

October 28, 1996
7:00 PM

Notice to Readers: City Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items does not reflect lack of thought or analysis on the City Council's part as issues have been discussed by Council previously. Council may defer final action on an item to a future meeting. Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 5) and Citizen Presentations (item 12) are reserved for comments on items not contained on the printed agenda.

1. **Pledge of Allegiance**
 2. **Roll Call**
 3. **Consideration of Minutes of Preceding Meetings**
 4. **Presentations**
 - A. Employee Service Award Recognition
 5. **Citizen Communication (5 minutes or Less in Length)**
 6. **Report of City Officials**
 - A. City Manager's Report
 7. **City Council Comments**
- The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any citizen wishes to have an item discussed. Citizens then may request that the subject item be removed from the Consent Agenda for discussion separately.
8. **Consent Agenda**
 - A. Little Dry Creek Trail Construction Engineering
 - B. Countryside Drive Median Improvements
 - C. 1997 Health Insurance Rates
 - D. Countryside Recreation Center Design Services
 - E. CB No. 67 re Contingency Transfer Land Purchase (Merkel-Allen)
 - F. CB No. 69 re Natural Gas Contingency Transfer (Scott-Dixion)
 9. **Appointments and Resignations**

None
 10. **Public Hearings and Other New Business**
 - A. TABLED - Resolution No. 50 re 1997 Mill Levy and Budget
 - B. TABLED - Councillor's Bill No. 68 re 1997 Water & Sewer Rates
 - C. TABLED - Resolution No. 51 re 1997 Pay Plan
 - D. Councillor's Bill No. 70 re Council Salary Adjustment
 - E. Revised Employment Contract with William Christopher
 - F. Public Hearing re Smith Property Zoning
 - G. Councillor's Bill No. 71 re Smith Property Annexation
 - H. Councillor's Bill No. 72 re Smith Property Zoning
 - I. Councillor's Bill No. 73 re Sales/Use Tax Refunding Bonds
 - J. Councillor's Bill No. 74 re Sheridan Crossing Easement Vacation
 - K. Resolution No. 58 re Purchase of Fire Station No. 2 Site
 - L. Councillor's Bill No. 75 re Pension Plan Changes
 - M. Resolution No. 55 re Official Position of Amendment #13
 - N. Exclusion from West Adams Fire Protection District
 - O. Resolution No. 56 re Exclusion from West Adams Fire District
 - P. Resolution No. 57 re Federal Heights Water Rates
 - Q. Boards and Commission Application Deadline
 - R. Intergovernmental Agreement re North Metro Youth Diversion Program
 11. **Old Business and Passage of Ordinances on Second Reading**

None
 12. **Citizen Presentations (5 Minutes + in Length) & Miscellaneous Business**
 - A. Financial Report for September, 1996
 - B. Quarterly Insurance Report
 - C. City Council
 - D. Request for Executive Session

1. Economic Development Prospect Business Assistance Package

13. Adjournment

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE CITY COUNCIL MEETING
HELD ON MONDAY, OCTOBER 28, 1996 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE:

Mayor Heil led Council, Staff and the audience in the Pledge of Allegiance.

ROLL CALL:

Present at roll call were Mayor Heil, Mayor Pro Tem Dixon and Councillors Allen, Harris, Merkel, Scott and Smith. Also present were William Christopher, City Manager; Martin McCullough, City Attorney; and Michele Kelley, City Clerk. Absent none.

CONSIDERATION OF MINUTES:

A motion was made by Allen and seconded by Scott to accept the minutes of the meeting of October 14, 1996 with no additions or corrections. Councillor Harris requested to abstain as he was not present at the meeting. The motion carried with Councillor Harris abstaining.

PRESENTATIONS:

Mayor Pro Tem Dixon and Councillors presented service pins and certificates of appreciation to employees celebrating 10, 15, 20 and 25 years of service with the City.

The Mayor recognized Standley Lake High School students who were in attendance at the meeting.

CITY COUNCIL COMMENTS:

Mayor Pro Tem Dixon reported on the Westminster DARE Foundation annual meeting at which several new Foundation Officers were elected and thanked Police Chief Dan Montgomery who served as the Foundation President for the past three years. The Mayor Pro Tem reported she had attended the following: Business Recognition Luncheon, Education Foundation recognition, Witt/Lukas COG meeting which discussed the ballot questions, Alternatives to Family Violence and a meeting with the Lt. Governor concerning Rocky Flats.

Councillor Merkel said she attended the Reading Aloud program at Skyline Vista Elementary School.

Councillor Allen commented on the Business Appreciation Luncheon.

CONSENT AGENDA:

The following items were considered as part of the Consent Agenda: Little Dry Creek Trail Contract Amendment; Countryside Drive Median Improvements; 1997 Health Insurance Rates; Countryside Recreation Center Design Services; Councillor's Bill No. 67 re Contingency Transfer for Land Purchase and Councillor's Bill No. 69 re Natural Gas Contingency Transfer. The Mayor asked if there was any member of Council or anyone from the audience who would like to have any of the consent agenda items removed for discussion purposes or separate vote. There was no request.

A motion was made by Dixon and seconded by Allen to adopt the consent agenda items as presented with the recommendation stated on the Council Agenda Memorandums. The motion carried unanimously.

RESOLUTION NO. 50 - 1997 MILL LEVY AND BUDGET:

A motion was made by Dixon and seconded by Allen to remove Resolution No. 50 from the Table. The motion carried unanimously.

A motion was made by Dixon and seconded by Merkel to adopt Resolution No. 50 which sets the mill levy at 3.65 mills and formally adopts the total 1997 City Budget including staffing and the Five year Capital Improvement Plan. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 68 - 1997 WATER AND SEWER RATES:

A motion was made by Dixon and seconded by Merkel to remove Councillor's Bill No. 68 from the Table and to pass Councillor's Bill No. 68 on first reading which sets the new water and sewer rate effective January 1, 1997 with no adjustments for a period of two years. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 51 - 1997 PAY PLAN:

A motion was made by Allen and seconded by Scott to remove Resolution No. 51 from the Table and to adopt Resolution No. 51 which establishes the 1997 pay ranges for City employees and authorizes certain adjustments in City employee benefits. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 70 - CITY COUNCIL SALARY ADJUSTMENT:

A motion was made by Dixon and seconded by Merkel to pass Councillor's Bill No. 70 on first reading concerning an adjustment to City Council compensation effective January 1, 1998. Comments from Council included: Smith: Pay is a token and does not reflect a living wage. Harris: Salaries are getting out of line with what other cities pay. This is at the upper level of the pay structure. Dixon: Don't see this as out of line with most cities. Allen: Convinced this is appropriate action to take based on everything we have considered. Heil: Council received an increase in 1990, 1994 and this increase will be in 1998. Upon roll call vote, the motion carried with dissenting votes from Harris, Scott and Smith.

REVISED EMPLOYMENT CONTRACT WITH WILLIAM CHRISTOPHER:

A motion was made by Dixon and seconded by Merkel to approve an employment agreement with William Christopher serving in the position of City Manager for calendar years 1997 and 1998 and authorize the appropriate City Officials to execute said agreement.

The motion carried unanimously.

PUBLIC HEARING RE SMITH PROPERTY ZONING:

At 7:46 P.M. the meeting was opened to a public hearing on the zoning for the Smith property, generally located east of Federal Boulevard, between 108th and 110th Avenues. Planning Manager Larry Hulse entered a copy of the Agenda Memorandum, Planning Commission recommendation and other related items as exhibits. Roberta Smith, co-owner of the property and Candice Cabula, 14900 W. 31st Ave, co-owner of the property, entered a copy of a letter from Martin McCullough and spoke in opposition to the zoning of the property to O-1. Terry TenEyck, 10885 Linda Vista Dr, owner under contract of purchase of the property, addressed Council requesting zoning be to PUD instead of the proposed O-1. A motion was made by Smith and seconded by Scott that Council enter into Executive Session. The motion carried and Council went into Executive Session at 8:25 P.M.

Council reconvened at 8:46 P.M. At 8:50 P.M. the public hearing was continued until the November 11 City Council meeting.

COUNCILLOR'S BILL NO. 71 - SMITH PROPERTY ANNEXATION:

A motion was made by Harris and seconded by Scott to pass Councillor's Bill No. 71 on first reading annexing the Smith property into the City of Westminster based on a finding that the property being annexed has been completely contained by the City for more than three years, and that proper notice was given pursuant to Colorado State Statutes, Section 331-12-106 and all other sections pertaining to annexation. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 72 - SMITH PROPERTY ZONING:

A motion was made by Harris and seconded by Smith to Table Councillor's Bill No. 72 re Smith Property Zoning until the November 11 City Council meeting. The motion carried unanimously.

COUNCILLOR'S BILL NO. 73 - SALES/USE TAX REVENUE REFUNDING BONDS:

A motion was made by Allen and seconded by Merkel to pass Councillor's Bill No. 73 on first reading appropriating \$31,000 in interest earnings in the Debt Service Fund to fund an additional principal payment and recording Sales and Use Tax transfer payments to the Debt Service Fund instead of the General Capital Improvement Fund. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 74 - SHERIDAN CROSSING EASEMENT VACATION:

A motion was made by Scott and seconded by Merkel to pass Councillor's Bill No. 74 on first reading vacating all utility easements dedicated with the Clover Creek Center Plat. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 58 - FIRE STATION 2 SITE ACQUISITION:

A motion was made by Merkel and seconded by Allen to adopt Resolution No. 58 authorizing the City Manager to proceed with the acquisition of a parcel of land owned by S & H Builders Inc., located at 9150 Lowell Boulevard in unincorporated Adams County, Colorado. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 75 - PENSION PLAN CHANGES:

A motion was made by Smith and seconded by Merkel to pass Councillor's Bill No. 75 on first reading related to certain amendments to the City's three Pension Plan Ordinances. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 55 - OFFICIAL POSITION ON AMENDMENT 13:

A motion was made by Allen and seconded by Dixon to adopt Resolution No. 55 which sets forth the City's official position of opposition to Amendment 13 which will appear on the November 5 ballot. Upon roll call vote, the motion carried with dissenting votes by Scott and Smith.

EXCLUSION OF PROPERTIES FROM WEST ADAMS FIRE PROTECTION DISTRICT:

A motion was made by Allen and seconded by Merkel to approve the Stipulation and Plan for exclusion of properties from the West Adams County Fire Protection District and authorize its execution by the Mayor and City Manager on behalf of the City. The motion carried unanimously.

RESOLUTION NO. 56 - EXCLUSION FROM WEST ADAMS FIRE DISTRICT:

A motion was made by Merkel and seconded by Scott to adopt Resolution No. 56 approving the exclusion of properties from the West Adams County Fire Protection District. Upon roll call vote, the motion carried unanimously.

RESOLUTION NO. 57 - 1997 WATER RATE FOR FEDERAL HEIGHTS:

A motion was made by Allen and seconded by Dixon to adopt Resolution No. 57 which establishes a rate for treated water sold to the City of Federal Heights on a wholesale contract basis of \$2.303123 PTG, effective February 1, 1997. Upon roll call vote, the motion carried unanimously.

BOARDS AND COMMISSION APPLICATION DEADLINE:

A motion was made by Merkel and seconded by Dixon to establish a deadline of December 9, 1996 to receive applications from citizens interested in the next cycle of the Boards and Commissions "Pool".

A motion was made by Smith to establish 2 year terms for Boards & Commissions members. The motion was withdrawn with discussion that this issue will be discussed at a future Study Session.

The main motion carried unanimously.

IGA RE NORTH METRO YOUTH DIVERSION PROGRAM:

A motion was made by Harris and seconded by Merkel to approve the intergovernmental agreement between Adams County municipalities, school districts, and other governmental entities for the establishment of the North Metro Youth Diversion Program and a governing North Metro Community Diversion Board of Directors, and authorize appropriate City Officials to execute said agreement. The motion carried unanimously.

MISCELLANEOUS BUSINESS:

Council reviewed the Financial Report for August, 1996 and the Quarterly Insurance Report.

Councillor Smith proposed a 3 member commission consisting of 1 business representative, 1 City Staff member and 1 citizen as an administrative body to hear appeals regarding Takings.

Francisco Gamez, 4227 Raleigh Street, addressed Council regarding the El Fugitivo settlement.

The Mayor stated there would be an Executive Session concerning a Economic Development Prospect Business Assistance Package and a real estate issue regarding water tank sites.

ADJOURNMENT:

The meeting was adjourned at 9:35 P.M.

ATTEST:

Mayor

City Clerk

Date: October 28, 1996
Subject: Presentation of Service Awards
Prepared by: Michele Kelley, City Clerk

Introduction

City Council is requested to present service pins and certificates of appreciation to those employees who are celebrating their 10th, 15th, 20th and 25th anniversary of employment with the City.

Summary

In keeping with the City's policy of recognition for employees who complete increments of five years of employment with the City, the presentation of City service pins and certificates of appreciation has been scheduled for Monday night's Council meeting.

Staff Recommendation

City Council present service pins and certificates of appreciation to employees celebrating 10, 15, 20 and 25 years of service with the City.

Background Information

The following employees will receive their ten year service pin and certificate:

Darrin Bacca	Police Department	Traffic Accident Invest.
Jeanne Bury	Parks, Rec & Lib	Clerk Receptionist
Karen Creager	Finance Department	Accountant
Judy Dick	Parks, Rec & Lib	Recreation Cashier
Lonnie Gunter	Police Department	Report Specialist
Dave Loseman	Community Developmt	Projects Engineer
David McFadden	Parks, Rec & Lib	Irrigator II
Tom Pageler	Public Works & Util	Utility Systems Spec.
Mary St. Clair	Parks, Rec & Lib	Lifeguard
Lisa Walls	Parks, Rec & Lib	Secretary
Laura Wood	Finance Department	Utility Billing Clerk

The following employees will receive a fifteen year service pin and certificate:

Rick Dietz	Public Works & Util	Equipment Operator II
Wanda Headley	Police Department	Communications Spec. I
Rod Larsen	Parks, Rec & Lib	Parks Foreman
Steve Ramer	Public Works & Util	Lab Analyst
Mike Webster	Public Works & Util	Equipment Operator I

The following 20 year employees will be presented with a certificate and service pin:

Rick Barker	Fire Department	Fire Lieutenant
Janet Harrison	Community Developmt	Administrative Secretary
Mary Martinez	Community Developmt	Secretary
Mark Spellman	Fire Department	Fire Lieutenant
David Stovall	Police Department	Senior Police Officer
Lynne Torgerson	City Manager's Off	Admin. Coordinator
Norman Weiner	General Services	Deputy Court Clerk II

The following 25 year employees will be presented with a certificate and service pin:

Mike Collier	Police Department	Police Sergeant
Bill Mason	Police Department	Police Lieutenant
Matt Raia	Police Department	Police Captain

On October 30th, the City Manager will be hosting the third employee awards luncheon for 1996. Sixteen employees will be receiving their five year service pins, while recognition will also be given to those who are celebrating their 10th, 15th, 20th and 25th anniversary.

The aggregate City service represented among the group of employees is 480 years of City service. The City can certainly be proud of the tenure of each of these individuals and of their continued dedication to City employment in serving Westminster citizens.

Respectfully submitted,

William M. Christopher
City Manager

10 years awards

Darrin Bacca	Police Department	Traffic Accident Invest.
Jeanne Bury	Parks, Rec & Lib	Clerk Receptionist
Karen Creager	Finance Department	Accountant
Judy Dick	Parks, Rec & Lib	Recreation Cashier
Lonnie Gunter	Police Department	Report Specialist
Dave Loseman	Community Developmt	Projects Engineer
Mary St. Clair	Parks, Rec & Lib	Lifeguard
Laura Wood	Finance Department	Utility Billing Clerk

15 year awards

Rick Dietz	Public Works & Util	Equipment Operator II
Wanda Headley	Police Department	Communications Spec. I
Rod Larsen	Parks, Rec & Lib	Parks Foreman
Mike Webster	Public Works & Util	Equipment Operator I

20 year awards

Rick Barker	Fire Department	Fire Lieutenant
Mary Martinez	Community Developmt	Secretary
Mark Spellman	Fire Department	Fire Lieutenant
David Stovall	Police Department	Senior Police Officer
Lynne Torgerson	City Manager's Off	Admin. Coordinator
Norman Weiner	General Services	Deputy Court Clerk II

25 years

Mike Collier	Police Department	Police Sergeant
Bill Mason	Police Department	Police Lieutenant
Matt Raia	Police Department	Police Captain

Date: October 28, 1996

Subject: Construction Engineering for Little Dry Creek Trail

Prepared By: Philo Shelton, Park Project Engineer

Introduction

City Council action is requested to authorize the City Manager to approve a construction engineering contract amendment with Loris and Associates, Inc. in the amount of \$83,451 for Little Dry Creek Trail between England Park (7190 Osceola Street) in Westminster, and approximately 66th Avenue and Zuni Street in Adams County. Funds for this expense are available in the Little Dry Creek Trail account in the General Capital Improvement Fund.

