Neighborhood Meeting Summary

7400 Simms Residential Privacy Fence
Major Modification

Chris and Samantha Clopper
7400 Simms St, Arvada, CO 80005
970-231-4477

Jonathan Moore, Planning Department
City of Arvada
8101 Ralston Rd, Arvada, CO 80002
720-898-7435

RE: 7400 Simms Fence Major Modification; Project Number DA2021-0120 Neighborhood Meeting Summary

Meeting was virtually held on October 14, 2021 at 5:30pm via Zoom format.

Attendance was by: Jonathan Moore, City of Arvada Planning
Chris Clopper, Homeowner
John Hahn, 7244 Routt Drive
Sherrie Dembrowski, 7254 Routt Drive

Not in attendance: Donna Lantgen, 11700 West 73rd Avenue

A total of two RSVPs were received prior to the virtual meeting and both people were in attendance (see above). One person was not able to attend but provided comment to Mr. Moore over the phone and via email.

Jonathan Moore opened the meeting by introducing himself, representing the City of Arvada planning department, and Chris Clopper, the homeowner. The two neighbors in attendance introduced themselves after which Mr. Moore turned over the presentation to Mr. Clopper to give an overview presentation of the proposed fence project and Major Modification process for the 7400 Simms Fence Major Modification project.



Figure 1. Excerpt from neighborhood meeting overview presentation.

The two neighbors present at the meeting were overwhelmingly supportive of the proposed fence project and offered no concerns or objections following the overview presentation.

- Mr. Hahn indicated that living along Simms St is challenging enough, and that he had no objections to the proposed project as presented in the meeting.
- Ms. Dembrowski asked the question as to how this fence project is different than the recent fence project along Simms St on the adjacent property to the south. Mr. Moore responded by saying that the current proposed fence project is falling under updated code requirements as of May 2020, and accordingly will not be subject to the same requirements as the previously completed fence project. Ms. Dembrowski also did not have any objections to the proposed project as presented in the meeting.

The one neighbor not in attendance for the neighborhood meeting, Ms. Lantgen, did provide objection to the proposed project as follows:

- “I am opposed to the height of the fence because I feel it will deteriorate the neighborhood, decrease home values, safety, and being an eye sore.”
RESPONSE: The objections were provided without any context of the actual proposed project as Ms. Lantgen was not in attendance nor able to view the project overview presentation. As outlined in the overview presentation, the proposed fence will maintain the look and feel of the neighborhood along Simms St as it will add 100 linear feet of 6-ft privacy fence (replacing the existing 4-ft-tall chain link fence) to the existing 2,000 linear feet of 6-ft privacy fence (both cedar and white vinyl) on the east side of Simms St. from the intersection of 72nd north to the railroad tracks – an increase of only 5%. The proposed fence is expected to increase the home value, thereby increasing comparable home prices for the immediate neighborhood. Safety is expected to improve for both the homeowner’s family and the public due to the high volume of traffic along Simms St. Lastly, the homeowners are proposing to have a upgraded style horizontal cedar fence with top cap be installed by a qualified fencing contractor, which will add to the sidewalk appeal of the property.

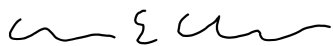
In addition to the support received for the proposed fence project from the two neighbors present at the meeting, the homeowners have received support up to the time of the neighborhood meeting from two additional neighbors:

Don Gilman, 7528 Queen Circle
Tim Knutson, 7345 Routt St

Summary:

The homeowner has addressed the sole neighbor’s concerns and any concerns not addressed will be worked through during the design and construction process, expected to occur this winter.

Best regards,



Chris and Samantha Clopper

Fwd: Your fence project

1 message

Chris Clopper [REDACTED]
To: Jonathan Moore <jmoore@arvada.org>

Mon, Oct 18, 2021 at 2:07 PM

Hi Jon,

Forwarding a message from Don Gilman, [7528 Queen Circle](#), in support of the proposed project for inclusion in the project file.

Thanks!

----- Forwarded message -----

From: [REDACTED]
Date: Mon, Oct 11, 2021 at 2:14 PM
Subject: Your fence project
To: <[REDACTED]>

Good Day Chris Clopper...

Don Gilman here ... as we discussed a few days ago by telephone, we have no objection whatsoever with regard to your requesting approval from the City of Arvada and erecting a privacy fence along the front of your residential property. As nearby neighbors living here for over 40 years, we have observed Simms Street grow from a simple, "sleepy", low volume, north-south street to today's "main-line, north-south high-volume arterial" feeding all the growth in Northwest Arvada and even the Boulder commuter crowd. This has resulted in a significant increase in noise, emissions and the potential for serious vehicle/property accidents .

Best ...

Don Gilman
[7528 Queen Circle](#)
Arvada, CO 80005



Abigail Ogg <aogg@arvada.org>

Fwd: Case Number: DA2021-0120

1 message

Jonathan Moore <jmoore@arvada.org>

Tue, Nov 9, 2021 at 1:38 PM

To: Abigail Ogg <aogg@arvada.org>

Cc: CED Boards and Commission <cedboardsandcommission@arvada.org>

1 more public comment for 7400 Simms

Jonathan Moore
Planner I
720.898.7464
jmoore@arvada.org



----- Forwarded mess

From: **Timothy Knutson** [REDACTED]

Date: Tue, Nov 9, 2021 at 12:58 PM

Subject: Case Number: DA2021-0120

To: <JMoore@arvada.org>

Dear Jonathan Moore,

I am writing this letter in support of our new neighbors (the Cloppers) recent "Major Modification" request with the City of Arvada's Planning Commission, where they are asking the City's approval to construct a six-foot privacy fence within the front setback of their residential property (7400 Simms Street). My wife Amie Knutson and I own the adjacent home to the South of their property (7350 Simms Street), as well as another adjacent home (7345 Routt Street) that diagonally backs to the Clopper's property (South/ East). Amie and I live at the 7345 Routt Street address, and our Daughter and her family live in our 7350 Simms Street address.