Summary

Staff has been working directly with the Colorado Department of Transportation (CDOT) staff to coordinate the project according to the State of Colorado and federal government contract requirements. Federal regulations require consultants to be selected based on qualifications and not costs. In May 1995, Loris and Associates (Loris) was selected as the most qualified firm based on the abilities of their personnel, past performance on similar ISTEA enhancement projects, willingness to meet time and budget requirements, location of their firm, accessibility to respond to the work site, current and projected work load, volume of previously awarded contracts, and involvement of minority consultants [Disadvantage Business Enterprise (DBE) participation of a minimum of 10%]. These were all the mandatory requirements that were evaluated for selection of Loris through the federal contract process. Loris was contracted to develop the right of way and construction documents for the Little Dry Creek Trail that meet CDOT, and federal design requirements.

CDOT requires that the construction engineering contract be approved prior to the award of the construction contract. Since Loris was previously determined to be a qualified consultant, CDOT prefers to amend the design consultant's existing contract to do the construction engineering work because Loris designed the project and has an approved contract by CDOT. The amount of the original contract between CDOT and Loris was \$120,000.

Staff then met with Loris and Associates to negotiate a final scope of services and fee for the Little Dry Creek Trail project. The scope of work includes a full time professional engineer on site, engineering field support, administration, and geotechnical testing. Loris's cost estimate of \$83,451 was reasonable given the scope of work and hourly rates charged. The construction engineering fee is 8.4% of the construction budget. If CDOT performed the construction engineering, the fee would be 15.4% of the construction budget, having a cost of \$70,000 more than Loris's fee.

Alternatives

> City Council could reject the proposed contract with Loris and Associates and select another engineering firm. However, CDOT procedures must be followed in hiring a new consultant and it would cause delays of several months to get the consultant contract approved by CDOT.

> City could hire CDOT to do the construction engineering at an estimated cost of \$154,000. This alternative is an appropriate alternative; however, CDOT requested that the City be responsible for the construction engineering contracts since CDOT is short on staff.

Staff Recommendation

Authorize the City Manager to sign a contract addendum with Loris and Associates in the amount of \$83,451 for construction engineering services for Little Dry Creek Trail, and charge this expense to the appropriate project account in the General Capital Improvement Fund.

Background Information

Staff submitted an ISTEA grant application to DRCOG in 1991 to design and construct the Little Dry Creek Trail system from England Park at 72nd Avenue and Raleigh to the Clear Creek confluence. DRCOG approved the \$1.2 million Little Dry Creek Trail project and awarded an 80% matching grant in the amount of \$960,000 and Westminster is required to match 20% in the amount of \$240,000.

A majority of the proposed Little Dry Creek Trail project is outside of the City of Westminster boundary, which ends at Lowell Boulevard. An Intergovernmental Agreement (IGA) between City of Westminster and Adams County was approved and completed on October 24, 1994. In summary, the IGA states that each governmental entity (the City of Westminster and Adams County) will be responsible for maintenance, law enforcement, and public liability for the portions of trail located in their jurisdiction. Staff has also been coordinating with Adams County and the Urban Drainage and Flood Control District for future drainage and flood control issues, and Burlington Northern for two railroad bridge underpasses on Little Dry Creek, which will also be used as an underpass for the Little Dry Creek Trail.

As a budget overview, the Little Dry Creek Trail project original budget developed in 1991, to secure the ISTEA grant, was estimated at \$1.2 million for design, right of way (ROW) acquisitions and construction (\$99,000 for design, \$151,000 for ROW acquisitions, and \$950,000 for construction). However, over a period of five years, costs have increased due to regulatory guidelines established by the federal government and implemented by CDOT within the ISTEA grant. Current design and construction costs, and ROW acquisitions/easements expenses have also increased. The new cost estimate for design, ROW acquisitions and construction is \$1.5 million, which is \$300,000 higher than the 1991 projection.

Cost to design the Little Dry Creek Trail is \$170,000 because of CDOT's extensive requirements for trail design, permits to acquire, and five years of inflation. The extra funding of \$71,000 beyond the 1991 estimate of \$99,000 for designs costs is being borrowed from the ROW budget leaving a balance of \$180,000.

This balance of \$180,000 is necessary to assist with construction costs, estimated at \$1 million, which have also increased over the last five years. In May 1996, City Council approved the use of Open Space funds of approximately \$300,000 for acquiring the right of way for the trail.

In September 1996, all the necessary permits, utility clearances, and right of way were secured and CDOT cleared the project to be advertised for construction. The project is currently out for bids that are due on October 25. Construction is anticipated to begin the last week of November with completion to the project in June 1997.

Respectfully submitted,

William M. Christopher
City Manager

Attachments - Project area maps

Date: October 28, 1996
Subject: Countryside Drive Median Improvement
Prepared by: Shinei Tsukamoto, Landscape Architect

Introduction

City Council action is requested to authorize the City Manager to approve a contract with **StackHolm Development & Construction Co., Inc.** in the amount of \$84,175, add \$8,500 as construction contingency, and authorize funds of \$92,675 for the proposed project budget for construction of a colored-pattern concrete edge on the medians on Countryside Drive off West 100th Avenue (see attached map). Funds for this expense are available in the Greenbelt and Drainage Improvement Account in the General Capital Improvement Fund.

Summary

This project was advertised in three publications and bid according to the City purchasing ordinances and procedures. Six contractors attended the mandatory pre-bid conference on September 12. Two bids were submitted. The following is a tabulation from the bid opening on October 3:

StackHolm Construction	\$84,175
Concrete Express	\$95,800

The low bid of \$84,175 by StackHolm Development & Construction Co., Inc. is considered a good bid as compared to the architect's cost estimate of \$80,000 for the project. Staff has determined that StackHolm Development and Construction, Inc. is a qualified contractor for this project. A total amount of \$92,675 including the testing expenses and contingency is requested for this project, with the proposed budget breakdown as follows:

Construction (Low Bid)	\$84,175
Testing (Approximately 2%)	\$1,700
Contingency (8%)	\$6,800
TOTAL	\$92,675

Staff Recommendation

Authorize the City Manager to sign a contract with the low bidder, StackHolm Development & Construction Co., Inc. in the amount of \$84,175 for the Countryside Drive Median Improvement project between West 100th Avenue and West 106th Drive in the Countryside Subdivision; authorize \$92,675 for the total project budget including project contingency and testing expenses; and charge this expense to the appropriate project account in the General Capital Improvement Fund.

Background Information

There are three medians on Countryside Drive between West 100th Avenue and Moore Street with a total length of approximately 1,300 feet (this equals 2,700 lineal feet for both sides and ends of the medians).

Evergreen and deciduous trees are currently planted in the median and grow without supplemental irrigation water (the original system was abandoned in the late 1970s). Shrubs or ground cover are not planted, which adds to the impression that the medians are made entirely of rock.

Asphalt pavement improvements over the years have reduced the height of the concrete curb to within 1 or 2 inches of the road surface instead of the normal 6 to 8 inches. This reduction in curb height escalates the migration of gravel onto the street.

At the City Council meeting on November 13, 1995, Arthur Anderson of 10458 Nelson Court requested an upgrade to the median on Countryside Drive north of 100th Avenue in the Countryside Subdivision. Staff was directed to confirm ownership and develop a plan to upgrade the median and provide cost estimates. The median in question is owned and maintained by the City of Westminster.

Staff recommended the installation of raised concrete edging, which would provide a minimum of 24-inch hard surface adjacent to the curb, sloping back toward the center of the median. This detail would be similar to the raised medians on 92nd Avenue, Church Ranch Boulevard, and 88th Avenue at Sheridan Boulevard.

Staff brought a Study Session item to City Council in late January 1996 regarding the prioritization of street project improvements from the \$1.55 million in funds. This was a part of the \$3.05 million in 1994 funds authorized by Westminster voters on November 7, 1995. City Council appropriated \$75,000 in CIP funded Greenbelt and Drainage Improvement Account in June 1996.

Staff hired a professional consultant, Terrasan, in the amount not to exceed \$5,800 to prepare construction drawings and bid documents in June 1996. Bid documents were completed in late August, and the project was advertised in the first week of September. Staff anticipates the construction to be started in November and completed in January 1997. The appropriated budget in 1996 in the amount of \$75,000 is not sufficient to complete the project; however, an additional \$75,000 has been requested in the CIP Greenbelt and Drainage Improvement Account in 1997, and will be available for this construction when the 1997 budget is adopted.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Site Map

Date: October 28, 1996
Subject: Employee Health Insurance Coverage
Prepared by: Pierrette Ray, Risk Manager

Introduction

City Council action is requested to authorize the City Manager to renew the contracts with Blue Cross/Blue Shield of Colorado, Kaiser, and Delta Dental for employee medical and dental insurance coverages.

Summary

Contracts with the City's medical and dental insurance providers will be coming up for renewal on January 1, 1997. Staff is recommending a 1/2 percent (.5%) increase in the basic health rates to both the employer and employee contributions for 1997 to cover increased costs in the dental program. No other changes are being recommended for 1997.

Staff Recommendation

Authorize the City Manager to renew the contracts with Blue Cross/Blue Shield, Kaiser and Delta Dental and charge the expense to the appropriate Central Charges accounts in the General, Water, and Wastewater Funds.

Background Information

The City of Westminster has had a contract with Blue Cross/Blue Shield Triple Choice Plan since 1990 and has contracted with Kaiser Permanente HMO services since the 1970's.

The present funding structure for the Blue Cross/Blue Shield Plan consists of a high self-insured retention and is known as a Minimum Premium Plan. Expenses for up to \$50,000 per family per year are charged to the City's claims expense account while expenses beyond this amount are paid through the company's specific excess coverage. There are three parts to a Minimum Premium Plan, the administrative cost, the claims expense, and the termination runout. The termination runout is used to cover claims incurred in the final months of a program but not paid until after the program has ended. Bills for services incurred in the final months of a program may not be promptly sent in by providers to Blue Cross/Blue Shield. The funding of the termination runout makes sure the City has funds available to cover these charges. Current claims expenses are paid on a weekly basis. Any funds remaining in the claims account after the year has ended are rolled into a reserve account and retained by the City as backup for catastrophic claims and to stabilize rates. As of year end 1995, reserves, including the claims runout, were \$1,153,000.

For 1997, Staff is recommending a 1/2 percent increase in the overall medical/dental rates in both the City and employee contributions. In the way of comparison, other public and private sector clients of the Segal Company are experiencing rate increases in the range of 5 to 10 percent.

The 1/2 percent increase represents an adjustment to the dental rate and is recommended by the City's benefits consultant at the Segal Company due to the increase in dental plan utilization. The level of reserves currently in the fund and current premium rates for the medical/dental program are adequate to cover projected program costs and provide sufficient claim reserves. The City received a notification from Kaiser that there would not be an increase in rates for 1997, while the Blue Cross/Blue Shield program was presented with a decrease of 3.5 percent for administrative costs, a projected 9.1 percent increase in claims expenses, and no increase for the termination runoff. Delta Dental has requested no increase in the rates for their administrative services for 1997. The City self-funds all dental claims expenses.

Based on current employee enrollment, the total cost for the City's share of the medical and dental premium is \$2,298,000 in the General, Water and Wastewater Funds.

For 1997, Staff is recommending that the Wellness Incentive Program be continued at the current level. The program provides all employees who join the Wellness Program and who do not smoke, a discount toward their health insurance premiums. While hard data is not yet available, Staff believes the Wellness Program is having a positive impact in terms of reducing the City's long term medical insurance costs. The program provides discounts of \$10 per month for single employees, \$20 for employee plus one dependent, and \$30 for employee plus two or more dependents. Charts which show the proposed revised medical and dental health insurance rates are attached.

As has been previously reported to Council, Staff continues to look at alternative methods for providing health insurance benefits to employees. Although the present arrangement with Blue Cross/Blue Shield and Kaiser is satisfactory, changes being considered at the federal and state level, changes in the types of products and funding mechanisms available in the health insurance industry, and the increasing focus on managed care and wellness necessitate that different approaches for providing this benefit be considered. Changes in employee benefits are considered every other year and were last reviewed in 1995. Staff will be reviewing plan options again in 1997 to identify possible changes for the 1998 plan year.

Sufficient funds are available in the City's 1997 Budget to cover the employer portion of the program. General Services Staff and the City's consultant from the Segal Company will be available to answer any questions Councillors may have during Monday evening's City Council meeting.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

Date: October 28, 1996

Subject: Countryside Recreation Center Design Services

Prepared by: Ken Watson, Recreation Facilities Manager
Deb Larsen, Recreation Supervisor

Introduction

City Council action is requested to authorize the City Manager to sign a contract with BBB Architects to develop construction documents, specifications, and bid documents for the renovation of Countryside Recreation Center, and authorize funds in the amount of \$204,700 for the basic contract, plus \$20,400 for a 10% contingency, for a total of \$225,100. Funds are available from the General Capital Improvement Fund for this project.

Summary

Over the past 20 years, the Countryside neighborhood has changed in population and needs. The Countryside Recreation Center was built in 1976 as a seasonal facility and draws full capacity summer usage to the outdoor pool. However, the lack of year-round amenities results in decreased usage patterns during the non-summer months. With the increase in the number of citizens, and their desire for health and fitness, renovation of the center would result in increased year-round amenities, revenue, and participation, as well as a higher percentage of cost recovery. Also, based on citizen surveys, public meetings, and preliminary design drawings, there has been overwhelming favorable response to enlarge Countryside Recreation Center to more of a year round community facility. The center has been evaluated over the past several years in the City's Master Plan as a location that is in need of an improved recreational and community facility.

In 1995, \$50,000 was authorized for preliminary design drawings and \$250,000 was allocated for construction drawings. A Request for Proposal was advertised in May 1996 for four weeks under normal City procedures. Only one firm, BBB Architects, responded. BBB Architects was hired for the renovation of the Swim and Fitness Center, as well as the preliminary drawings of Countryside Recreation Center. Staff is confident that the fees proposed by BBB Architects are fair and the firm is reputable. The fee computes to 6% of construction costs based on a \$4,000,000 budget. Typical architect fees for projects of this nature run in the 8-10% range. It is recommended that City Council accept the bid submitted by BBB Architects based on the firm's experience, qualifications, previous work for the City, and reasonable expenses.

Staff Recommendation

Authorize the City Manager to sign the contract with BBB Architects in the amount of \$204,700, and include a 10% contingency of \$20,400, for a total of \$225,100 for design, specifications, construction drawings, and bid documents for the Countryside Recreation Center renovation project and charge the expense to the appropriate project account in the General Capital Improvement Fund.

Background Information

Countryside Recreation Center was built in 1976 as a seasonal facility by the home developer in the Countryside area. The amenities included a clubhouse, meeting room, restrooms, outdoor pool, playground, tennis courts, and outdoor basketball. The City owns, operates, and maintains the center. In 1977, the City added three racquetball courts. The building is utilized for recreation classes and racquetball. The usage patterns continue to be seasonal due to the limited amenities. The revenue received in the summer accounts for 50% of the total annual revenue.

In 1994, the Parks, Recreation and Libraries Department determined a need to request funds to hire an architect to formalize preliminary plans for the renovation of Countryside Recreation Center. In 1995, citizen surveys, public meetings, and staff planning meetings resulted in preliminary plans and conceptual drawings for a phased renovation. The first phase includes new locker rooms, lobby/office area, restrooms, relocation of the racquetball courts, addition of a gymnasium, running track, weightroom, cardio-equipment area, a general usage/stretching area, and depending on the final construction cost estimates, classrooms/community room, and indoor hot tub. Future phases include an aerobic room, childcare/tiny tot areas, and renovation of the outdoor pool. The preliminary plans were presented and concurrence was given by City Council. Funds were allocated in 1996 to hire an architect to produce construction drawings based on the preliminary drawings.

The signing of this contract continues the process to enable construction drawings for Phase I and/or Phase II. The construction drawings will be available for a quick start as construction funds become available. The City would fund this project as either a "pay as you go" or possibly by issuing a revenue bond if the 1/4 cent sales tax and authorization to issue long term debt is approved by City voters in November. It is estimated that Phase I of the renovations will cost \$4.0-5.0 million.

Respectfully submitted,

William M. Christopher
City Manager

Date: October 28, 1996
Subject: Tabled - Adoption of 1997 City Budget
Prepared by: Mike Simmons, Management Assistant

Introduction

City Council is scheduled to adopt the 1997 City Budget at Monday night's meeting in accordance with City Charter requirements. The attached Resolution to adopt the budget is based on Staff's understanding of the City Council discussions at the Budget Retreat and the various Public Hearings and public meeting on the Budget. In addition, City Council action is requested to approve the attached Councillor's Bill that would implement water and sewer rate increases totalling approximately 5.0% for the customer that has average water consumption and sewer use.

Summary

Under City Charter provisions, City Council is to hold a public hearing on the proposed city budget for the ensuing year and adopt it no later than the fourth Monday in October. A public meeting was held on June 10 and two public hearings were held on the proposed 1997 Budget on July 22 and September 9. A copy of the proposed 1997 Budget has been on file in the City Clerk's Office for citizen review since September 3 and the appropriate legal notices have been published in the official City newspaper.

The 1997 Budget reflects all City operations and services to be provided to Westminster citizens in 1997. It also provides for several priority enhancements to City services and productivity improvements. The budget includes a net total of 29.55 new full-time equivalent (FTE) positions, including 13.5 FTE's for the new College Hill Library, to carry out City Council focus area programs and to maintain adequate service levels in various departments. The total 1997 Proposed Budget is \$100,956,495 which includes \$2,700,000 in the Reserve Fund and \$2,553,517 in Contingency accounts. This budget is predicated on a conservative projection of 800 single family detached housing starts, a modest increase in residential and commercial construction activity and no increase in property tax. In addition, the combined water and sewer rates will be slightly increased by 5.0% based on data gathered through the utility rate model, and an ordinance is attached to implement this action. Even with this conservative fiscal approach, the City will be able to provide a full range of excellent services and provide for an aggressive Capital Improvement Program in 1997.

The following provides a brief executive summary of the proposed 1997 City Budget:

- > General Fund expenditures are budgeted at \$45,234,000 (incl. Contingency) which is an increase of 3.0% over the 1996 estimated expenditure level of \$43,892,421.

- > The General Fund will receive a transfer payment from the Sales and Use Tax Fund totalling \$31,658,000 which is an increase of 6.9% over the 1996 transfer payment of \$29,616,000.
- > The total number of full-time equivalent (FTE) staffing in 1996 is 720.274 - an increase of 29.55 FTE's over the 1996 authorized level. New FTE's in 1996 include 13.5 FTE's for the new College Hill Library, 6.5 FTE's in the Police and Fire Departments, 5.0 FTE's in Parks and Recreation, 3.6 FTE's to address data processing and environmental compliance needs, 2.45 FTE's to address internal service delivery needs, and a 0.5 FTE at Legacy Ridge Golf Course. In addition, two positions in the Animal Control division are proposed to be eliminated due to the recommended outsourcing of the animal storage function.
- > Utility Fund revenue is projected at \$33,534,034 - an increase of 2.4% compared to the 1996 estimated revenue of \$32,740,776.
- > Sales and Use Tax revenue for 1997 is projected at \$38,325,000 - a 4.2% increase compared to the 1996 estimated revenue of \$36,782,000. Sales Tax returns are projected to increase by 6.4% over 1996.
- > In 1997, Contingency is recommended at \$1,122,856 in the General Fund, \$1,348,743 in the Utility Fund and \$81,918 in the Golf Course Fund. The Reserve account for 1996 is \$2,700,000.
- > An aggressive General Capital Improvement Program is recommended in 1997 due to the continued strength of one-time revenues such as Building and Use Taxes, Park Development Fees, and Carryover Funds from the General Fund.
"Pay-as-you-go" revenues are proposed at \$11,285,000 which includes \$4,923,000 for street and traffic improvements, \$1,750,000 for city facilities and infrastructure, and \$4,612,000 for park development projects. In addition, the 1997 CIP package is contingent upon voter approval of a \$15 million Sales and Use Tax Revenue bond to fund a variety of transportation improvements in the Westminster City Center area, including the Westminster Mall. Approval of the bond issue will not result in any tax increase for Westminster residents.
- > A comprehensive Utility Fund Capital Improvement Program is funded at \$11,336,000 all of which is based on "pay as you go" funding. Another \$3,590,000 is recommended through debt financing for the 1997 portion of the Water Reclamation Project.

Staff Recommendation

1. Remove from the Table and adopt Resolution No. 50 which sets the mill levy at 3.65 mills and formally adopts the total 1997 City Budget including staffing and the Five Year Capital Improvement Plan.
2. Remove from the Table and pass Councillor's Bill No. 68 on first reading which sets the new water and sewer rate effective January 1, 1997 with no adjustments for a period of two years.

Background Information

CITY COUNCIL FOCUS AREAS: Earlier this year, City Council identified five focus areas to be pursued in 1997. They consist of the following focus areas:

- > Economic Development
- > South Westminster Enhancements
- > Citizen Involvement
- > Parks and Recreation
- > Public Safety

The 1997 City Budget has been built upon these key areas, and includes programs to address each focus area identified by City Council. Economic Development will continue to be a high priority as the City plans to pursue new high tech businesses, hotels, grocery stores and entertainment and sports complexes along major business corridors throughout the City. Development of the Countrydale Business Park and golf course, and the continuing efforts at the exciting pedestrian activity center known as the Westminster Promenade will be major priorities for the City in 1997. In addition, a consultant will be hired to assist with the implementation of the City's Comprehensive Plan that will be completed later this year.

South Westminster Enhancements are another area that will be a priority in 1997. Redevelopment of the Westminster Plaza and along the 72nd Avenue business corridor will be a key focus in 1997. A South Westminster Coordinator will be hired using Westminster Economic Development Authority (WEDA) funds to oversee this major redevelopment effort. Further enhancement efforts include a more proactive code enforcement program and major improvements to several South Westminster neighborhood parks.

In order to maintain effective citizen involvement and communication throughout the City, funds are available for several key enhancements. An additional 0.20 FTE Volunteer Coordinator will be hired to better respond to escalating customer needs as the City increases volunteer opportunities. The City will also pursue several public information enhancements that will focus on youth civics education, an upgraded new resident package, and participation in the Public Television Democracy Project. Additional funding will also allow the City to put more resources into the production and programming of its government access channel on cable television.

Another City Council priority that is addressed in the 1997 Budget is Parks and Recreation. Several new positions will be hired in 1997 to ensure that the City's park and open space system maintains a high standard of appearance and aesthetics. A 1.0 FTE Park Ranger will also be hired at Standley Lake to assist with maintenance and law enforcement as the facility transitions to a regional park operating on a year-round basis.

Furthermore, funds are budgeted in the capital improvement program to develop parks and trails, and improve existing park and open space sites.

The final critical focus area that will be emphasized in 1997 is Public Safety. To handle the substantial increase in the volume of police calls, 2.5 FTE Communications Specialists and 2.0 FTE Police Officers will be hired in 1997. In addition, a 0.5 FTE Code Enforcement Office, and a 0.5 FTE Probation Officer are budgeted to address increased activity in these areas.

In the Fire Department, a 1.0 FTE Firefighter will complete the separation of staffing for Engine 4 and Ambulance 4 in order to improve response in the Station 4 area. Funding is also provided for the upgrade of six current Firefighters to Paramedics to advance the level of patient care from Basic Life Support to Advanced Life Support on each emergency apparatus. Mobile data terminals will also be installed in Fire emergency vehicles, providing staff with immediate access to critical information and allowing for more convenient and efficient report processing.

STAFFING: The 1997 City Budget calls for a net increase of 29.55 FTE positions to carry out City Council focus area programs and to maintain effective service levels within various City departments. Almost half of these new employees will be hired in late 1997 to begin preparations for the opening of the new College Hill Library, a joint facility that will be operated by both the City and Front Range Community College. Even with the addition of this new facility, this increase in total FTE's is consistent with previous benchmark employee/population ratios. Based on a year-end 1996 population of 90,000 and a 1997 workforce of 720.274 FTE's, the ratio equals 8.0 FTE's per 1,000 population. This number falls in the middle of the range for this statistic which has been as high as 8.39 FTE's in 1987 and as low as 7.75 FTE's in 1990.

CITIZEN REQUESTS: At the various public hearings on the 1997 proposed budget, several residents either requested information about City projects or asked that City Council consider providing funds for specific City programs and projects. City Council had the opportunity to review these requests in more detail at the Budget Retreat, and where appropriate, funds have been included in the 1997 Budget to address these projects.

ATTACHMENTS: The attached Resolution maintains the City's property tax mill levy at 3.65 mills. The City has not raised the property tax mill levy in five years, and it continues to be one of the lowest in the Denver metropolitan area. Any future increase in the mill levy will require voter approval under the provisions set forth in Amendment One.

An ordinance is also attached which establishes a new water and sewer rate. The new rate is based on the results of the City's comprehensive utility rate model. On average, the 5.0% combined increase in water and sewer rates will result in an additional \$30 per year for each household. This rate adjustment will produce sufficient revenues for a two year period meaning that no increase in rates would be required in 1998.

This budget also contains a new water rate for owner occupied townhomes. Previously, townhomes were charged at the City's commercial rate, however, it was brought to City Council and Staff's attention that this rate places an unfair burden on townhome owners. After further research, Staff has agreed to impose an interim water rate of 80% of the commercial rate for townhome complexes on master meters which can demonstrate they are 80% owner occupied. Staff will study townhome water use patterns over the next two years and plan to have a recommended permanent rate to implement for 1999.

It should also be noted that this budget does not include any changes to the meter service charge, nor does it include any increase to utility tap fees.

There are also several Exhibits attached which are ready for final action as deemed appropriate by City Council.

City Staff appreciates the leadership and direction provided by the Mayor and City Council in developing the 1997 Budget. Special recognition is also due for the Budget Review Team, the City Manager's Office, General Services Department and Finance Department for their hard work and commitment in preparing a well thought out budget.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

RESOLUTION

RESOLUTION NO. INTRODUCED BY COUNCILLORS

SERIES OF 1996 _____

A RESOLUTION OF THE CITY OF WESTMINSTER, COLORADO SETTING THE 1996 MILL LEVY COLLECTIBLE IN 1997, ADOPTING THE BUDGET AND FIVE YEAR CAPITAL IMPROVEMENT PROGRAM FOR THE FISCAL YEAR 1997.

WHEREAS, In accordance with Section 9.2 of the City Charter, the City Manager has prepared and submitted to the City Council a proposed budget for the fiscal year 1997; and

WHEREAS, On July 22 and September 9, 1996, public hearings on the proposed 1997 budget were held by the City Council pursuant to Section 9.4 of the City Charter.

NOW, THEREFORE, be it resolved, by the City Council of the City of Westminster, Colorado that there is hereby levied for the 1996 year upon all taxable property within the City of Westminster, taxes in the amount of three and sixty-five hundredths (3.65) mills per dollar of assessed valuation in Adams and Jefferson Counties, which shall be paid into the General Fund of the City; and

NOW, THEREFORE, be it resolved by the City Council of the City of Westminster, Colorado that the annual budget of the City of Westminster for the fiscal year beginning January 1, 1997 which has been submitted by the City Manager is hereby adopted according to the attached exhibits:

FUND	EXHIBITS
General	A
Utility	B
General Capital Improvement	C
Sales & Use Tax	D
Open Space	E
Fleet Maintenance	F
Golf Course Fund	G
Human Service Agency Funding	H
Five Year Capital Improvement Program	I
Staffing Summary	J

Be it further resolved, that the annual budget of the City of Westminster for fiscal year 1997 beginning January 1, 1997 be established with the following totals:

Balance of Funds on 1-1-96	<u>1997 PROPOSED</u>
General Fund	\$770,000
Utility Fund	4,809,034
Fleet Maintenance Fund	0
Sales & Use Tax Fund	2,410,000
General Capital Improvement Fund	524,000
Reserve Fund	2,550,000
Conservation Trust Fund	182,000
Open Space Fund	171,000
General Debt Service Fund	52,336
Golf Course Fund	0
TOTAL	\$11,468,370

REVENUES:**1997 PROPOSED**

General Fund	\$44,464,000
Utility Fund	28,725,000
Fleet Maintenance Fund	998,235
Sales & Use Tax Fund	38,325,000
General Capital Improvement Fund	10,761,000
Reserve Fund	150,000
Conservation Trust Fund	578,000
Open Space Fund	3,105,000
General Debt Service Fund	5,783,125
Golf Course Fund	<u>1,670,000</u>
TOTAL	\$134,559,360
Total Funds Available	\$146,027,730
Less Transfers	
<u>-45,071,235</u>	
GRAND TOTAL	\$100,956,495

EXPENDITURES:**1997 PROPOSED**

General Fund	\$44,111,144
Utility Fund	32,185,291
Fleet Maintenance Fund	998,235
Sales & Use Tax Fund	40,735,000
General Capital Improvement Fund	11,285,000
Reserve Fund	0
Conservation Trust Fund	760,000
Open Space Fund	3,276,000
General Debt Service Fund	5,835,461
Golf Course Fund	<u>1,588,082</u>
TOTAL	\$140,774,213
Less Transfers	<u>-45,071,235</u>
	\$95,702,978
Plus Contingencies	5,253,517
GRAND TOTAL	\$100,956,495

Passed and adopted this 28th day of October, 1996.

ATTEST:

Mayor

City Clerk

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO.

SERIES OF 1996

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE RATES FOR WATER SALES AND SEWER USER CHARGES

THE CITY OF WESTMINSTER ORDAINS:

WHEREAS, the City of Westminster operates a water and wastewater enterprise utility; and

WHEREAS, the City Charter requires that the utility be self-supporting; and

WHEREAS, the last water rate increase and the last rate increase for sewer user charges took effect January, 1996; and

WHEREAS, costs to operate the Water and Wastewater Utility have increased; and

WHEREAS, since the Utility is operated as an enterprise exempt from the TABOR amendment, the City Council may set the rates to adequately fund the operation of the enterprise.

NOW THEREFORE, be it ordained by the City Council of the City of Westminster as follows:

Section 1. Title VIII, Chapter 7, Section 7, Subsection (B), Westminster Municipal Code, is hereby amended as follows:

(B) RESIDENTIAL: Three (3) dwelling units or less served by one meter primarily used for residential occupancy shall be charged a \$2.10 per month meter service charge plus:

1.65 PER 1,000 gallons	First 4,000 gallons
2.50 PER 1,000 gallons	5,000 TO 25,000 gallons
3.99 PER 1,000 gallons	26,000 gallons and over
\$1.80 PER 1,000 GALLONS	FIRST 4,000 GALLONS
\$2.60 PER 1,000 GALLONS	5,000 TO 25,000 GALLONS
\$3.99 PER 1,000 GALLONS	26,000 GALLONS AND OVER

per unit. Unit consumption shall be determined by dividing the number of gallons consumed by the number of units using one meter. Notwithstanding the above, residential customers who use more than fifty thousand (50,000) gallons for two (2) billing cycles in a twelve (12) month period will be billed at the rate of three dollars and thirty cents (\$3.30) per one thousand (1,000) gallons for any usage exceeding 50,000 gallons. If usage exceeds 50,000 gallons for more than two billing cycles in a twelve month period, the first two (2) qualifying cycles will be billed at the \$3.30 rate.

Section 2. Title VIII, Chapter 7, Section 7, Subsection (C), Westminster Municipal Code, is hereby amended as follows:

(C) MULTIPLE UNITS, COMMERCIAL AND PUBLIC: Multiple residential units consisting of four (4) units or more, commercial units and public users consisting of municipal, county and state facilities, church facilities, school district facilities and recreation district facilities shall be charged ten dollar and fifty cents (\$10.50) monthly meter service charge plus ~~three dollars and two cents (\$3.02)~~ THREE DOLLARS AND SEVENTEEN CENTS (\$3.17) per thousand (1,000) gallons for all water delivered through the meter.

NON-IRRIGATION ACCOUNTS FOR MULTIPLE RESIDENTIAL UNITS CONSISTING OF FOUR (4) UNITS OR MORE WHICH ARE NOT INDIVIDUALLY METERED AND WHICH ARE CLASSIFIED AS TOWNHOMES OR CONDOMINIUMS AND CAN DEMONSTRATE THAT THEY ARE EIGHTY PERCENT (80%) OWNER OCCUPIED ON A COMPLEX WIDE BASIS SHALL BE CHARGED A TEN DOLLAR AND FIFTY CENTS (\$10.50) MONTHLY METER SERVICE CHARGE PLUS TWO DOLLARS AND FIFTY FOUR CENTS (\$2.54) PER THOUSAND (1,000) GALLONS FOR ALL WATER DELIVERED THROUGH THE METER. THE DIRECTOR OF FINANCE IS AUTHORIZED TO PRESCRIBE AND ACCEPT SUCH FORMS OF DOCUMENTATION AS THE DIRECTOR MAY DEEM SUFFICIENT TO DEMONSTRATE AN APPLICANT'S ELIGIBILITY FOR THE RATE DESCRIBED IN THIS PARAGRAPH. FOR PURPOSES OF THIS SECTION, A TOWNHOME OR CONDOMINIUM IS A RESIDENTIAL UNIT PHYSICALLY ATTACHED TO ANOTHER RESIDENTIAL UNIT AND SEPARATELY OWNED.

Section 3. Title VIII, Chapter 8, Section 5, Subsection (D), Westminster Municipal Code, is hereby amended as follows:

(D) The rates for user charges hereinafter set forth are based generally upon the quantity and quality of sewage collected and they are subject to change periodically as circumstances require. The minimum monthly rate for use of the City of Westminster sanitary sewerage system by residential, including multiple unit residential, and public users shall be a sum equal to ~~two dollars and twenty four cents (\$2.24)~~ TWO DOLLARS AND THIRTY-FIVE (\$2.35) per thousand (1,000) gallons multiplied by the average monthly water consumption per user during the period December 1 through March 31. The minimum monthly rate for use of the City of Westminster sanitary sewerage system by multiple units and commercial users shall be a sum equal to ~~two dollars and fifty seven cents (\$2.57)~~ TWO DOLLARS AND SEVENTY CENTS (\$2.70) per thousand (1,000) gallons multiplied by the average monthly water consumption per user during the period December 1 through March 31. The minimum monthly sewer charge for commercial users may be appealed to the Utility Billing division for user charges resulting from the average monthly water consumption during the period of December 1 through March 31 and may be adjusted if the water consumed during the months of June 1 through September 30 is less. Commercial users shall be allowed to install a separate meter to record out of house use which consumption will not be assessed a sewer use charge. The meter readings actually taken prior to and closest to the specified time frame shall be used for purposes of accomplishing the required calculation. However, City Council may by Resolution adjust the period of time to be used to calculate said user charges when, in the opinion of the Council, climate conditions and water consumption patterns warrant such an adjustment. The monthly charge shall apply to an account that is billed for more than fifteen (15) days service. Any new occupant of a residential unit shall be charged fifteen dollars and fifty cents (\$15.50) sewer charge until an experience rate has been established. Residential users who appeal the initial sewer charge rate can have the rate adjusted to actual usage of the first four (4) months of occupancy. Any new multi-unit or commercial account shall be charged a rate based on water consumption of similar accounts in the Westminster or the Denver Metro area. Any account not receiving Westminster water will be based on actual consumption, if available or consumption of similar accounts.