Simms is a very loud and busy street on a 24-7 schedule that makes it impossible to ignore. This heavy traffic & noise was the main reason the previous owners (the Nelsons) told us why they were selling their home earlier this year. The Nelson's obviously did not express that traffic noise, or a lack of privacy was an issue to any perspective buyer...

Amie and I really enjoy our new neighbors and hope that they are successful in their "Major Modification" request, so that they are not forced to move and be replaced by a new homeowner that will surly build an "illegal fence" anyway. Please, put yourself in the homeowner's shoes when making these types of decisions. Please allow the Cloppers to build their six-foot fence. Or better yet, please suggest that they make it an eight-foot privacy fence...

Thank you,

[REDACTED]

Public Comment

donna lantgen <[REDACTED]>
To: "JMOORE@ARVADA.ORG" <JMOORE@arvada.org>

Thu, Oct 7, 2021 at 10:26 AM

Dear Mr. Jonathan Moore:

I spoke to you earlier this week with concerns about a fence at the address 7400 Simms. Arvada, CO owned by Chris Clopper

I am opposed to the height of the fence because I feel it will deteriorate the neighborhood, decrease home values, safety, and being an eye sore.

I am not able to attend the meeting. But would appreciate this information being forwarded to the Planning Commission.

Sincerely,

Donna Lantgen
11700 West 73rd Avenue
Arvada, CO 80005
[REDACTED]



CED Boards and Commission <cedboardsandcommission@arvada.org>

DA2021-0120

leon gonzale [REDACTED]

Sat, Nov 13, 2021 at 4:22 PM

To: "cedboardsandcommission@arvada.org" <cedboardsandcommission@arvada.org>

RE: 7400 Simms Street

We live on the corner of 74th Ave and Simms.

We fully agree on letting this person build their fence.

There are other homes with a fence along Simms and it does not take away from the environment.

The traffic and noise is a constant on Simms.

This fence will give this person a piece of privacy and quiet.

Any questions you can call me a [REDACTED]

Thank you and we hope you let them build the fence.

Laura and Leon Gonzales

11605 W 74th Ave

Arvada, CO 80005



CED Boards and Commission <cedboardsandcommission@arvada.org>

Public Hearing for Privacy Fence Variance 7400 Simms - DA2021-01201 message

John Hah

Thu, Nov 11, 2021 at 4:32 PM

Re

To

Cc

As a neighbor of the resident asking for the fencing variance I support his request. I sat in on the Zoom meeting hosted by city planner, Jonathan Moore, and saw the proposal for the fencing project. I feel I have a good understanding of the request. Since the three properties directly North of the 7400 Simms residence already have 6' privacy fence I don't feel this fence would have a negative impact on the aesthetics of the neighborhood. I think we can all agree that Simms Street between 72nd and 80th has very high traffic. I also believe if we want to be good neighbors we should want this family to be able to enjoy their home. By allowing them to have some relief from the Simms traffic this is a small price. I don't see any negative impact to the Simms Street commuters or to the immediate neighbors.

Respectfully submitted.

John Hahn

ive



SUMMARY MINUTES OF PLANNING COMMISSION ACTION HELD
NOVEMBER 16, 2021

Planning Commission meeting minutes are not an exact transcript and represent key points and the basis of discussion.

1. **CALLED MEETING TO ORDER**– By Michael P. Griffith at 6:15 P.M.
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL OF MEMBERS**

THOSE PRESENT:

Michael P. Griffith, Patricia Connell, Doug Magee, Steve Hannan, Andrew Gay, Tim Knapp

THOSE ABSENT:

T.O. Owens

Mr. Griffith moved to excuse T.O. Owens from the meeting.

The following votes were cast on the motion:

Those voting Yes: Griffith, Connell, Magee, Hannan, Gay, Knapp

Those voting No:

Those Absent: Owens

The motion carries 6-0

ALSO PRESENT:

Ryan Stachelski, Director of Community and Economic Development; Rob Smetana, Manager of City Planning and Development; Emily Grogg, Sr. Ass't. City Attorney; Josie Suk, Systems and Administrative Manager; Jonathan Moore, City Planner; Abigail Ogg, Recording secretary/Administrative Specialist; Heidi Van Gieson, Administrative Specialist.

4. **APPROVAL OF MINUTES**

October 5, 2021. The minutes stand approved as printed.

5. **GENERAL BUSINESS**

None

6. **REPORTS**

None

7. PUBLIC COMMENT

There was no one wishing to speak. Public Comment was closed.

8. PUBLIC HEARINGS

Major modification of a Residential Privacy Fence, generally located at 7400 Simms St.

Mr. Griffith opened the public hearing, and asked staff if the required documents were in order.

Mr. Moore stated that three forms of notice are required. Staff published notice in the paper, the mailing affidavits and posting log are both in order. There were no additions or corrections added to the staff report.

Mr. Griffith entered into record the staff report dated November 16, 2021, affidavit of mailing, and posting log.

Mr. Moore gave a brief overview of the project. Chris and Samantha Clopper are requesting approval of a major modification to increase the maximum height allowed for a solid fence in the front setback.

Mr. Griffith asked the applicant to present their project.

Chris Clopper, applicant, explained the site layout, surrounding area and the current fence. He stated the goals for a Major Modification would be adding privacy and safety while reducing the noise and light pollution.

Mr. Griffith opened the hearing for comments from the public.

PUBLIC COMMENT

None

IN FAVOR

None

IN OPPOSITION

None

APPLICANT REBUTTAL

There being no one wishing to speak Mr. Griffith closed public comment.

QUESTIONS FROM THE COMMISSION

Mr. Magee asked the applicant if the elevation of the property is fairly flat or if the house rises above the fence.

Mr. Clopper stated that a higher fence would help obstruct vehicles and any passersby from viewing their front porch.