Section 4. This ordinance shall be effective for any water charges billed after December 31, 1996.

Section 5. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of October, 1996.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this th day of , 1996.

ATTEST:

Mayor

City Clerk

Date: October 28, 1996

Subject: Tabled - Resolution No. re Adoption of 1997 Pay Plan

Prepared By: Debbie Mitchell, Employee Services Manager and
Matt Lutkus, Deputy City Manager for Administration

Introduction

As part of the 1997 Budget adoption process, Staff requests that City Council adopt the attached resolution which establishes the 1997 salary ranges. The funds needed to implement the recommended adjustments have been included in the proposed 1997 City Budget.

Summary

The City Administration is recommending a 3.5% across-the-board increase for all full-time and part-time Classified and temporary positions, adjustments of approximately 3.5% at the top of the ranges for most Unclassified positions and a series of other pay range adjustments based on the annual pay plan review and salary survey conducted by the Employee Services Division.

Staff Recommendation

Remove this item from the Table and adopt Resolution No. which establishes the 1997 pay ranges for City employees and authorizes certain adjustments in City employee benefits.

Background Information

City Staff continues to use a benchmark system whereby City positions which are relatively similar among Front Range cities are surveyed. The salaries for non-benchmark positions are linked to the salaries of benchmark positions based on their relationships in a job group and relative value to the organization. In addressing market based changes in employee salaries, half of the major job category benchmarks are surveyed each year. This year, benchmark salary surveys were conducted for police, fire, management, and business and professional occupations.

The recommended pay and classification adjustments were based on an extensive salary survey process which included eight area cities for most positions as well as special districts and private sector data where appropriate.

The cities used for comparison purposes for the majority of positions are Arvada, Aurora, Boulder, Englewood, Fort Collins, Lakewood, Littleton, and Thornton. In addition, a number of special districts are surveyed for Fire and Parks and Recreation position comparisons.

The main information resources used during this process are the Colorado Municipal League surveys, private sector data from Mountain States Employers Council as well as direct contacts with other municipalities.

Staff is recommending an across the board adjustment of 3.5% to keep pace with overall salary increases in the public and private sectors. Across-the-board increases being projected in other area cities range from 2.8% to 5% not including longevity or step increases. Data from Mountain States Employers Council indicates private sector companies are projecting pay increases for 1997 to be an average of 4.1% and 4% for government.

In addition to the across the board increase, the proposed 1997 Pay Plan includes forty-three recommended grade/classification changes. Proposed salary changes are based on the Employee Services Division's analysis of prevailing salaries for various classifications, as well as adjustments for internal relationships. A summary of all of the recommended pay plan changes and the pay plan itself are attached for Council's review.

Funding for all of the recommended pay and benefit changes has been included in the proposed 1997 City Budget.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

RESOLUTION

RESOLUTION NO.

INTRODUCED BY COUNCILLORS

SERIES OF 1996

WHEREAS, Section 1-24-3 of the Official Code of the City of Westminster provides that the City Council, upon recommendation of the City Manager, shall by resolution establish the salary schedule for all position classifications in the municipal service, and

WHEREAS, the City Manager is recommending a 3.5% across the board salary increase for regular classified employees and adjustments of approximately 3.5% to the top of the ranges for most unclassified positions, and

WHEREAS, several reclassifications, new classifications and title adjustments are recommended as a result of organizational changes and a review of the results of the annual compensation survey,

NOW, THEREFORE, BE IT RESOLVED THAT THE WESTMINSTER CITY COUNCIL RESOLVES that the attached new salary schedule and the authorized personnel schedule are hereby adopted and approved and shall be put into effect on January 1, 1997.

Passed and adopted this 28th day of October, 1996.

ATTEST:

Mayor

City Clerk

Date: October 28, 1996
Subject: Councillor's Bill No. re City Council Salary Adjustment
Prepared by: Debbie Mitchell, Employee Services Manager

Introduction

City Council is requested to pass the attached Councillor's Bill on first reading amending the salaries of elected City of Westminster officials and providing a matching City amount provision on deferred compensation taken by City Councilmembers.

Summary

City Council has asked to consider changes to Councillors' compensation. As discussed during the recent Budget Retreat, the proposal being considered would increase salaries by \$100 per month and provide for a City match for Councillors' contributions to the City's Deferred Compensation Plan. If approved, the proposed changes would take effect January 1, 1998. This approach is in compliance with the City Charter.

Staff Recommendation

Pass Councillor's Bill No. on first reading concerning an adjustment to City Council's compensation effective January 1, 1998.

Background Information

The salaries of elective officers are included in Title I, Chapter 7 of the Westminster Municipal Code. At the recent City Council Budget Retreat for the 1997- 1998 Proposed Budget, City Council discussed adjusting the current salary structure to reflect inflation and cost of living factors. The current City Council salary schedule is as follows:

Mayor	\$900 per month
Mayor Pro Tem	\$800 per month
Councilmembers	\$700 per month

The last City Council salary adjustment was approved on October 13, 1993 and took effect on January 1, 1994. From 1994 to 1997, City Council's salaries have remained constant while City employees' wages have risen approximately 12 percent in order to keep pace with inflation and other cost of living factors. The proposed 1998 City Council salary schedule would be as follows:

Mayor	\$1,000 per month
Mayor Pro Tem	\$900 per month
Councilmembers	\$800 per month

In addition to the above stated salaries, it has been requested that Councillors receive a matching contribution to their individual contributions to the City's 457 deferred compensation program. Internal Revenue Service rules limit the combined contribution from the employer and employee to 25% of the employee's salary.

By City Charter, changes to Councillor compensation can only take place after a municipal election. Thus, any changes to Councillors' compensation must be acted on prior to a municipal election and cannot become effective until after the election is held. The effective date of the proposed Councillor's Bill is therefore January 1, 1998.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Councillor's Bill

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. _____

SERIES OF 1996

INTRODUCED BY COUNCILLOR'S

A BILL

FOR AN ORDINANCE AMENDING THE SALARIES OF ELECTED OFFICIALS OF THE CITY OF WESTMINSTER.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title I, Chapter 7 of the Official Code of the City of Westminster is hereby amended as follows:

1-7-1: ELECTIVE OFFICERS: The salaries of THE CITY'S elective officers shall be as follows:

Mayor elected by Council	\$ 900 \$1000 per month
Mayor Pro Tem, elected by Council	\$ 800 \$ 900 per month
Councilmembers COUNCILLORS, other than	
Mayor or Mayor Pro Tem	\$ 700 \$ 800 per month

IN ADDITION, THE CITY SHALL CONTRIBUTE TO THE CITY DEFERRED COMPENSATION ACCOUNTS OF EACH SUCH OFFICER AN AMOUNT EQUAL TO THE OFFICER'S CITY DEFERRED COMPENSATION CONTRIBUTIONS. THE COMBINED CONTRIBUTIONS FROM THE CITY AND THE ELECTIVE OFFICER SHALL BE SUBJECT TO ALL APPLICABLE I.R.S. REGULATIONS BUT IN NO EVENT SHALL SUCH COMBINED CONTRIBUTIONS FROM THE CITY AND THE ELECTIVE OFFICER EXCEED 25% OF THE OFFICER'S TOTAL CITY SALARY.

Section 2. This ordinance shall take effect on January 1, 1998.

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of October, 1996.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this th day of November, 1996.

ATTEST:

Mayor

City Clerk

Date: October 28, 1996

Subject: Revised Employment Contract with William Christopher

Prepared by: William M. Christopher, City Manager

Introduction

City Council review and consideration is requested pertaining to the attached revised employment agreement with William Christopher serving in the capacity of City Manager.

Summary

At the time City Council appointed William Christopher as City Manager in June, 1978, an employment agreement was formally approved by the Council to reflect the terms and conditions of his employment. Each year, the employment contract is reviewed and revised based on the results of the Council's performance evaluation of the City Manager. This year's evaluation was completed on October 21 including updated compensation terms. A revised employment contract has been prepared to reflect the adjustments.

Staff Recommendation

Approve an employment agreement with William Christopher serving in the position of City Manager for calendar years 1997 and 1998 and authorize the appropriate City Officials to execute said agreement.

Background Information

The initial employment agreement with William Christopher, serving as City Manager, has been subsequently reviewed annually (except in 1988) to reflect compensation adjustments as well as any other changes in the provisions of the agreement as warranted. The existing contract is scheduled to expire December 31, 1997. City Council and the City Manager have discussed a new two year contract which would extend the employment agreement to December 31, 1998. The only change in the revised agreement compared to the existing agreement is as follows:

- > The increased compensation (\$6,000 - a 5.8% increase) is to be reflected in the base salary. The annual salary will become \$102,500 with \$7,500 taken as deferred compensation.

All other provisions of the contract remain the same as per the existing employment agreement between the City Council and the City Manager.

City Council was previously provided a salary survey of other area city manager's compensation packages. The average salary of the ten Cities surveyed indicated an annual compensation of \$105,928 which would include any deferred compensation for 1996. This compares to the current annual salary and deferred compensation for the Westminster City Manager in the amount of \$104,000.

The revised contract that was discussed at the October 21 Executive Session reflects a compensation increase of 5.8% for 1997. The salary for 1997 would be \$102,500 and the deferred compensation would be \$7,500.

I am extremely pleased to have the opportunity to continue the working relationship with City Council. I believe there have been many meaningful achievements this year and produced numerous enhancements for the community. I look forward to the numerous challenges and opportunities which the new year most certainly will hold. Westminster continues to be a great City to have the opportunity to manage.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective as of the 1st day of January, 1997, by and between the City of Westminster, State of Colorado, a municipal corporation, hereinafter called "CITY" as party of the first part, and WILLIAM M. CHRISTOPHER, hereinafter called "EMPLOYEE", as party of the second part, both of whom understand as follows:

WHEREAS, the CITY desires to continue employing the services of WILLIAM M. CHRISTOPHER, as City Manager of the City of Westminster as provided by City Charter, Chapter IV, Section 7; and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of said EMPLOYEE; and

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of EMPLOYEE and to provide inducement for him to remain in such employment; (2) make possible full work productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; (3) act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE, and (4) provide a just means for terminating EMPLOYEE'S services at such time as he may be unable to fully discharge his duties due to age or disability or when CITY may desire to otherwise terminate his employ; and

WHEREAS, EMPLOYEE previously accepted employment as City Manager of said CITY.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. DUTIES:

CITY hereby agrees to continue the employment of WILLIAM M. CHRISTOPHER as City Manager of CITY to perform the duties and functions specified in Section 4.8 of the City Charter and such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

SECTION 2. TERMS:

A. EMPLOYEE agrees to remain in the exclusive employ of CITY and WILLIAM M. CHRISTOPHER will serve as City Manager for calendar years 1997 and 1998. Further, EMPLOYEE agrees neither to seek, to accept, nor to become employed by any other employer until said termination date, unless said termination date is effected as hereinafter provided.

The term "employed" shall not be construed to include occasional teaching, writing, consulting work or other related activities performed on EMPLOYEE'S time off.

B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in Section 3, Paragraph A and B of this agreement.

C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with the CITY, subject only to the provisions set forth below.

D. This contract shall be considered for renewal annually, no later than October 31 of each year to address extending the contract, salary, and other changes negotiated between the parties, unless written notice is given to the EMPLOYEE that such contract will not be renewed, and such written notice is forwarded to EMPLOYEE ninety (90) days prior to the end of October. Each renewal of the contract shall be for a specified time. If this contract is not renewed, or terminated, as set forth in the contract, and the contract expires, EMPLOYEE shall continue to work under the terms of the last executed contract until a new contract is executed or EMPLOYEE is terminated after receiving four (4) months' written notice of termination.

SECTION 3. TERMINATION, NOTICE AND SEVERANCE PAY:

A. In the event City Council decides to exercise its right to terminate EMPLOYEE before expiration of the aforementioned term of employment and during such time that EMPLOYEE is willing and able to perform the duties of City Manager, then and in that event, the CITY agrees to give EMPLOYEE four (4) months' written notice or to pay EMPLOYEE a lump sum cash payment equal to his base salary for the ensuing four (4) months, provided however, that in the event the EMPLOYEE is terminated because of his conviction of any illegal act, then, and in that event, CITY has no obligation to give notice or pay the aggregate severance sum designated in this paragraph.

B. In the event the CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across the board reduction for all City employees, or in the event the CITY refuses, following written notice to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a formal suggestion by the City Council that he resign, then, and in that event, EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such resignation, within the meaning and content of the four (4) months' severance pay provisions herein.

C. In the event EMPLOYEE voluntarily resigns his position with the CITY before expiration of the aforesaid term of employment, then EMPLOYEE shall give the CITY four (4) months' notice in advance in writing.

D. The parties may, by mutual written agreement, shorten the time required for written notification of termination or resignation set forth in paragraphs (A) and (C) of this Section 3, and Section 2(D).

SECTION 4. SALARY:

The CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto an annual base salary of \$102,500 and \$7,500 in deferred compensation effective January 1, 1997, payable in installments at the same time as other employees of the CITY are paid.

CITY agrees to review the EMPLOYEE'S performance annually, no later than October 31st of each year. Salary evaluation each year shall be at the discretion of the CITY.

SECTION 5. HOURS OF WORK:

A. It is recognized that EMPLOYEE must devote a great deal of his time outside normal office hours to business of the CITY, and to that end EMPLOYEE will be allowed to take compensatory time off as he shall deem appropriate during normal office hours.

B. EMPLOYEE shall not spend more than ten (10) hours per week in teaching, consulting, or other non-City connected business without the expressed prior approval of the Council. Provided, that such consulting or other non-City connected business does not constitute a conflict of any nature with EMPLOYEE'S work as City Manager. City Council shall be the sole judge of such conflicts whose determination shall be final.

SECTION 6. TRANSPORTATION:

EMPLOYEE'S duties require that he shall have the exclusive use at all times during his employment with the CITY of an automobile provided to him by the EMPLOYEE. EMPLOYEE shall be responsible for paying of liability, property, maintenance, repair and regular replacement of said automobile. A monthly car allowance of \$450 shall be paid to EMPLOYEE to assist in compensating for these costs.

SECTION 7. DUES AND SUBSCRIPTIONS:

CITY agrees to budget and to pay the professional dues of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the City.

SECTION 8. PROFESSIONAL DEVELOPMENT:

CITY hereby agrees to budget and to pay the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official and other functions for CITY, including but not limited to the International City/County Management Association, the Colorado Municipal League, and such other national, regional, state and local governmental groups and committees thereof which EMPLOYEE serves as a member.

SECTION 9. GENERAL EXPENSES:

CITY recognizes that certain expenses of a non-personal, job affiliated nature are incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said non-personal, job affiliated expenses. Disbursement of such monies shall be made upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavit.

SECTION 10. FRINGE BENEFITS:

EMPLOYEE will be allowed all benefits as are extended to all other Department Head level employees, except that when such benefits are in conflict with this contract, said contract shall control.

SECTION 11. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. The City Council shall fix any other terms and conditions of employment as it may from time to time determine, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the City Charter or any other law.

B. All provisions of the City Charter and Code, and regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays, longevity pay, and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to EMPLOYEE as they would to other employees of CITY in addition to said benefits enumerated specifically for the benefit of EMPLOYEE, except as herein provided.

SECTION 12. GENERAL PROVISIONS:

- A. The text herein shall constitute the entire agreement between the parties.
- B. This agreement shall be binding upon and to the benefit of the heirs at law and executors of EMPLOYEE.
- C. This agreement becomes effective on January 1, 1997, and shall be in effect through calendar years 1997 and 1998.
- D. If any provision, or any portion hereof contained in this agreement is held to be unconstitutional, invalid or unenforceable, the portion thereof shall be deemed severable, and the remainder shall not be affected, and shall remain in full force and effect.
- E. Nothing in this agreement shall be construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20.
- F. The parties agree that this contract is entered into and shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the City of Westminster, Colorado, has caused this agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this agreement.

Approved by Westminster City Council on this 28th day of October, 1996.

Mayor

ATTEST:

City Clerk

William M. Christopher

APPROVED AS TO FORM:

City Attorney

Date: October 28, 1996
Subject: Annexation and Zoning of Smith Property
Prepared by: David Falconieri, Planner III

Introduction

City Council action is requested on the attached Councillor's Bill No. and No. annexing 8.3 acres of land and zoning the property O-1.

Summary

The Smith property is located on the east side of Federal Boulevard (an area which is unincorporated, but entirely surrounded by the City's corporate limits) between 108th and 110th Avenues. It was originally a 40 acre enclave that has been entirely surrounded by the City since 1983. Since then, the City has bought two separate parcels of that property and annexed them. The first was a 16 acre piece on the south side which was purchased as part of the Legacy Ridge Golf Course, and the second, a 14.6 acre purchase on the east side which is being used by the City for a regional detention pond and open space area. The remaining approximately 8.3 acres is currently an unincorporated parcel of land.

Recently, application was made to the County by the owner for rezoning of that parcel from agricultural to commercial for the purpose of constructing a mini warehousing development. Due to strong resistance from the neighbors and the City, the application has since been withdrawn. However, it is important to bring this remaining piece of the Smith property into the City's corporate limits and within the purview of City zoning codes.

This would be a unilateral annexation being made without the permission of the property owner as defined under Section 31-12-106(1) C.R.S. which permits a municipality to annex enclaves which have been entirely surrounded for a period of at least three years. Under that section of the statute, neither a petition nor a public hearing is required as long as notification is made in accordance with the specifications of that statute. The Westminster Municipal Code and State statutes also allow the property to be unilaterally zoned by the City, following the normal zoning hearing procedures without the permission of the owner. Once annexed, the owner may request a rezoning, again, following normal City procedures.

Property Owner Candice Cebula

Location East side of Federal Boulevard, between 108th and 110th Avenues.

Size of Site Approximately 8.3 acres.

Description of Proposed Use No use is proposed at this time and the proposed zoning would be O-1, "OPEN" which primarily allows agricultural use until the property is zoned Planned Unit Development at a later date.

This zoning is most like the existing county designation (A-3) and is expected to change to Planned Unit Development upon request by the owner or applicant through the normal application process. The Westminster Municipal Code requires that properties of this size zone to either O-1 or Planned Unit Development. A Planned Unit Development would require a Preliminary Development Plan, and for a unilateral annexation, Staff does not prepare the Preliminary Development Plan, given the costs as well as not wanting to speculate as to the specific need of a future development. staff expects a rezoning and Preliminary Development Plan to be submitted in the near future, consistent with the City's rules, policies, and Comprehensive Plan.

Major Issues Because the property is located adjacent to the Legacy Ridge Golf Course, along a major arterial and next to City open space, it is important to bring the property within the City's jurisdiction. This is also an opportunity to annex the last remaining portion of Federal Boulevard which remains unincorporated within the general boundaries of the City. That will help clarify responsibility for emergency response personnel.

Planning Commission Recommendation The Planning Commission, after conducting a public hearing on October 22, voted 4-0 to recommend approval of the annexation and zoning of the subject property to O-1, Open District.

As a part of the motion, the Planning Commission stated that they recommend the O-1 zoning noting that they clearly expect that the property will be zoned Planned Unit Development in the near future. They recommend City Council give due consideration to the rezoning application to Planned Unit Development, because the property is being unilaterally annexed by the City. They recommended that the City Council recognize the City's prior commitments to the Smith property owners when the City purchased openspace in 1994 and take into account the effect the current moratorium will have on the owners' ability to process their zoning request.

Mr. Terry Teneyck, the "owner under contract", and Ms. Candice Cebula, one of the three owners of the Smith Property, spoke during the public hearing. They requested zoning to Planned Unit Development for a senior housing project and asked that their zoning request be given priority. They also expressed concerns that their zoning application would be hindered by the moratorium on new residential projects which is in effect until the end of the year.

The moratorium on new residential development does not allow the City to process any new residential projects including those currently in the City or those which are annexed. The senior housing concept that the applicants proposed at the Planning Commission meeting could not have been developed in Adams County due to the lack of utilities. Any development of the parcel in Adams County requiring City Services would have needed to be annexed to the City, and would be subject to the City's Ordinances, including the Growth Management provisions as well as the temporary moratorium on new residential projects.

Staff Recommendation

1. Hold a public hearing on the rezoning of the Smith property from Adams County A-1 to City of Westminster O-1.
2. Pass Councilor's Bill No. on first reading annexing the property into the City of Westminster based on a finding that the property being annexed has been completely contained by the City for more than three years, and that proper notice was given pursuant to Colorado State Statutes, Section 331-12-106 and all other sections pertaining to annexation.
3. Pass Councilor's Bill No. on first reading zoning the property O-1, Open District based on a finding that the zoning meets the requirements of of the City Code, including Section 11-2-1, Zoning Map Amendments; and the proposed landuse is compatible with existing and proposed land uses in the area.

Background Information

Discussion of Major Issues

The recent application to the County for mini-warehousing on the subject parcel demonstrates the risk to the City of this parcel remaining in unincorporated Adams County. As such, the proposed Comprehensive Plan or existing City development standards would not apply to any development proposed. Annexation of the property would remedy that situation. Staff considers this to be an important parcel within the City because of its proximity to the Legacy Ridge Golf Course adjacent to a major arterial and being next to City open space property next to the CedarBridge Subdivision. The Draft Comprehensive Land Use Plan indicates that the area should be used for single family residential use.

The adjacent portion of Federal Boulevard is the only portion of that right-of-way between 120th and 68th Avenues which remains entirely unincorporated and therefore under the purview of Adams County emergency response entities, a situation which creates confusion among the various jurisdictions. The annexation of that segment will clarify responsibility for the area.

The O-1 "Open" zoning district is recommended with this unilateral annexation. This district allows for agricultural and residential use, similar to the current Adams County zoning designation of A-3. The O-1 district is appropriate until the owner or subsequent developer applies for rezoning to Planned Unit Development and prepares a site specific Preliminary Development Plan for the City's consideration. This practice of using the O-1 district as a holding zone until specific development plans are submitted has been the City's practice for many years. An example would be the "Foster" property, a large tract located between Sheridan and Federal south of 120th Avenue which was zoned O-1 when it was annexed and will be ultimately zoned as a Planned Unit Development when an end user has solidified plans for the property.

Respectfully submitted,

William M. Christopher
City Manager

attachment

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO.

SERIES OF 1996

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE APPROVING AND ACCOMPLISHING THE ANNEXATION OF CONTIGUOUS UNINCORPORATED TERRITORY IN SECTION 8, TOWNSHIP 2 SOUTH, RANGE 68 WEST, COUNTY OF ADAMS, STATE OF COLORADO.

WHEREAS, an annexation is proposed to and by the City of Westminster of the hereinafter described, contiguous, unincorporated territory situate, lying and being in the County of Adams, State of Colorado; and

WHEREAS, this property is eligible for annexation pursuant to Section 31-12-106, et. seq., Colorado Revised Statutes, in that the property has been entirely contained within the boundaries of the City of Westminster for a period of not less than three years; and

WHEREAS, City Council has been advised by the City Attorney and the City Manager that the accompanying maps are in substantial compliance with Sections 31-12-106, et. seq., Colorado Revised Statutes, as amended; and

WHEREAS, pursuant to Section 31-12-106, et. seq., Colorado Revised Statutes, notice of this proposed annexation ordinance was given by publication as provided by Section 31-12-108, Colorado Revised Statutes, regarding notice of annexation petitions and resolutions and initiating the annexation proceeding; and

WHEREAS, pursuant to Section 31-12-108(2), notice was given at least 30 days prior to the adoption of this ordinance, and

WHEREAS, pursuant to Section 31-12-106, et. seq., Colorado Revised Statutes, no public hearing on the proposed annexation is required and City Council now finds that the property proposed for annexation may be annexed by ordinance at this time; and

WHEREAS, the Council of the City of Westminster has satisfied itself concerning the conformance of the proposed annexation to the annexation policy of the City of Westminster.

NOW, THEREFORE, the City of Westminster ordains:

Section 1. That the annexation is hereby accomplished by and to the City of Westminster, State of Colorado, of the following described contiguous unincorporated territory situate, lying and being in the County of Adams, State of Colorado, to wit:

A tract of land in the northeast quarter of Section 8, Township 2 South, Range 68 West of the Sixth Principal Meridian, in the City of Westminster, County of Adams, State of Colorado, more particularly described as follows:

Commencing at the north quarter corner of said Section 8; thence along the west line of said northeast quarter S00°01'09"W, 1320.80 feet to the true point of beginning;

Thence N89°34'27"E, 50.00 feet to a point on the easterly right of way line of Federal Boulevard; thence continuing N89°34'27"E, 449.95 feet; thence S00°25'33"W, 754.94 feet; thence S39°43'11"W, 70.82 feet; thence N80°16'49"W, 416.52 feet to the east right of way line of Federal Boulevard; thence along said line and parallel to the west line of said northeast quarter S00°01'09"W, 585.33 feet to a point on the south line of said quarter;

thence along said south line S89°41'51"W, 50.00 feet to the southwest corner of said quarter; thence along the south line of the northwest quarter of said Section S89°40'26", 100.00 feet to a point on the west right of way line of Federal Boulevard; thence along said line and parallel to said west line N00°01'09"E, 1320.77 feet; thence N89°34'27"E, 100.00 feet to the true point of beginning.

Said tract contains 548,424 square feet or 12.590 acres more or less.

Section 2. This ordinance shall take effect upon its passage after second reading.

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this day of
, 1996.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this day of , 1996.

ATTEST:

Mayor

City Clerk

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO.

SERIES OF 1996

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING THE ZONING LAW AND ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN DESCRIBED PROPERTY IN SECTION 8, TOWNSHIP 2 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO.

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The City Council finds:

- a. That an application for the zoning of the property described below from Adams County A-1 to City of Westminster O-1 zoning has been proposed by the City for its approval pursuant to Westminster Municipal Code section 11-2-1.
- b. That Council has completed a public hearing on the requested zoning pursuant to the provisions of Chapter 2 of Title XI of the Westminster Municipal Code.
- c. That based on the evidence produced at the public hearing, the City Council finds that the proposed zoning complies with all requirements of City Code, including, but not limited to, the provisions of Westminster Municipal Code sections 11-2-1, 12-2-1, 12-2-2, and 12-8-7.
- d. That the proposed zoning is compatible with existing zoning and land uses of adjacent properties in the general vicinity of the property proposed for zoning.
- e. That the proposed zoning is consistent with all applicable general plans and policies concerning land use and development relative to the property proposed for zoning.

Section 2. The Zoning District Map of the City is hereby amended by reclassification of the property described herein hereto from Adams County A-1 to City of Westminster O-1--Open.

A tract of land in the northeast quarter of Section 8, Township 2 South, Range 68 West of the Sixth Principal Meridian, in the City of Westminster, County of Adams, State of Colorado, more particularly described as follows:

Commencing at the north quarter corner of said Section 8; thence along the west line of said northeast quarter S00°01'09"W, 1320.80 feet to the true point of beginning;

Thence N89°34'27"E, 50.00 feet to a point on the easterly right of way line of Federal Boulevard; thence continuing N89°34'27"E, 449.95 feet; thence S00°25'33"W, 754.94 feet; thence S39°43'11"W, 70.82 feet; thence N80°16'49"W, 416.52 feet to the east right of way line of Federal Boulevard; thence along said line and parallel to the west line of said northeast quarter S00°01'09"W, 585.33 feet to a point on the south line of said quarter; thence along said south line S89°41'51"W, 50.00 feet to the southwest corner of said quarter; thence along the south line of the northwest quarter of said Section S89°40'26", 100.00 feet to a point on the west right of way line of Federal Boulevard; thence along said line and parallel to said west line N00°01'09"E, 1320.77 feet; thence N89°34'27"E, 100.00 feet to the true point of beginning.

Said tract contains 548,424 square feet or 12.590 acres more or less.

Section 3. This ordinance shall take effect upon its passage after second reading.

Section 4. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

-
INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of October, 1996

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this day of November, 1996

ATTEST:

Mayor

City Clerk

Date: October 28, 1996

Subject: Councillor's Bill No. re Sales & Use Tax Revenue Refunding Bonds

Prepared by: Nancy Alberts, Accounting Manager

Introduction

City Council action is requested to pass the attached Councillor's Bill on first reading appropriating \$31,000 in extra interest earnings in the Debt Service Fund to help fund an additional principal payment. In addition, the transfer payments from the Sales & Use Tax Fund are proposed to be changed to the Debt service Fund. Originally, these transfers were being made to the General Capital Improvement Fund. These are housekeeping actions related to the refunding of the 104th Avenue Special Improvement District Bonds to make it a Sales Tax Revenue Bond issue which occurred earlier this year.

Summary

The 104th Avenue Special Assessment Bonds were refunded on May 15, 1996. The new bonds are Sales and Use Tax Revenue Refunding Bonds. Accordingly, the debt service must be paid from Sales & Use Tax revenue, which was not contemplated when the original debt service budget was prepared in October 1995. Also, the budget for principal payments will be increased via an appropriation of excess interest earnings in the Debt Service Fund.

Staff Recommendation

Pass Councillor's Bill No. on first reading appropriating \$31,000 in interest earnings in the Debt Service Fund to fund an additional principal payment and recording Sales and Use Tax transfer payments to the Debt Service Fund instead of the General Capital Improvement Fund.

Background Information

On May 15, 1996, the City refunded the 104th Avenue Special Improvement District Special Assessment Bonds. This refunding was not contemplated when the 1996 Debt Service budget was prepared in October of 1995. The previous debt service on the Special Assessment Bonds was paid, in part, from assessments that were levied to the property owners in the 104th Avenue Improvement District. Because the bonds are now sales tax bonds, the debt service must be paid from sales tax revenues.

The City budgeted for assessments to be received from property owners in the amount of \$769,121. Before the refunding, \$257,416 was received and recorded in the Debt Service Fund. After the refunding, \$536,320 was received and recorded in the General Capital Improvement Fund (GCIF). All scheduled assessments have been received. Because these assessments are now recorded in a different fund, the Debt Service Fund is short this revenue to pay the debt service on the bonds which is due in December. To correct these budgets, the following will occur:

Sales & Use Tax Revenue Refunding Bonds

Page 2

1. \$536,320 of assessments will be appropriated in the GCIF fund while transfers from the sales tax fund will be reduced by the same amount.

2. \$536,320 will be appropriated as a transfer from sales tax to the Debt Service Fund while assessments in the Debt Service Fund will be reduced by the same amount.

The result of the above two items is simply to change which fund the sales tax transfer is going to. The cash outlay from the Sales & Use Tax Fund will not change.

In addition, prior to the refunding, the City made an extra principal payment of \$60,000 on the old bonds to avoid additional Detached "B" Interest Growth Securities (DBIGS) on the new bonds. Cash was available for the extra payment from added interest earnings not budgeted. In addition, because extra principal was paid, the interest costs will be lower than anticipated. At this time, an additional \$31,000 in interest earnings has been received over and above what was budgeted. This should now be appropriated to help cover the extra principal payment.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Councillor's Bill

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. _____

SERIES OF 1996

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE INCREASING THE 1996 BUDGET OF THE GENERAL DEBT SERVICE FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 1996 ESTIMATED REVENUES IN THE FUND

THE CITY OF WESTMINSTER ORDAINS:

Section 1. The 1996 appropriation for the General Debt Service Fund, initially appropriated by Ordinance No. 2385 in the amount of \$5,859,304 is hereby increased by \$31,000 which, when added to the fund balance as of the City Council action on October 28, 1996, will equal \$14,471,734. The actual amount in the General Debt Service Fund on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. This increase is due to an appropriation of excess interest earnings which will fund an additional principal payment, and to record sales and use tax transfer payments to the Debt Service Fund instead of the General Capital Improvement Fund.

Section 2. The \$31,000 increase in the General Debt Service Fund shall be allocated to City Revenue and Expense accounts which shall be amended as follows:

<u>Description</u>	<u>Current Budget</u>	<u>\$ Increase</u>	<u>Final Budget</u>
<u>REVENUES</u>			
104TH SID Assessments 80-1029-165	\$769,121	\$(536,320)	\$232,801
Transfer from Sales & Use Tax 80-9999-530	3,172,000	536,320	3,708,320
Interest 80-0751-000	14,500	<u>31,000</u>	45,500
Total change to revenues		<u>\$31,000</u>	
<u>EXPENSES</u>			
Principal payment 80-10-90-601-565	\$819,000	<u>\$31,000</u>	950,000

Section 3. The 1996 appropriation for the Sales & Use Tax Fund initially appropriated by Ordinance No. 2385 in the amount of \$36,099,000 and the 1996 appropriation for the General Capital Improvement Fund initially appropriated by Ordinance No. 2385 in the amount of \$14,590,129 will not change but is included here for clarification purposes only. The actual amount in these two funds on the date this ordinance becomes effective may vary from the amount set forth in this section due to intervening City Council actions. A transfer from the Sales & Use Tax Fund to the GCIF Fund will be discontinued and the payment will be made instead to the Debt Service Fund, as follows:

Section 4. The budgetary changes in the Sales & Use Tax Fund and the GCIF shall be allocated to City Revenue and Expense accounts which shall be amended as follows:

<u>Description</u> <u>Final Budget</u>	<u>Current Budget</u>	<u>\$ Increase</u>	
<u>REVENUES</u>			
Transfer from Sales Tax 75-9999-530	\$8,247,960	\$(536,320)	\$7,711,640
104th Ave Assessment 75-1029-165	-0-	<u>536,320</u>	536,320
Total change to revenues		<u>\$-0-</u>	
Transfer to GCIF 53-10-95-990-975	8,247,960	(536,320)	7,711,640
Transfer to Debt Service 53-10-95-990-980	3,172,000	<u>536,320</u>	3,708,320
Total change to expenses		<u>\$-0-</u>	

Section 5 - Severability. The provisions of this Ordinance shall be considered as severable. If any section, paragraph, clause, word, or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part shall be deemed as severed from this Ordinance. The invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect the construction or enforceability of any of the remaining provisions, unless it is determined by a court of competent jurisdiction that a contrary result is necessary in order for this Ordinance to have any meaning whatsoever.