Mr. Knapp asked the applicant if there were any other reasons why the fence would be moved closer to the street, besides the existing tree and irrigation.

Mr. Clopper stated that if they were to match the fence up with the already existing fence to the north they would lose yard space, irrigation and a large established tree.

Mr. Knapp asked the applicant if they had thoughts or comments regarding the condition to dedicate land in fee simple to the City for future infrastructure.

Mr. Clopper stated that he is aware of the condition and has done some research on the issue. He did ask if the City is responsible for filing the appropriate paperwork for recording with the County.

Mr. Hannan asked staff for confirmation if the City handles the appropriate paperwork.

Mr. Moore confirmed that if the City Council were to approve of the agreement, the City will submit the proper paperwork to the county for recording.

Mr. Hannan asked staff if there are current plans for the widening of Simms Street.

Mr. Moore stated there are no current plans.

Mr. Gay stated that he didn't think the City should encumber the property for something that may not happen in the future and that he was not in favor of the agreement.

Mr. Griffith asked if it was considered to have the proposed fence material match the fence on the north property adjacent to the site.

Mr. Clopper explained that the current fence on the north property is a vinyl fence with masonry columns, stating that cost would be a big factor.

Mr. Moore stated that staff felt it was a significant burden to place on the applicant since the north side fence was installed as part of a larger subdivision development.

Mr. Clopper also stated that the properties to the south of them have a cedar fence.

MOTION:

It was moved by Mr. Magee that a Major Modification for a Residential Privacy Fence, generally located at 7400 Simms St., be recommended to City Council for approval subject to the condition stated on Page 7 of the staff report. This motion is based on the findings of fact and approval criteria on Page 6 of the staff report.

DISCUSSION OF MOTION

Mr. Knapp stated that he was not in favor of the portion of the condition that would require the owner to dedicate land in fee simple to the City for future infrastructure.

AMENDMENT:

It was moved by Mr. Knapp to amend the condition of approval to strike the following language from page 7 of the staff report: *"dedicate the necessary land in fee simple to the City for right-of-way purposes. The agreement shall also state that that the property owner will"*

DISCUSSION OF THE AMENDMENT

Mr. Hannan stated he supported both the motion and the amendment.

Mr. Gay stated he supported the amendment as well

Ms. Connell stated she accepts the amendment.

Mr. Griffith stated he agreed with the amendment.

Voting on the amendment to strike the following language from the condition of approval on page 7 of the staff report: *"dedicate the necessary land in fee simple to the City for right-of-way purposes. The agreement shall also state that the property owner will"*

Those voting Yes: Hannan, Gay, Connell, Griffith, Magee, Knapp

Those voting No:

Those absent: Owens

The motion carried 6-0

DISCUSSION OF THE AMENDED MOTION

The amended condition of approval on page 7 of the staff report states:

"The applicants shall execute a development agreement with the City stating that at the time Simms St. is improved to the full right-of-way width, the property owner will be solely responsible for the expense of relocating the six-foot solid fence at that time. The agreement shall be recorded prior to issuance of a fence permit."

Mr. Magee stated he agreed with the amended motion.

Mr. Griffith stated he also supported the amended motion.

Voting to approve the motion as amended:

Those voting Yes: Hannan, Gay, Connell, Griffith, Magee, Knapp

Those voting No:

Those absent: Owens

The motion carried 6-0

8. OTHER ITEMS

Mr. Griffith moved to cancel the December 7, 2021 Planning Commission meeting.

Those voting Yes: Hannan, Gay, Connell, Griffith, Magee, Knapp

Those voting No:

Those absent: Owens

The motion carried 6-0

9. ADJOURNED at 6:56 P.M.

Michael P. Griffith, acting Chair

Patricia Connell, Secretary

Abigail Ogg, Recording Secretary



Chris Koch <chrisk@arvada.org>

Fwd: Fence Modification Case No. DA2021-0120

1 message

Kristen Rush <kristen@arvada.org>
To: Chris Koch <chrisk@arvada.org>

Tue, Nov 30, 2021 at 8:51 AM

Sent from my iPhone

Begin forwarded message:

From: steve votaw <psteve7@outlook.com>
Date: November 29, 2021 at 7:09:27 PM MST
To: kristen@arvada.org
Subject: Fence Modification Case No. DA2021-0120

I live at 11660 W 73rd Avenue and have no objection to the privacy fence request for 7400 Simms.

They have an interesting and beautiful yard, and with the traffic on Simms,

I can understand the desire to have less noise and more privacy.

Regards,

Steve Votaw

720-925-0857

Sent from Mail for Windows

Chris and Samantha Clopper
7400 Simms St, Arvada, CO 80005
970-231-4477

City of Arvada
Community and Economic Development
8101 Ralston Rd, Arvada, CO 80001
720-898-7435

RE: 7400 Simms Fence Major Modification; Project Number DA2021-0120

To Whom it May Concern:

This letter shall serve as the official Major Modification Project Overview letter regarding the proposed privacy fence along Simms St at the property of 7400 Simms St., Arvada, CO 80005. The zone district for the subject property is RN 12.5 with a comprehensive plan designation of SUBR, with a total lot size of 0.454 acres. The vast majority of the usable yard space at our new property is between the home and Simms St, but since the access to the property is directly from Simms St, this is officially considered as Area 1 Front yard. According to Table 4-7-2-1 in Chapter 4 of the Arvada City Code, this means that the fence may only be a 3-ft tall privacy fence, or 4-ft tall if greater than 50% is see through. Due to the location of the home and primary yard space along Simms St, we are requesting that a major modification be granted to improve safety for our young daughter and two dogs, privacy, and light/noise pollution reduction from Simms St.