Section 6. This ordinance shall take effect upon its passage after the second reading.

Section 7. This ordinance shall be published in full within ten days after its enactment.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of October, 1996.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this ____ day of _____, 1996.

ATTEST:

Mayor

City Clerk

Date: October 28, 1996
Subject: Councillor's Bill No. re Sheridan Crossing Easement Vacation
Prepared by: Kevin L. Berryhill, Senior Civil Engineer

Introduction

City Council action is requested on the attached Councillor's Bill to vacate the existing utility easements located southeast of the intersection of Sheridan Boulevard and 120th Avenue dedicated with the Clover Creek Center final plat. The property previously platted under the name "Clover Creek Center" is now the location of the proposed Sheridan Crossing development.

Summary

The development of Sheridan Crossing Filing No. 1 necessitates the vacation of the existing utility easements dedicated with the final plat of Clover Creek Center. The existing easements have been replaced by new utility easements dedicated with the Sheridan Crossing Filing No. 1 final plat, which is a replat of Clover Creek Center and a portion of the 3M Tract. There are no existing utilities located within the utility easements to be vacated. There are three different utility easements to be vacated described on Exhibits "A", "B", and "C". The vicinity map shows the location of all 3 easements on one map.

City Staff is in agreement with the owner's request that the subject easements be vacated. The City Charter mandates that Council must approve vacations via ordinance.

Staff Recommendation

Pass Councillor's Bill No. on first reading vacating all utility easements dedicated with the Clover Creek Center Plat.

Background Information

The Clover Creek Center plat, which was recorded in 1985, dedicated right-of-way and utility easements for a proposed commercial development. The Clover Creek Center was never developed and the utility easements dedicated were never utilized. In 1996, with the development of Sheridan Crossing Filing No. 1, the Clover Creek Center was replatted and new utility easements for water and sanitary sewer systems were dedicated. The previously dedicated utility easements are no longer needed and are in conflict with the Sheridan Crossing Filing No. 1 development; thus, the existing utility easements should be vacated.

Respectfully submitted,

William M. Christopher
City Manager
Attachments:

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO. _____

SERIES OF 1996

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE VACATING UTILITY EASEMENTS WITHIN SHERIDAN CROSSING FILING NO. 1

THE CITY OF WESTMINSTER ORDAINS:

WHEREAS, all utility easements previously dedicated with the Clover Creek Center plat as recorded in Adams County Clerk and Recorder's Office in Reception No. B587508, File No. 16, Map No. 282; and

Section 1. City Council finds and determines that the public convenience and welfare require the vacation of the easement parcels described in Section 2 hereof.

Section 2. Utility Easements as recorded by Clover Creek Center, Plat File 16, Map No. 282, Reception No. B587508 of the Adams County Records, being a part of the Northwest Quarter of Section 6, Township 2 South, Range 68 West of the Sixth Principal Meridian, City of Westminster, County of Adams, State of Colorado, being more particularly described as follows:

Note: For the purpose of this description, the bearings are based on the northerly line of the Northwest Quarter of Section 6, Township 2 South, Range 68 West of the Sixth Principal Meridian bearing N89°56'23"E, 2579.27 feet. Monumented by a 3.25-inch aluminum cap in a range box stamped L.S. No. 26600 at the Northwest Corner of said Section 6 and a 3.25-inch aluminum cap in a range box stamped L.S. No. 13225 at the North Quarter Corner of said Section 6.

EASEMENT "A"

Commencing at the Northwest Corner of said Clover Creek center, said point also being on the easterly right-of-way of North Sheridan Boulevard; Thence S00°07'37"E, 185.00 feet, along said easterly right-of-way, to the True Point of Beginning; Thence N89°56'23"E, 70.00 feet; Thence N00°07'37"W, 50.00 feet; Thence N89°56'23"E, 10.00 feet; Thence S00°07'37"E, 50.00 feet; Thence N89°56'23"E, 76.00 feet; Thence S00°07'37"E, 20.00 feet; Thence S89°56'23"W, 36.00 feet; Thence S00°07'37"E, 117.86 feet; Thence S89°52'23"W, 10.00 feet; Thence N00°07'37"W, 117.87 feet; Thence S89°56'23"W, 110.00 feet, to said easterly right-of-way line; Thence N00°07'37"W, 20.00 feet, along said easterly right-of-way line to the Point of Beginning. Containing 4799 square feet (0.1102 acres) more or less. See Exhibit "A" for plot.

EASEMENT "B"

Commencing at the Northwest Corner of said Clover Creek Center, said point also being on the easterly right-of-way of North Sheridan Boulevard; Thence S00°07'37"E, 723.00 feet, along said easterly right-of-way, to the northerly right-of-way of West 118th Avenue; Thence N89°56'23"E, 184.49 feet, along said northerly right-of-way, to the True Point of Beginning; Thence N31°17'58"W, 74.36 feet; Thence N00°07'37"W, 51.65 feet; Thence S89°52'23"W, 10.00 feet; Thence N00°07'37"W, 10.00 feet; Thence N89°52'23"E, 10.00 feet; Thence N00°07'37"W, 354.77 feet; Thence N89°56'23"E, 347.95 feet; Thence N26°33'19"W, 26.23 feet; Thence N63°26'41"E, 20.00 feet;

Thence N26°33'19"W, 67.73 feet; Thence N89°56'23"E, 11.17 feet; Thence S26°33'19"E, 103.93 feet; Thence N89°56'23"E, 165.20 feet; Thence N00°03'37"W, 97.00 feet; Thence N89°56'23"E, 10.00 feet; Thence S00°03'37"E, 97.00 feet; Thence N89°56'23"E, 77.04 feet; Thence N00°03'37"W, 12.00 feet; Thence N89°56'23"E, 20.00 feet; Thence S00°03'37"E, 12.00 feet; Thence N89°56'23"E, 8.00 feet, to the easterly line of said Clover Creek Center; Thence S00°03'37"E, 15.00 feet, along said easterly line; Thence N89°56'22"E, 24.96 feet, continuing along said easterly line; Thence S00°03'37"E, 15.00 feet, continuing along said easterly line; Thence S89°56'23"W, 130.00 feet; Thence S00°03'37"E, 10.00 feet; Thence S89°56'23"W, 10.00 feet; Thence N00°03'37"W, 10.00 feet; Thence S89°56'23"W, 520.64 feet; Thence S00°07'37"E, 324.74 feet; Thence N89°52'23"E, 54.00 feet; Thence S00°07'37"E, 10.00 feet; Thence S89°52'23"W, 54.00 feet; Thence S00°07'37"E, 44.40 feet; Thence S31°17'58"E, 82.88 feet; Thence S89°56'23"W, 30.41 feet, to the Point of Beginning. Containing 35835 square feet (0.8227 acres) more or less. See Exhibit "B" for plot.

EASEMENT "C"

Commencing at the Northwest Corner of said Clover Creek Center, said point also being on the easterly right-of-way of North Sheridan Boulevard; Thence S00°07'37"E, 723.00 feet, along said easterly right-of-way, to the northerly right-of-way of West 118th Avenue; Thence N89°56'23"E, 226.00 feet along said northerly right-of-way to the Point of Beginning; Thence N00°07'37"W, 213.56 feet; Thence N44°56'23"E, 191.90 feet; Thence N45°03'37"W, 12.00 feet; Thence N44°56'23"E, 20.00 feet; Thence S45°03'37"E, 12.00 feet; Thence N44°56'23"E, 122.47 feet; Thence N89°56'23"E, 49.50 feet; Thence S44°56'23"W, 137.55 feet; Thence S45°03'37"E, 10.00 feet; Thence S44°56'23"W, 10.00 feet; Thence N45°03'37"W, 10.00 feet; Thence S44°56'23"W, 214.36 feet; Thence S00°07'37"E, 82.99 feet; Thence N89°56'23"E, 12.76 feet; Thence S00°07'37"E, 10.00 feet; Thence S89°56'23"W, 12.76 feet; Thence S00°07'37"E, 101.10 feet; Thence S89°56'23"W, 30.00 feet, to the Point of Beginning. Containing 18767 square feet (0.4308 acres) more or less. See Exhibit "C" for plot.

Section 3. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of October, 1996.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this _____ day of _____, 1996.

ATTEST:

City Clerk

Mayor

Date: October 28, 1996

Subject: Resolution No. re Fire Station 2 Site Acquisition

Prepared by: Steve Pacifico, Battalion Chief
Jim Cloud, Fire Chief

Introduction

City Council action is requested to adopt the attached Resolution authorizing the acquisition of a parcel of land located at 9150 Lowell Boulevard for the future relocation of Fire Station 2. Funds in the amount of \$219,575 are available through section 3 of the agreement dated April 25, 1995, between the City of Westminster and Marketplace One Limited Liability Company. No City funds are required to purchase this parcel of land.

Summary

In January of 1996 City Council approved Staff's recommendation to pursue the acquisition of the vacant property located at 9150 Lowell Boulevard in unincorporated Adams County for the future relocation of Fire Station 2. Staff has since completed negotiations with Mr. Arthur Hayutin, agent for the property owner, S & H Builders Inc. The Purchase and Sale Agreement has been approved by both parties and signed by S & H Builders, Inc. Prior to these purchase negotiations, Staff conducted a Phase I and II environmental assessment and a preliminary drainage study.

Results from these studies were positive with respect to constructing the proposed Fire Station.

Staff Recommendation

Adopt Resolution No. authorizing the City Manager to proceed with the acquisition of a parcel of land owned by S & H Builders Inc., located at 9150 Lowell Boulevard in unincorporated Adams County, Colorado.

Background Information

Staff has been working on the relocation of Fire Station 2 for a number of years. Initially, a computer study of fire station locations in the community was completed and presented to City Council. This study indicated that the current locations of fire stations in Westminster provided optimal response times to nearly all sections of the City. The study did however indicate a need to place new resources or reallocate current resources more toward the center of the City along the 92nd Avenue corridor to better serve the community. With this information in hand, Staff completed the expansion of Fire Station 3 located at 7702 West 90th Avenue. This expansion included construction of a third bay to house an aerial unit and third ambulance. Staff then looked at Fire Station 2 located at 9099 Lowell Boulevard for possible expansion but determined that logistically this facility was impossible to expand to meet the needs of the growing community.

Staff then pursued the possible relocation of Fire Station 2. Approximately twelve sites were initially considered with this list reduced to four. Of these, two were identified as optimal and purchase was pursued. The first site on the southwest corner of 92nd Avenue and Lowell Boulevard had a number of potential environmental issues and appraised at a price that exceeded the City's budget. Staff then focused on a second site just south of the southeast corner of 92nd Avenue and Lowell Boulevard. This site proved to be affordable and presented no environmental problems. Additional benefits to this site included:

- > Optimal site for first and second response times throughout the City by emergency apparatus.
- > Excellent access to 92nd Avenue, Lowell Boulevard, Sheridan Boulevard, and U.S. 36 Highway.
- > Adequate lot size, 50,180 square feet.
- > Moves the current station away from fronting an existing elementary school.
- > Site offers an opportunity for development to present a better image in the area.
- > The neighborhood has experience with fire station operations.

As part of the Official Development Plan (ODP) of the Marketplace at Westminster City Center, the City included two options related to the acquisition of a fire station site. These options included the dedication of a one acre fire station site in the ODP or a cash-in-lieu payment by the developer for the fair market value of 1.6 acres. The City, with this proposed purchase, will be pursuing the cash-in-lieu option which had a maximum value of \$238,360.

Attached are copies of three memorandums, a site map and the agreement with Marketplace One Limited Liability Company for reference. These attachments contain all pertinent background information regarding the relocation of Fire Station 2.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

RESOLUTION

RESOLUTION NO. _____

INTRODUCED BY COUNCILLORS

SERIES OF 1996

WHEREAS, the City of Westminster has determined that it is necessary to the public health, safety, and welfare to obtain the land described in Exhibit A as a site for a future fire station; and

WHEREAS, appraisal services have been obtained in order to determine the fair market value for these parcels; and

WHEREAS, the City has made an earnest good faith offer of purchase for each of the subject parcels; and

WHEREAS, a municipal public purpose exists to acquire the property; and

WHEREAS, legal counsel for the City of Westminster advises that the City's right of eminent domain may be exercised should normal negotiations fail; and

WHEREAS, the City finds that if acquisition by condemnation of any parcel described in this resolution is commenced, immediate possession by the City will be necessary for the public health, safety, and welfare,

NOW, THEREFORE, the City Council of the City of Westminster resolves that:

1. The City Manager is hereby authorized to establish the just compensation to be offered to acquire the property.

2. City Staff is authorized to cause negotiations to be initiated to acquire the parcels and interests identified in Exhibit A on the basis of the appraised value, or such amount as may seem just and reasonable to facilitate such acquisition without the necessity of condemnation, and the City Manager is hereby authorized to acquire such parcels consistent with applicable law, including the execution of all documents necessary to complete these purchases. The negotiations that have previously been conducted are hereby ratified.

3. The City Attorney of the City of Westminster is authorized to take all necessary legal measures to acquire the properties in question, including proceeding with condemnation of the properties in question against the owner or owners and any other persons or entities claiming an interest therein or thereto, and to take such other or further action as may be reasonably necessary for or incidental to the filing and diligent prosecution of any litigation or proceeding required to obtain the properties should normal negotiations fail or exceed the time constraints of the overall project. In the event that acquisition by condemnation is commenced, the City Attorney is further authorized to request immediate possession of the properties.

4. The City Manager shall be further authorized to incur reasonable costs associated with acquiring the properties in question, including, without limitation, the cost of title examination, title insurance, appraisal fee payments mandated by statute, normal closing costs, filing fees and charges, and all other related or incidental costs or expenses customarily associated with the acquisition or condemnation of property. The costs shall be charged to the 1996 Fire Department Budget.

PASSED AND ADOPTED this 28th day of October, 1996.

ATTEST:

Mayor

City Clerk

"EXHIBIT A"

Lots 13 and 14, Block 7, Subdivision of Lot 8, Block 7, Shaw Heights Mesa 8th Filing; and Lot 9, Block 7, Shaw Heights Mesa 8th Filing, County of Adams, State of Colorado.

Date: October 28, 1996

Subject: Councillor's Bill No. re Changes to City Pension Ordinances

Prepared by: Matt Lutkus, Deputy City Manager for Administration and
Margie Miller, Pension Administrator

Introduction

City Council is requested to pass the attached Councillor's Bill on first reading which makes changes to the City's General Employee, Fire, and Police pension ordinances.

Summary

The City Administration and the Police, Fire and General Employee Pension Boards are recommending a series of changes to the City's Pension Ordinances. Three of the recommended changes are substantive while the remainder are of a housekeeping nature. After City Council takes formal action on the proposed ordinances, State statutes mandate that 65% of the active participants in the Police and Fire Plans approve any changes before these changes can be implemented.

The changes which are of a substantive nature are:

- A recommendation to increase the employee contribution from 6% to 10% over a two year phase-in period.
- An amendment to the provisions related to Qualified Domestic Relations Orders (QDRO) requires that divorced, non-employee spouses withdraw all of their interest in the pension plan.
- Authorization to implement a 401h retirement medical savings account.

Since the issue regarding the level of employee contributions is the most visible of the proposed changes and the one that would have a direct impact on all plan participants, all City employees were asked to indicate their preference through a Citywide ballot process. The results of this organization-wide advisory vote show that there is a strong preference to: 1) increase the employee mandatory contribution to 10% and 2) implement this change over a two year period.

Formal approval of the Section 401h program by the Internal Revenue Service cannot be requested until after Council takes formal action on this ordinance. The specifics of the plan will, therefore, not be clear until after this review occurs. Thus, the language in the ordinance itself has been written to simply enable the City to implement a retirement medical savings plan through an administrative process.

Staff Recommendation

Pass Councillor's Bill No. on first reading related to certain amendments to the City's three Pension Plan Ordinances.

Background Information

The City's three pension ordinances have been in effect since 1987 when the single pension ordinance was divided into three ordinances for General, Police, and Fire employees. This change was necessitated by the enactment of a State law which required that any changes to pension plans for Police and Fire employees be approved by each of these employee groups. The State law requires that these changes receive an affirmative vote by no less than 65% of the active participants in each respective plan. Changes to the General Employee pension ordinance do not require a vote of the plan participants.

Presently, the fund investment options for the City's defined contribution pension plan are the same for all three plans. The Pension Boards meet jointly and the Finance Director, who is charged with overseeing the three plans, chairs these meetings. Currently, the Deputy City Manager for Administration is serving as the Pension Boards' trustee on an interim basis while the Finance Director position is vacant.

A task force made up of representatives from each of the three Pension Boards has been meeting to identify recommended changes to the ordinances. The proposed changes were discussed with the full Pension Boards who arrived at the final list of recommended changes. All of these changes have been reviewed by City Administration and they are in concurrence with the Boards' recommendations.

Three of the proposed changes are substantive and of great interest to employees. These recommended changes and a brief description of each are as follows:

Change in the mandatory contributions for employees - The City presently contributes 10.25% to benefited employees' pension accounts after employees complete 22 months of continuous service. The employee contribution is currently at 6%. A review of employer and employee contributions to pension plans in 1995 shows that while the City contribution was in line with the contributions of other municipal employers in the metro area, the employee contribution averages ranged from 8.28% to 8.62% for the three employee groups. Other factors which led to employee interest in increasing their mandatory contributions are: the ability to increase the amount of tax deferred savings which an employee could put aside for retirement and the potential for contributing to a retirement medical account which would be allowed under the 401h option described below. Employees currently can contribute up to 10% additional in voluntary contributions to the pension plan, however, because these contributions are voluntary, they are on an after-tax basis.

Given the importance of this particular issue to City employees, the Pension Boards decided to poll all employees to determine employees' preference with regard to an increase in the mandatory employee contribution. The choices on the ballot were: no change, an increase to 9%, and an increase to 10%, as well as choices on the time frame for phasing in this increase.

Seventy-three percent of the General Plan participants who voted, 77% of the Fire Plan participants who voted, and 72% of the Police Plan participants who voted favored the increase to 10%. Strong majorities in each plan also favored the implementation of this increase over a two-year versus a four-year period.

Implementation of a 401h retirement medical savings plan - The Federal tax code presently has a provision which allows employers to set up a retirement medical savings account for employees within the structure of their employee retirement plans. Although formal Internal Revenue Service approval of such a plan will be required prior to implementation, it is anticipated that such a program will have several key provisions that will be of benefit to employees. The program will allow for employees to set aside some of their tax deferred employer and mandatory employee contributions into an account which will be tax free if the funds are ultimately used for medical-related expenses. Such a savings plan is of tremendous interest to employees given the amount of uncertainty with the long term viability of Medicare and other health insurance options.

Qualified Domestic Relations Orders (QDRO) - Presently, the ordinance allows for QDROs whereby courts can require employees to allocate a certain percentage of their pension dollars to a spouse as part of a divorce settlement. Recent State legislation mandates that such QDROs be provided for in all pension plans but provides that the plan may adopt rules allowing either the retention or immediate payout of the alternate payee account. The proposed change in the City's pension ordinances would state that rather than allowing the former spouse of an employee to become a participant in the pension plan with a separate account, once the QDRO is issued, the former spouse would receive their portion of the employee's pension in a lump sum. This avoids the situation where the plan is maintaining an additional account for a person who was never an employee of the City of Westminster.

Several other changes were made in the proposed new pension ordinance which are, by and large, housekeeping provisions. These proposed amendments are as follows:

Changes to the definition of compensation - These changes clarify that the base compensation on which the pension contributions are determined is computed prior to any salary reduction plans such as the City's dependent care program and that the pension contributions for part-time employees shall be determined based on the authorized FTE level of those positions.

Voluntary contribution - This amendment would provide that the level of voluntary contributions can be revised more frequently than once each six month period.

Daily evaluation - The wording in this section has been changed to require that evaluations of the market value of pension assets be computed at least quarterly. Since the ordinance currently requires quarterly evaluations, this change will allow more flexibility if participants want more frequent evaluations, such as daily evaluations.

Life insurance annuities - The change in this section will take out provisions which allow for employees to purchase life insurance annuities through the pension plan. This option has never been used by pension participants and those who choose to purchase annuities can easily do so in the private financial marketplace.

Board consent of deferrals - This change will make it unnecessary for the Boards to approve participants' requests to change the deferral of receipt of their pension assets if the change is a request for a rollover.

Participant request to change level of deferrals - The change here would not allow former employees to change their minds with regard to the level of pension deferrals more often than once every six months.

Federally required changes - Four changes in Federal Law necessitate changes in the ordinances. The first provides that a plan participant who separates from City employment will receive the total value of their pension account automatically when the value does not exceed \$3,500, in conformance with IRS regulations. Others place limits on the compensation on which allocations are based to \$150,000, allow for rollovers of pension contributions and implement "non discrimination" rules.

These amendments are not subject to the approval by Fire and Police plan participants.

Incorporation of IRS regulations - This change will add language which automatically incorporates any mandatory IRS regulations without requiring participant approval.

Once the ordinance is approved by Council, as required by State statute, Police and Fire Plan participants must have the opportunity to vote on their respective plan amendments. In order for the changes to be adopted, 65% of the active plan participants in each of the plans must approve the changes. It is expected that the vote by these employee groups will take place in mid November. The only amendments not subject to employee approval are those that are mandated by Federal law.

All of the changes with the exception of the 401h Plan would go into effect January 1, 1997. This includes the first phase of the increase to the employee mandatory contributions to 8%. The 10% level would go into effect on January 1, 1998. As stated above, the 401h component of the plan amendments would not go into effect until after the Internal Revenue Service reviewed the City's proposed 401h Plan document.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Councillor's Bill

BY AUTHORITY

ORDINANCE NO. COUNCILLOR'S BILL NO. _____

SERIES OF 1996 INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE REPEALING AND REENACTING TITLE XIV OF THE OFFICIAL CODE OF THE CITY OF WESTMINSTER PERTAINING TO THE GENERAL EMPLOYEES, FIRE AND POLICE PENSIONS

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title XIV, Chapter 1 of the Westminster Municipal Code is hereby repealed and reenacted as follows:

14-1-1: NAME AND PURPOSE OF PLAN; HISTORY:

(A) The City OF WESTMINSTER does hereby establish its Police Pension Plan, which is a qualified deferred money purchase pension plan. The Plan is created for the exclusive benefit of the City's eligible employees who qualify as participants and their Beneficiaries. The Plan is intended to qualify under Section 401(a) of the Federal Internal Revenue Code and the Trust created pursuant to the Plan is intended to be exempt under Section 501(a) of such Code and all provisions of this Plan shall be construed in accordance with this intention. Since this is a governmental plan, it is not the intention of the City to have the Plan comply with the provisions of the Federal Internal Revenue Code after the enactment of the Employee Retirement Income Security Act of 1984, except to the extent that changes to the Code apply to governmental plans.

(B) Prior Coverage Under the Participant's Other City Funded Pension Plans: Upon the approval of this Plan by at least sixty-five percent (65%) of the Participants, any employee who was formerly a Participant in the Employee's Pension Plan and Trust Agreement, General Employee Pension Plan OR THE Police and Fire Pension Plan ~~or Fire Pension Plan~~ shall automatically have his interest in such plan, whether held by investment agents, the Trustee, or the City, transferred to this Plan upon becoming eligible to be a Participant in this Plan. Upon transfer of the employee's interest without a break in municipal service, the employee shall have the same participant status as the employee had under the other plan. Any contributions due from the City, or withheld from the employee for the pay period ending January 5, 1986 will be paid directly into this Plan.

14-1-2: DEFINITIONS: When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural:

(A) "BENEFICIARY": Any person OR ENTITY who, pursuant to Section 14-1-6(B) becomes entitled to receive all or any part of a Participant's interest upon the Participant's death.

(B) "BOARD": The Police Pension Plan Board established in this Chapter.

(C) "CITY": The City of Westminster, Colorado.

(D) "COMPENSATION": The base pay of a Participant for services rendered to the City, including longevity pay, but excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to this Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan OR A SALARY REDUCTION PLAN OR PRE-TAX MEDICAL PLAN.

COMPENSATION FOR PART-TIME EMPLOYEES IS THE PAY EARNED FOR THE AMOUNT OF FULL TIME EQUIVALENTS (FTE'S) BUDGETED FOR THEIR POSITIONS.

(E) "CONTRIBUTING PARTICIPANT": Any employee who is making contributions to this Plan whether or not the City is contributing.

(F) "DIRECT ROLLOVER": A DIRECT ROLLOVER IS A PAYMENT BY THE PLAN TO THE ELIGIBLE RETIREMENT PLAN SPECIFIED BY THE DISTRIBUTE.

(G) "DISTRIBUTE": A DISTRIBUTE INCLUDES AN EMPLOYEE OR FORMER EMPLOYEE. IN ADDITION, THE EMPLOYEE'S OR FORMER EMPLOYEE'S SURVIVING SPOUSE AND THE EMPLOYEE'S OR FORMER EMPLOYEE'S SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE PAYEE UNDER A QUALIFIED DOMESTIC RELATIONS ORDER, AS DEFINED IN SECTION 414(p) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE, ARE DISTRIBUTES WITH REGARD TO THE INTEREST OF THE SPOUSE OR FORMER SPOUSE.

(H) "ELIGIBLE RETIREMENT PLAN": AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT DESCRIBED IN SECTION 408(a) OF THE FEDERAL INTERNAL REVENUE SERVICE (IRS) CODE, AN INDIVIDUAL RETIREMENT ANNUITY DESCRIBED IN SECTION 408(b) OF THE IRS CODE, AN ANNUITY PLAN DESCRIBED IN SECTION 403(a) OF THE IRS CODE, OR A QUALIFIED TRUST DESCRIBED IN SECTION 401(a) OF THE IRS CODE, THAT ACCEPTS THE DISTRIBUTE'S ELIGIBLE ROLLOVER DISTRIBUTION. HOWEVER, IN THE CASE OF AN ELIGIBLE ROLLOVER DISTRIBUTION TO THE SURVIVING SPOUSE, AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT OR INDIVIDUAL RETIREMENT ANNUITY.

(I) "ELIGIBLE ROLLOVER DISTRIBUTION": AN ELIGIBLE ROLLOVER DISTRIBUTION IS ANY DISTRIBUTION OF ALL OR ANY PORTION OF THE BALANCE TO THE CREDIT OF THE DISTRIBUTE, EXCEPT THAT AN ELIGIBLE ROLLOVER DISTRIBUTION DOES NOT INCLUDE: ANY DISTRIBUTION THAT IS ONE OF A SERIES OF SUBSTANTIALLY EQUAL PERIOD PAYMENTS (NOT LESS FREQUENTLY THAN ANNUALLY) MADE FOR THE LIFE (OR LIFE EXPECTANCY) OF THE DISTRIBUTE OR THE JOINT LIVES (OR JOINT LIFE EXPECTANCIES) OF THE DISTRIBUTE AND THE DISTRIBUTE'S DESIGNATED BENEFICIARY, OR FOR A SPECIFIED PERIOD OF TEN YEARS OR MORE; ANY DISTRIBUTION TO THE EXTENT SUCH DISTRIBUTION IS REQUIRED UNDER SECTION 401(a)(9) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE; AND THE PORTION OF ANY DISTRIBUTION THAT IS NOT INCLUDIBLE IN GROSS INCOME (DETERMINED WITHOUT REGARD TO THE EXCLUSION FOR NET UNREALIZED APPRECIATION WITH RESPECT TO EMPLOYER SECURITIES).

(J)(K) "EMPLOYEE": Any person who fills an authorized position of Police Officer as defined in this Chapter that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding temporary employees, elected officials, independent contractors, volunteers and part-time employees scheduled to work less than twenty (20) hours in a seven day cycle.

(L)(M) "FULL PARTICIPANT": Any employee who is qualified to receive employer contributions under this Plan.

(N)(O) "INACTIVE PARTICIPANT": Any person who has been a Contributing Participant to this Plan or a preceding pension plan of the City who is no longer an employee but who has not received full distribution of all respective interest in the Plan.

(P)(Q) "INTEREST": The amount of a Participant's share in the Trust Fund including City contributions, employee contributions and earnings.

(R)(S) "PARTICIPANT": Any Contributing Participant or Inactive Participant.

(T)(U) "THE PLAN": The Pension Plan established in this Chapter and all subsequent amendments thereto.

~~(L)~~(P) "PLAN YEAR": The City's fiscal year which is the calendar year, which shall be the fiscal year of the trust fund established pursuant to this Plan.

~~(M)~~(Q) "POLICE OFFICER": Any person who is employed by the City as a recognized law enforcement officer and who has sworn to enforce the ordinances of the City; the laws of the State of Colorado and the United States of America. The term Police Officer shall not include dispatchers, clerical employees, animal control personnel, civilian administrative personnel, reserve officers, code enforcement personnel and any other employees who do not regularly enforce the traffic and criminal codes and ordinances of the City and State.

~~(N)~~(R) "TERMINATION OF EMPLOYMENT": The cessation of a person's status as an "Employee" as defined in this section. If the person, upon termination of employment, becomes eligible to participate in either the Fire or General Employees' pension plan, without a break in municipal service, the person's interest shall be transferred to that plan and the person shall retain his participant status. Termination due to dismissal shall become effective on the date after the employee's grievance rights have lapsed or, if a grievance is filed, on the date of the final decision by the City.

~~(O)~~(S) "TOTAL DISABILITY": A disability which permanently renders a Contributing Participant unable to perform satisfactorily the usual duties of his employment with the City, as determined by the Board, and which results in his termination of employment with the City.

~~(P)~~(T) "TRUST FUND": The assets of the trust established pursuant to this Plan out of which the benefits under this Plan shall be paid including all income of whatever nature earned by the fund and all increases in fair market value.

~~(Q)~~(U) "TRUSTEE": The Trustee of the trust fund established pursuant to this Plan who shall always be the current acting Finance Director of the City of Westminster and any duly qualified corporate co-trustee appointed pursuant to Section 14-1-10 and any duly appointed and qualified successor trustees.

14-1-3: PARTICIPATION OF EMPLOYEES:

(A) Participants.

(1) Contributing Participant: Each employee hired on or after January 6, 1986 shall become a Contributing Participant in the Plan on the date the employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). Each person who was an employee on January 6, 1986, had the option to elect to become a Contributing Participant on January 6, 1986. Any employee who is not a Contributing Participant on the date he becomes eligible to be a Full Participant will begin making mandatory contributions on the same date as employer contributions begin. By accepting employment with the City, each employee shall be deemed to have consented to the terms and provisions of this Plan.

(2) Full Participant: No matter when an employee becomes a Contributing Participant, each employee shall become a Full Participant, eligible to receive employer contributions, on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18).

(3) Last Pay period of Contribution: The City shall not make any contribution for the account of a Full Participant for the pay period in which his employment shall terminate for any reason unless such Participant is employed on the last date of such pay period. No Participant may make contributions to the Plan, other than changes in the valuation of or earnings on his undistributed interest in the Plan, after his termination of employment or loss of status as an employee as defined in this Chapter.

(4) Determination of Service: For the purpose of determining eligibility to become a Full Participant, service shall be determined in accordance with the following rules:

(a) An employee who completes twenty-two (22) months of continuous municipal service as defined in Chapter 24 of Title I of this Code, shall be eligible as a Full Participant on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18), provided such employee is still employed on such date and has not severed his employment (as provided in subsection (d) of this section) during such twenty-two (22) month period.

(b) A leave of absence without pay other than for military service shall be considered a break in continuous municipal service unless municipal service is extended, pursuant to Section 1-24-10(V) of this Code. Neither the City nor the employee shall be required to contribute to the Participant's account during a leave of absence without pay.

(c) Any employee who has entered or enters the armed forces of the United States shall be presumed to be on a leave of absence, regardless of the length of such service, and such leave of absence shall not be considered as a break in continuity of service or a termination of employment, provided he returns to the employ of the City within ninety (90) days of the date on which he shall have the right to release from military service or from the hospital in the event of service-caused disability, without intervening employment elsewhere.

(d) Dismissal or voluntary termination of employment shall be considered as a break in continuity of service; subsequent reemployment shall be deemed to be new employment, and the employee will be subject to the eligibility requirements as if such employee were a new employee, whether or not such employee was formerly a Full Participant. However, if the City reinstates an employee subsequent to dismissal, this paragraph shall not apply.

(e) The provisions of this paragraph (4) shall be applied to all employees and Participants in a like manner.

(B) Board to Determine Participants.

(1) The City shall deliver to the Board in writing such information from the City's records with respect to employees and their compensation as the Board may require in order to determine the identity and interests of the Participants, and otherwise to perform its duties hereunder.

(2) Any information given by the City to the Board pursuant to subsection (B) of this section shall, for all purposes of this Chapter, be binding on all parties in interest; provided that whenever any employee proves to the satisfaction of the City that his period of employment or his compensation as so given is incorrect, the City shall correct such information and so advise the Board.

(3) The determination of the Board as to the identity of the respective Participants and as to their respective interests shall be binding upon the City and Trustee, all employees, all Participants and all Beneficiaries.

14-1-4: CONTRIBUTIONS BY THE CITY, THE STATE OF COLORADO AND PARTICIPANTS

(A) Contributions by the City.

(1) Determination of Contribution by the City: On and after January 6, 1986, each pay period the City shall contribute to the credit of each Full Participant's account, ten and one-quarter percent (10.25%) of each Full Participant's compensation for that pay period, provided that during any period in which the City is required to make contributions on behalf of Participants under the Federal Insurance Contributions Act or the Social Security Act, the contribution to this Plan for each Participant shall be offset by the amount of the old age survivors and disability insurance ("OASDI") portion of the Social Security taxes paid by the City for such Participant. This offset shall not exceed the City contribution.