We purchased our new home in July 2021 and are enjoying living in Arvada. The home was purchased with a 4-ft tall chain link fence set back approximately 9-ft from the existing sidewalk along the east side of Simms St. The requested privacy fence shall be constructed in the same alignment as the current chain link fence and will include approximately 135 linear feet (LF) of 6-ft tall cedar privacy fence along Simms St and perpendicular to Simms St along our driveway to a point aligning with the structure of our home (see site plan).

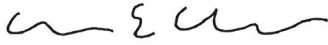
The proposed privacy fence is to be constructed of 6-inch-wide cedar planks with vertical posts approximately every 6-ft (see Figure 1 for example). We are proposing to maintain a consistent 6-ft tall fence height to match the adjacent property to the north, as to maintain the feel of the neighborhood along Simms St. A gate will be constructed at the location of the existing front gate, with access to the mail box. The current alignment of the chain link fence, and proposed alignment of the new privacy fence, are aligned in a way to go around an existing approximate 24-inch caliper mature tree in the yard, and to maintain existing sprinkler irrigation. This alignment maintains an approximate 9-ft offset from the current sidewalk.

Lastly, while we fully understand the need for City codes and ordinances, we believe that the unique layout of our property and the integration of the proposed fence to the existing 6-ft tall privacy fence along the adjacent property to the north warrants the approval of a major modification for a privacy fence. We truly believe our family will gain substantial health, safety, and general welfare from the proposed project and are prepared to spend upwards of \$10,000 on top of the purchase price of the home to achieve this. We have been in coordination with Denver Fence Guys and Denco Fence Co. for cost estimates and plan to move forward with construction as soon as realistically possible, pending approval of this request.

RE: 7400 Simms Fence Major Modification; Project Number PA2021-0167

Please contact me at 970-231-4477 with any additional questions regarding this Major Modification application and request.

Best regards,



Chris and Samantha Clopper

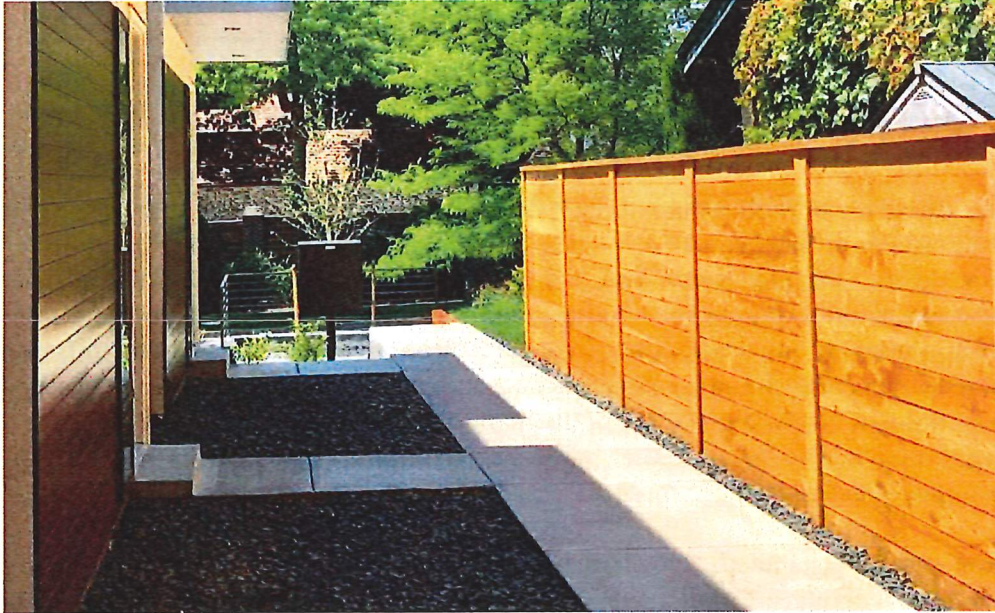


Figure 1. Example 6-ft tall cedar privacy fence with horizontal planks.

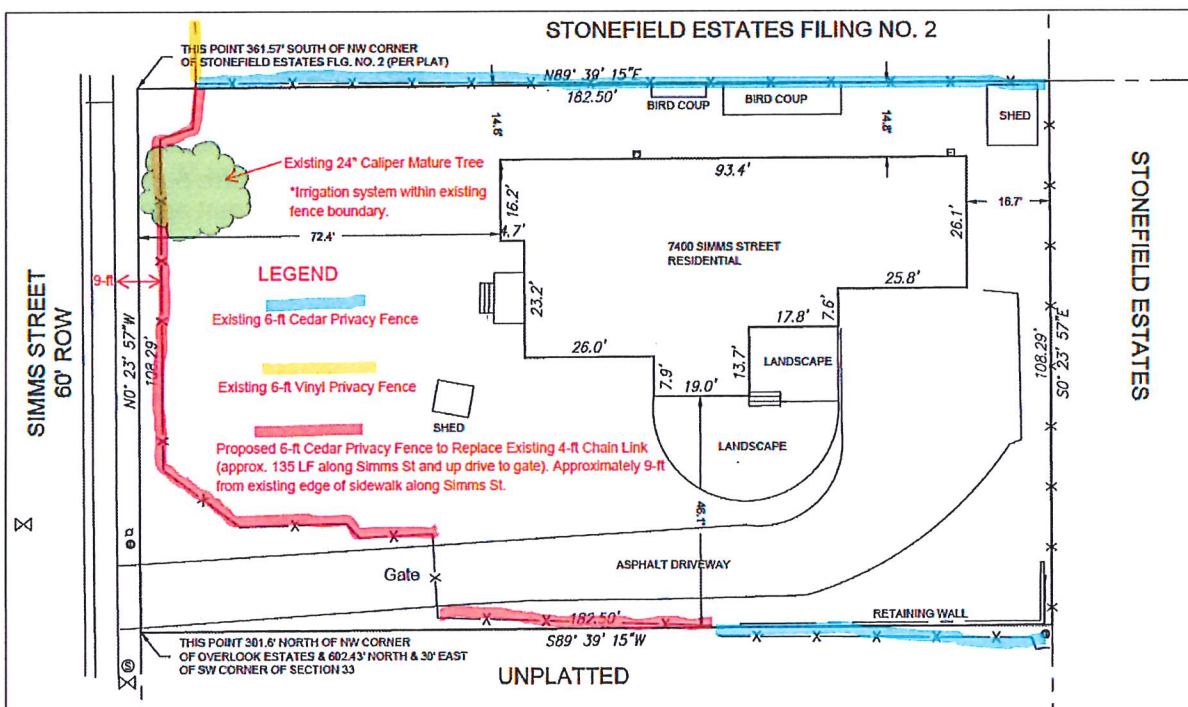


Figure 2. Proposed project site plan (full size plan submitted separately).

Chris and Samantha Clopper
7400 Simms St, Arvada, CO 80005
970-231-4477

City of Arvada
Community and Economic Development
8101 Ralston Rd, Arvada, CO 80001
720-898-7435

RE: 7400 Simms Fence Major Modification; Project Number DA2021-0120

To Whom it May Concern:

This letter shall serve as the official Major Modification Justification Letter regarding the proposed privacy fence along Simms St at the property of 7400 Simms St., Arvada, CO 80005.

We, the new homeowners, are requesting the City's approval for the construction of a 6-ft tall cedar privacy fence along Simms St which is considered the front yard of our property, which exceeds 20 percent of the allowable height for a solid privacy fence in Area 1 Front yard of a property in Arvada as stated in Chapter 4 of the City Code (Table 4-7-2-1).

We believe that the proposed privacy fence adheres to the intent of the City Code and will not adversely change the feel or function of the neighborhood and will address the unique situation in which most of the usable yard space at the property is between the structure of the home and Simms St. Since the adjacent property to the north currently has a 6-ft tall privacy fence along Simms St, the proposed privacy fence will not result in incompatible development. We believe that the requested modification will not have any adverse impact on the health, safety, or general welfare of surrounding property owners or the public and will only increase the general health, safety, and welfare of our family.

The approval of this requested allowance for a 6-ft tall privacy fence will provide our family with added security for our young daughter and two dogs, increased privacy, and substantial noise/light pollution reduction from busy Simms St. Additionally, as part of this process, we are working with our immediate neighbors to make sure that any concerns are addressed as part of the fence layout.

Please contact me at 970-231-4477 with any additional questions regarding this Major Modification application and request.

Best regards,



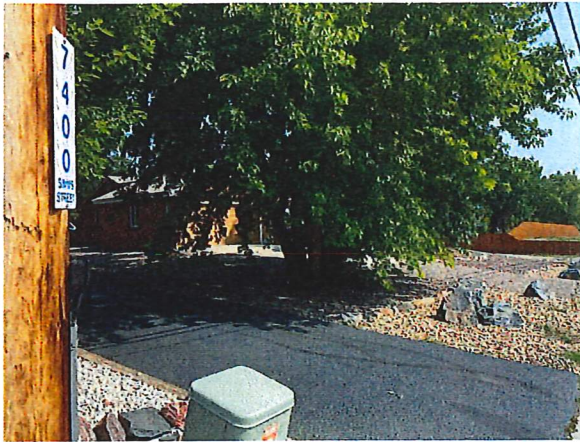
Chris and Samantha Clopper

Proposed Fence Example:



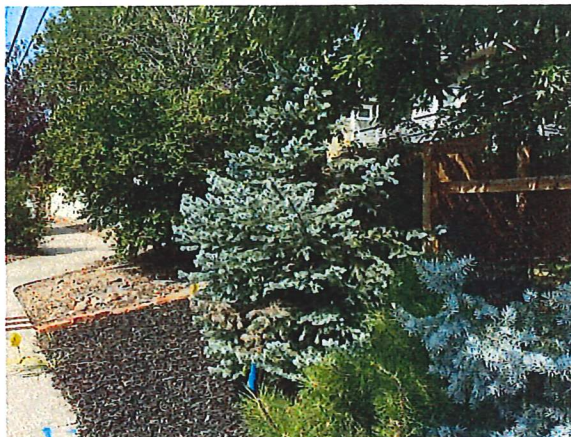
6 ft Cedar Privacy With Horizontal Boards and Top Cap Detail

Fig. 1



Looking south towards neighbors 6 ft cedar privacy fence along Simms St from 7400 Simms St driveway

Fig. 3



Looking east towards neighbors 6 ft vinyl (white) and end post (stone) at tie-in from Simms St. Existing 4 ft chain link fence visible.

Alternative Fence Example:



5 ft Cedar Privacy With Horizontal Boards with 1 ft 50% open Top Section

Fig. 2



Looking north towards neighbors 6 ft vinyl (white) privacy fence along Simms St and sidewalk. Existing 4 ft chain link visible.

Fig. 4



Looking west towards neighbors 6 ft cedar interior fence and 6 ft vinyl fence along Simms St. Existing 4 ft chain link fence visible.

Neighborhood Meeting Summary

7400 Simms Residential Privacy Fence
Major Modification

Chris and Samantha Clopper
7400 Simms St, Arvada, CO 80005
970-231-4477

Jonathan Moore, Planning Department
City of Arvada
8101 Ralston Rd, Arvada, CO 80002
720-898-7435

RE: 7400 Simms Fence Major Modification; Project Number DA2021-0120 Neighborhood Meeting Summary

Meeting was virtually held on October 14, 2021 at 5:30pm via Zoom format.

Attendance was by: Jonathan Moore, City of Arvada Planning
Chris Clopper, Homeowner
John Hahn, 7244 Routt Drive
Sherrie Dembrowski, 7254 Routt Drive

Not in attendance: Donna Lantgen, 11700 West 73rd Avenue

A total of two RSVPs were received prior to the virtual meeting and both people were in attendance (see above). One person was not able to attend but provided comment to Mr. Moore over the phone and via email.

Jonathan Moore opened the meeting by introducing himself, representing the City of Arvada planning department, and Chris Clopper, the homeowner. The two neighbors in attendance introduced themselves after which Mr. Moore turned over the presentation to Mr. Clopper to give an overview presentation of the proposed fence project and Major Modification process for the 7400 Simms Fence Major Modification project.

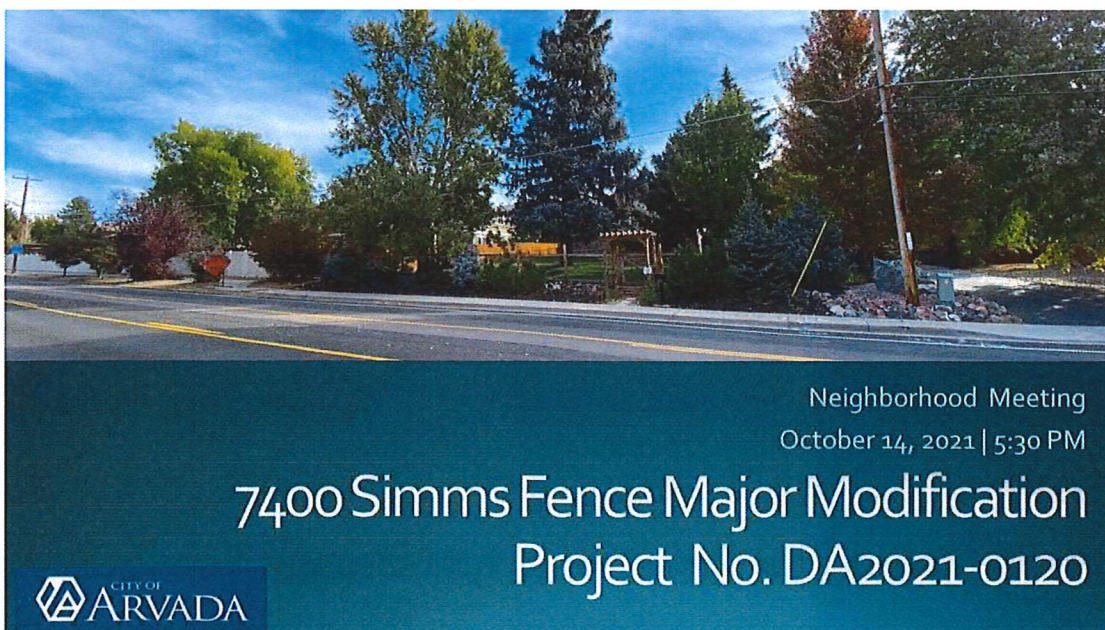


Figure 1. Excerpt from neighborhood meeting overview presentation.

The two neighbors present at the meeting were overwhelmingly supportive of the proposed fence project and offered no concerns or objections following the overview presentation.

- Mr. Hahn indicated that living along Simms St is challenging enough, and that he had no objections to the proposed project as presented in the meeting.
- Ms. Dembrowski asked the question as to how this fence project is different than the recent fence project along Simms St on the adjacent property to the south. Mr. Moore responded by saying that the current proposed fence project is falling under updated code requirements as of May 2020, and accordingly will not be subject to the same requirements as the previously completed fence project. Ms. Dembrowski also did not have any objections to the proposed project as presented in the meeting.

The one neighbor not in attendance for the neighborhood meeting, Ms. Lantgen, did provide objection to the proposed project as follows:

- "I am opposed to the height of the fence because I feel it will deteriorate the neighborhood, decrease home values, safety, and being an eye sore."
RESPONSE: The objections were provided without any context of the actual proposed project as Ms. Lantgen was not in attendance nor able to view the project overview presentation. As outlined in the overview presentation, the proposed fence will maintain the look and feel of the neighborhood along Simms St as it will add 100 linear feet of 6-ft privacy fence (replacing the existing 4-ft-tall chain link fence) to the existing 2,000 linear feet of 6-ft privacy fence (both cedar and white vinyl) on the east side of Simms St. from the intersection of 72nd north to the railroad tracks – an increase of only 5%. The proposed fence is expected to increase the home value, thereby increasing comparable home prices for the immediate neighborhood. Safety is expected to improve for both the homeowner's family and the public due to the high volume of traffic along Simms St. Lastly, the homeowners are proposing to have a upgraded style horizontal cedar fence with top cap be installed by a qualified fencing contractor, which will add to the sidewalk appeal of the property.

In addition to the support received for the proposed fence project from the two neighbors present at the meeting, the homeowners have received support up to the time of the neighborhood meeting from two additional neighbors:

Don Gilman, 7528 Queen Circle
Tim Knutson, 7345 Routt St

Summary:

The homeowner has addressed the sole neighbor's concerns and any concerns not addressed will be worked through during the design and construction process, expected to occur this winter.

Best regards,



Chris and Samantha Clopper



Scale 1"=20'

LEGAL DESCRIPTION:

A tract of land in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 33, Township 2 South, Range 69 West of the 6th Principal Meridian, described as follows: Beginning at the point on the west line of said Section 33, a distance of 602.43 feet North of the Southwest corner of said Section 33 thence continuing North along the West line of said Section 33, a distance of 410 feet; thence East 212.5 feet; thence South and parallel with the West line of said Section 33 a distance of 410 feet; thence Westerly 212.5 feet to the Point of Beginning, except that portion thereof described in Deed Recorded in Book 2019 at Page 647, County of Jefferson, State of Colorado.

Acres: 0.454 (19,783.00 sq ft)

Zone: RN 12.5

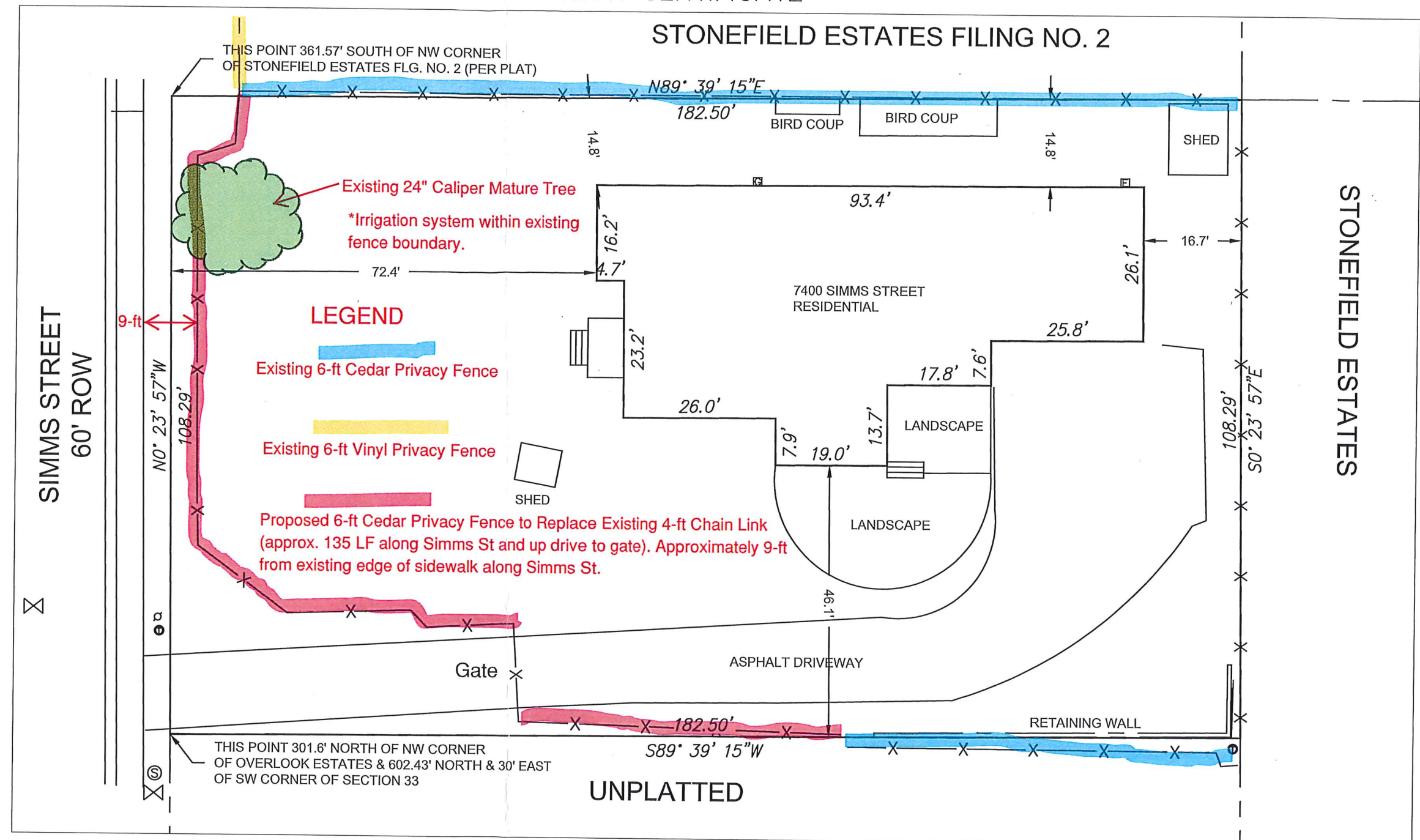
Subdivision: None

Comp Plan Designation: SUBR

Pre-App Proj. Number: NA

IMPROVEMENT LOCATION CERTIFICATE

STONEFIELD ESTATES FILING NO. 2

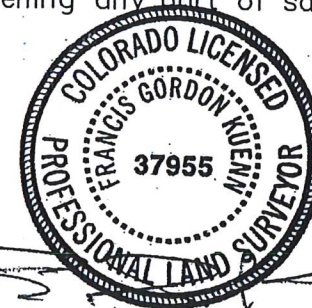


IMPROVEMENT LOCATION CERTIFICATE

I hereby certify that this Improvement Location Certificate was prepared for Aaron Nelson, that it is not a Land Survey Plat or Improvement Survey Plat, and that it is not to be relied upon for the establishment of fence, building, or other future improvement lines.

Table 4-7-2-1: Max Height of Fences for Zone RN12.5 for Area 1 Front is 3-ft, or 4-ft if 50% open. Request for permit to construct 6-ft privacy fence exceeds the 20% deviation from the numeric requirement, requiring a Major Modification. 90% of the property's usable yard space on the property is along Simms St, and both adjacent properties on Simms St have 6-ft privacy fences, so the proposed fence would not result in any significant adverse on surrounding property owners or the general public.

I further certify that the improvements on the above described parcel on this date, May 26th 2021, except utility connections, are entirely within the boundaries of the parcel, except as shown, that there are no encroachments upon the described premises by improvements on any adjoining premises, except as indicated, and that there is no apparent evidence or sign of any easement crossing or burdening any part of said parcel, except as noted.



5/26/2021



Souder, Miller & Associates
Engineering ♦ Environmental ♦ Surveying
5610 Ward Road, Suite 130
Arvada, CO 80002
Phone (303) 239-9011
www.soudermiller.com
Serving the Southwest & Rocky Mountains

NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED ON ANY DEFECT IN THIS SURVEY WITHIN SIX YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED ON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.



REPORT FROM CITY COUNCIL

AGENDA ITEM
12.A.

DATE: December 6, 2021

SUBJECT: Council Committee Reports

Report in Brief

City Council members are appointed to various committees and boards as set out on the attached listing. As meetings are held, individual council members will report back to the full City Council any relevant discussions and issues that occurred.

Prepared by:
Chris Koch, CCO Admin

Reviewed by:

Approved by:

Rachel Morris, City Attorney	11/19/2021
Lorie Gillis, Deputy City Manager	11/23/2021
Mark Deven, City Manager	11/23/2021

Enclosure, exhibits & attachments required to support the report

Council Member	Committee
Marc Williams	Arvada Municipal Court/Judicial Committee Arvada City Attorney Committee Arvada Urban Renewal Authority E-470 Authority (alternate) Jefferson Parkway Public Highway Authority Northwest Parkway Authority (Associate Member) (alternate) Urban Drainage and Flood Control District West Connect Coalition *Metro Mayors Caucus
Bob Fifer	Adams County Economic Development Association Apex Coordinating Committee Arvada City Attorney Committee Arvada Transportation Committee Denver Regional Council of Governments (Alternate) Jefferson County R-1 Schools Coordinating Committee Jeffco Transportation Action & Advisory Group (JEFFTAAG) Smart City Advisory Committee
David Jones	E-470 Authority (alternate) Jefferson County Community Corrections Board Jefferson County R-1 Schools Coordinating Committee Jefferson Economic Development Council (JEDC) Jefferson Parkway Public Highway Authority Northwest Parkway Authority (Associate Member) (alternate) West Connect Coalition (alternate)
John Marriott	Adams County Economic Development Association (alternate) Apex Coordinating Committee Arvada Economic Development Association Board Arvada Municipal Court/Judicial Committee Arvada Visitors Center Committee (alternate) CML Policy Committee Olde Town Business Improvement (BID) District Rocky Mountain Metropolitan Airport Community Noise Roundtable
Randy Moorman	Arvada Audit Committee Arvada Sustainability Advisory Committee CML Policy Committee Rocky Flats Stewardship Council
Lauren Simpson	Arvada Audit Committee Arvada Center for the Arts and Humanities Arvada Fire Protection District Coordinating Committee Arvada Visitors Center Committee Olde Town Business Improvement (BID) District (alternate)
Lisa Smith	Arvada Chamber of Commerce Government Affairs Committee Arvada Fire Protection District Coordinating Committee Denver Regional Council of Governments Jefferson County Community Corrections Board (alternate) Jeffco Transportation Action & Advisory Group (JEFFTAAG) (alternate) Smart City Advisory Committee

*Asterisked committees are not appointed by Council

City Clerk Team Drive: Council appointed committees



REPORT TO CITY COUNCIL

AGENDA ITEM
13.A.

TO: THE HONORABLE CITY COUNCIL

DATE: December 6, 2021

SUBJECT: Review of Future Workshops and Presentations

Report in Brief

The City Manager's Office maintains a list of upcoming workshops and presentations to be scheduled for City Council meetings. During City Manager Reports, at the end of City Council business meetings, City Manager, Mark Deven, will review with City Council the tentative schedule and make any adjustments necessary.

Prepared by:
Chris Koch, CCO Admin

Reviewed by:

Approved by:

Rachel Morris, City Attorney	11/19/2021
Lorie Gillis, Deputy City Manager	11/23/2021
Mark Deven, City Manager	11/23/2021

Enclosure, exhibits & attachments required to support the report

2021/2022 CITY COUNCIL WORKSHOPS, PRESENTATIONS AND RETREATS (TENTATIVE)

WORKSHOPS	Date	Lead
Bond Project Update	Dec 13	PW
LDC Update	Dec 13	CED
2022		
Master Plan Update on Storm and Wastewater	Jan 10	Utilities
Comprehensive Plan Update	March 14	CED
Demography Update	March 14	CED
	March 28	
	April 11	
	April 25	
	May 9	
	June 13	
No Meeting – Appointee Evaluations	June 27	
	July 25	
10-year model	August 8	
	August 22	
Budget Presentation	Sept 26	
CIP Update	Oct 10	
Neighborhood Engagement and Marketing Updates	Oct 24	
	Nov 14	
	Nov 28	
	Dec 12	
TBD's		
Council Retreat Update	TBD	CMO
Pocket Neighborhoods	TBD	
Meyers Pool	TBD	CMO
City Marketing Plan	TBD	CMO
Traffic Violation Fee	TBD	PW
Financial Scenarios for Street Maintenance Deficit/Options for Increasing Maintenance Funds Engage City Council in a discussion around the current street maintenance needs and how the City might fund them. This will include revenue enhancements, future allocations and expenditure realignments.	TBD	PW/Fin/ CMO
Fiber Master Plan The Fiber Master Plan which is also called Arvada Fiber Optic Network (AFON), was first presented to City Council 4/10/2017. City Councils had set a strategic goal to build a fiber network to enable high speed/real-time connectivity to city facilities and assets in order to enhance city operations. This workshop is intended to brief City Council as to the progress of the AFON build out. Updates are intended to cover conduit installation progress, fiber installation progress, current collocate opportunities, IGA member updates, and connections to current assets (city buildings, traffic, signals, utilities, radio, etc.).	TBD	PW

Community Survey Update The purpose of this item is to continue a discussion with Council about the Community Survey results and what the City team is doing to apply what is learned. Discussion will include an update on action plans targeting key drivers of the City's 5-star rating as well as how Worksystems are targeting specific measures.	TBD	CMO
Problem Properties	TBD	P.D.
Water Storage – Plan B (include with master plan presentation)	TBD	Utilities
Activation of Historical Assets	TBD	VCN
N.W. Arvada	TBD	CED
Body Worn Cameras	TBD	PD
Customer Service Philosophy	TBD	CMO
Ask Arvada Update	TBD	CMO
Diversity and Equity Committee	TBD	CMO
COUNCIL JOINT MEETINGS/DINNERS:		
Denver Water Board Apex Board AURA Board Arvada Center Board–Per Coop Agreement - Annually after October 1 of each year Jefferson Parkway Meeting with Jeffco and Broomfield Council Annual Retreat		