(2) Time and Method of Payment of Contribution by the City: The contributions of the City shall be made every pay period and shall be credited to the Plan on each payday.

(B) Contributions by State of Colorado: All monies from the State of Colorado contributed on behalf of Police Officers each year will be credited to the account of each Police Officer in the ratio that his full months of service as a Police Officer for the City relates to the full months of service of all other Police Officers who are Participants in the Plan for that year.

(C) Contributions by Contributing Participants.

(1) Mandatory Employee Contributions:

(a) Each Contributing Participant must contribute to the Trust Fund a percentage of his compensation for each pay period as follows: for the pay periods ~~commencing January 5, 1987, and ending December 20, 1987, five percent (5%); thereafter six percent (6%)~~ COMMENCING JANUARY 1, 1997, EIGHT PERCENT (8%) AND FOR THE PAY PERIODS COMMENCING JANUARY 1, 1998, AND THEREAFTER, TEN PERCENT (10%), ~~provided that~~ OR THE PERCENTAGE AT LEAST EQUAL TO THE OASDI TAX RATE. During any period in which the contributing participant is required to make contributions under the Federal Insurance Contributions Act or the Social Security Act, the mandatory contribution to this Plan by each contributing participant shall be offset by the OASDI taxes paid by the participant, except that no offset for OASDI taxes shall reduce the mandatory contribution to this Plan for a Participant to less than two percent (2%) of that contributing Participant's compensation for that pay period.

(b) For the pay period commencing December 21, 1987, and thereafter, the contribution provided by this paragraph shall be picked up and paid by the City, as Employer, as provided in Section 414(h) of the Internal Revenue Service Code and the Participant's gross income shall be reduced by the amount of the contributions picked up by the City.

(c) Each Participant, as a condition to his employment, shall be deemed to have authorized the City to reduce the Participant's compensation by such amount from each of his paychecks and to transmit such amount directly to the Trustee, according to the provisions of this Chapter.

(d) Separate accounts shall be maintained for the mandatory contributions of the Employees prior to the pick up of such contributions by the City and the contributions picked up by the City.

(2) Voluntary Contributions:

(a) Subject to the provisions of Section 14-1-5(B), each Contributing Participant may elect to contribute to the Trust Fund an amount not to exceed ten percent (10%) of his compensation for each pay period in addition to the mandatory contributions required in paragraph (1) of this subsection.

(b) The amount, if any, which a Contributing Participant voluntarily contributes to the Trust Fund may vary from year to year and may be contributed through payroll deductions or in one lump sum, annually, or both, provided that a lump sum contribution for any year must be paid directly by the Contributing Participant instead of through a payroll deduction. ~~Once a payroll deduction is authorized, it may not be revised more often than once during any six month period.~~ A CONTRIBUTING PARTICIPANT MAY HAVE THE OPTION OF INCREASING, DECREASING, OR TERMINATING HIS VOLUNTARY CONTRIBUTION AT ANY TIME. No Participant shall have any obligation to make any voluntary contribution.

(c) For purposes of this Section, amounts representing the Participant's interest in another qualified pension plan transferred in accordance with Section 14-1-12(A), shall not be considered voluntary contributions.

(3) Payment of Participant Contributions: The contributions of the employee shall be withheld every pay period and shall be credited to the Plan on each payday.

(D) RETIREMENT MEDICAL SAVINGS ACCOUNTS:

(1) SUBJECT TO APPROVAL BY THE INTERNAL REVENUE SERVICE, EACH PARTICIPANT SHALL HAVE THE OPTION OF DESIGNATING UP TO 25% OF HIS MANDATORY AND CITY CONTRIBUTIONS TO BE USED FOR FUTURE MEDICAL EXPENSES AS PROVIDED FOR IN SECTION 401(h) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE. CONTRIBUTIONS TO THE MEDICAL SAVINGS ACCOUNTS WILL NOT BE TAXED AT RETIREMENT NOR UPON USE FOR MEDICAL EXPENSES DURING RETIREMENT. THE RETIREMENT MEDICAL SAVINGS ACCOUNTS WILL BE SUBJECT TO THE RULES AND REQUIREMENTS AS ISSUED BY THE CITY MANAGER.

(2) CONTRIBUTIONS DESIGNATED FOR FUTURE HEALTH BENEFITS UNDER SECTION 401(h) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE AS DESCRIBED IN SUBSECTION C(1) OF THIS SECTION SHALL BE MAINTAINED IN SEPARATE ACCOUNTS.

(D)(E) City's Obligations.

(1) The adoption and continuance of the Plan as set forth in this Chapter shall not be deemed to constitute a contract between the City and any employee or Participant, nor to be consideration for, or an inducement or condition of, the employment of any person. Nothing in this Chapter shall be deemed to give any employee or Contributing Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any employee or Contributing Participant at any time, nor shall it be deemed to give the City the right to require the employee or Contributing Participant to remain in its employ, nor shall it interfere with the right of any employee or Contributing Participant to terminate his employment at any time.

(2) The City shall not incur any liability whatsoever to the Trust Fund, any Participant or his Beneficiaries, the Trustee, or any other person, for anything done or omitted by the Trustee, or for the loss or depreciation in whole or in part, of the Trust Fund.

14-1-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS:

(A) Allocation of Employer Contributions: The contributions made by the employer to the credit of the account of each Full Participant shall be allocated to the account of each such Participant as of the end of each pay period. Any allocation shall be subject to the limitations set forth in subsection (B) of this section.

(B) Limitations on Allocations:

(1) General Rule: In no event may a Participant receive an allocation for any year which, when combined with his allocation under any other defined contribution plan established by the City, exceeds the lesser of twenty-five percent (25%) of his compensation for such year or \$30,000, provided such figure shall change to conform with any adjustment for changes in the cost of living after the enactment of the Tax Equity and Fiscal Responsibility Act of 1982, as provided by law or regulation. For the purpose of applying the foregoing limitation, the limitation year shall be the plan year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations: For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and nondeductible contributions made by the Participant, provided that for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of his compensation for the year, or one-half (1/2) of the nondeductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. EXCEPT THAT, FOR THE PLAN YEARS BEGINNING ON OR AFTER JANUARY 1, 1994, ALLOCATIONS MAY NOT BE BASED ON COMPENSATION IN EXCESS OF THE ANNUAL LIMITATION OF \$150,000.00, SUBJECT TO ADJUSTMENT AS PROVIDED FOR BY LAW OR REGULATION, FOR THE ACCOUNT OF ANY INDIVIDUAL PARTICIPANT. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer which is a common member with the employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded Amounts: Any amount not mentioned in paragraph (2) of this subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, roll over contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of Excess: In the event an allocation would otherwise exceed the limitations of this section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this section. If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the employer. If the employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the employer is discretionary, and if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the employer contribution to each of the Plans. If this plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limit, shall be returned to the employer.

(5) Defined Benefit Plans: In any year if a Participant in this Plan is or ever has been a Participant in a defined benefit plan maintained by the employer, then the sum of the Defined Benefit Plan fraction and the Defined Contribution Plan fraction (both as prescribed by law) for such Participant for such year shall not exceed 1.0. In any year if the sum of the Defined Benefit Plan fraction on behalf of a Participant would exceed 1.0, then the allocation under this plan shall be reduced to the extent necessary so that the sum of such fractions does not exceed 1.0. For purposes of this Section, the limitation year shall be the plan year. The Defined Benefit Plan fraction for any Participant shall be the fraction, the numerator of which is the projected annual benefit of the Participant under the plan (determined as of the close of the year), and the denominator of which is the lesser of (i) the product of 1.25 multiplied by the maximum dollar limitation for benefits set forth in subsection 415(b)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the percentage limitation set forth under Subsection 415(b)(1)(B) of the Federal Internal Revenue Code with respect to such Participant for such year. The Defined Contribution Plan fraction shall be the fraction, the numerator of which is the sum of the annual additions to the Participant's account as of the close of the year for such year and all prior years, and the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the employer: (i) The product of 1.25 multiplied by the dollar limitation in effect under Subsection 415(c)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Subsection 415(c)(1)(B) of the Federal Internal Revenue Code with respect to such individual under such plan for such year with respect to dollar limitations.

(6) Compensation: For the purposes of applying the limitations of this subsection (B), compensation means the total amount paid by the employer to a Participant for services rendered to the employer which are included in the taxable income of the Participant, PROVIDED THAT FOR LIMITATION YEARS BEGINNING AFTER DECEMBER 31, 1997, COMPENSATION FOR THE PURPOSES OF THIS SECTION SHALL NOT BE REDUCED BY VOLUNTARY SALARY

DEFERRALS OR REDUCTIONS FOR A PARTICIPANT UNDER A PLAN ESTABLISHED UNDER FEDERAL INTERNAL REVENUE SERVICE CODE SECTIONS 125, 457, 401(k), OR 403(b).

(C) CONTRIBUTION PERCENTAGE TEST FOR MATCHING AND EMPLOYEE CONTRIBUTIONS.

(1) GENERAL RULE: THE AVERAGE CONTRIBUTION PERCENTAGE IN ANY YEAR OF ALL PARTICIPANTS WHO ARE HIGHLY COMPENSATED EMPLOYEES MAY NOT EXCEED THE GREATER OF THE FOLLOWING AMOUNTS:

(a) 125% OF THE AVERAGE CONTRIBUTION PERCENTAGE FOR SUCH YEAR OF ALL PARTICIPANTS WHO ARE NOT HIGHLY COMPENSATED EMPLOYEES; OR

(b) THE AVERAGE CONTRIBUTION PERCENTAGE FOR SUCH YEAR OF ALL PARTICIPANTS WHO ARE NOT HIGHLY COMPENSATED EMPLOYEES, PLUS TWO PERCENTAGE POINTS (2%), LIMITED TO TWO TIMES THE AVERAGE CONTRIBUTION PERCENTAGE FOR ALL SUCH PARTICIPANTS.

FOR PURPOSES OF THE FOREGOING, THE AVERAGE CONTRIBUTION PERCENTAGE IS THE AVERAGE OF THE SUM OF THE CITY CONTRIBUTIONS UNDER SECTION 14-1-4(A) ALLOCATED TO THE ACCOUNT OF THE APPLICABLE PARTICIPANT PLUS SUCH PARTICIPANT'S VOLUNTARY NON-DEDUCTIBLE CONTRIBUTIONS, DIVIDED BY THE TOTAL COMPENSATION OF SUCH PARTICIPANT FOR EACH SUCH PARTICIPANT. IF THE AMOUNT TO BE CONTRIBUTED BY THE CITY AND ALLOCATED TO THE ACCOUNTS OF PARTICIPANTS WHO ARE HIGHLY COMPENSATED EMPLOYEES EXCEEDS THE FOREGOING LIMITATIONS, THEN THE AMOUNT SO ALLOCATED SHALL BE REDUCED, BEGINNING WITH THE HIGHEST DOLLAR AMOUNT OF CONTRIBUTION AMONG SUCH PARTICIPANTS, TO THE EXTENT NECESSARY TO SATISFY SUCH LIMITATION AND SUCH EXCESS AMOUNT, TOGETHER WITH EARNINGS THEREON, AND SHALL BE DISTRIBUTED TO SUCH PARTICIPANTS NO LATER THAN 2-1/2 MONTHS AFTER THE END OF THE PLAN YEAR IN WHICH SUCH CONTRIBUTIONS WERE MADE.

(2) ADJUSTMENT OF CONTRIBUTION PERCENTAGE: THE EMPLOYER MAY IN ITS DISCRETION MAKE CONTRIBUTIONS TO THE PLAN, WHICH SHALL BE DESIGNATED AS ADDITIONAL MATCHING CONTRIBUTIONS AND WHICH SHALL BE ALLOCATED TO THE ACCOUNTS OF PARTICIPANTS WHO ARE NOT HIGHLY COMPENSATED EMPLOYEES, IN ORDER TO INCREASE THE AVERAGE CONTRIBUTION PERCENTAGE OF SUCH PARTICIPANTS. IN APPLYING THE LIMITATION ABOVE, THE ADMINISTRATOR SHALL TAKE INTO ACCOUNT SUCH DESIGNATED EMPLOYER CONTRIBUTIONS.

(3) EXCESS AGGREGATE CONTRIBUTIONS: EMPLOYER CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS IN EXCESS OF THE LIMITATIONS OF THIS SECTION ARE EXCESS AGGREGATE CONTRIBUTIONS.

(4) DISPOSITION OF EXCESS AGGREGATE CONTRIBUTIONS.

(a) GENERAL RULE: NOTWITHSTANDING ANY OTHER PROVISION OF THIS PLAN, EXCESS AGGREGATE CONTRIBUTIONS, PLUS ANY INCOME AND MINUS ANY LOSS ALLOCABLE THERETO, SHALL BE FORFEITED, IF FORFEITABLE, OR IF NOT FORFEITABLE, DISTRIBUTED NO LATER THAN THE LAST DAY OF EACH PLAN YEAR TO PARTICIPANTS TO WHOSE ACCOUNTS SUCH EXCESS AGGREGATE CONTRIBUTIONS WERE ALLOCATED FOR THE PRECEDING PLAN YEAR. IF SUCH EXCESS AGGREGATE CONTRIBUTIONS ARE DISTRIBUTED MORE THAN 2-1/2 MONTHS AFTER THE LAST DAY OF THE PLAN YEAR IN WHICH SUCH EXCESS AMOUNTS AROSE, A 10% EXCISE TAX WILL BE IMPOSED ON THE EMPLOYER MAINTAINING THE PLAN WITH RESPECT TO THOSE AMOUNTS. EXCESS AGGREGATE CONTRIBUTIONS SHALL BE TREATED AS ANNUAL ADDITIONS UNDER THE PLAN.

(b) DETERMINATION OF INCOME OR LOSS: EXCESS AGGREGATE CONTRIBUTIONS SHALL BE ADJUSTED FOR ANY INCOME OR LOSS UP TO THE DATE OF DISTRIBUTION. THE INCOME OR LOSS ALLOCABLE TO EXCESS AGGREGATE CONTRIBUTIONS IS THE SUM OF: (i) INCOME OR LOSS ALLOCABLE TO THE PARTICIPANT'S EMPLOYEE CONTRIBUTION ACCOUNT, MATCHING CONTRIBUTION ACCOUNT (IF ANY, AND IF ALL AMOUNTS THEREIN ARE NOT USED IN THE DEFERRAL PERCENTAGE TEST UNDER INTERNAL REVENUE SERVICE CODE SECTION 401(k)) AND, IF APPLICABLE, QUALIFIED NON-ELECTIVE CONTRIBUTION ACCOUNT AND ELECTIVE DEFERRAL ACCOUNT FOR THE PLAN YEAR MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS SUCH PARTICIPANT'S EXCESS AGGREGATE CONTRIBUTIONS FOR THE YEAR AND THE DENOMINATOR OF WHICH IS THE PARTICIPANT'S ACCOUNT BALANCE(S) ATTRIBUTABLE TO CONTRIBUTION PERCENTAGE AMOUNTS WITHOUT REGARD TO ANY INCOME OR LOSS OCCURRING DURING SUCH PLAN YEAR; AND (ii) 10% OF THE AMOUNT DETERMINED UNDER (i) MULTIPLIED BY THE NUMBER OF WHOLE CALENDAR MONTHS BETWEEN THE END OF THE PLAN YEAR AND THE DATE OF DISTRIBUTION, COUNTING THE MONTH OF DISTRIBUTION IF DISTRIBUTION OCCURS AFTER THE 15TH OF SUCH MONTH.

(c) FORFEITURES OF EXCESS AGGREGATE CONTRIBUTIONS: FORFEITURES OF EXCESS AGGREGATE CONTRIBUTIONS SHALL BE APPLIED TO REDUCE EMPLOYER CONTRIBUTIONS.

(d) ACCOUNTING FOR EXCESS AGGREGATE CONTRIBUTIONS: EXCESS AGGREGATE CONTRIBUTIONS SHALL BE FORFEITED, IF FORFEITABLE OR DISTRIBUTED ON A PRO RATA BASIS FROM THE PARTICIPANT'S EMPLOYEE CONTRIBUTION ACCOUNT, EMPLOYER CONTRIBUTION ACCOUNT, AND QUALIFIED MATCHING CONTRIBUTION ACCOUNT, IF ANY, (AND, IF APPLICABLE, THE PARTICIPANT'S QUALIFIED NON-ELECTIVE CONTRIBUTION ACCOUNT OR ELECTIVE DEFERRAL ACCOUNT, OR BOTH).

(e) AGGREGATE LIMIT: FOR PURPOSES OF THIS SECTION, THE TERM "AGGREGATE LIMIT" SHALL MEAN THE SUM OF (i) 125% OF THE GREATER OF THE DEFERRAL PERCENTAGE OF THE NON-HIGHLY COMPENSATED EMPLOYEES FOR THE PLAN YEAR OR THE CONTRIBUTION PERCENTAGE OF THE NON-HIGHLY COMPENSATED EMPLOYEES UNDER THE PLAN SUBJECT TO INTERNAL REVENUE SERVICE CODE SECTION 401(m) FOR THE PLAN YEAR BEGINNING WITH OR WITHIN THE PLAN YEAR OF THE CASH OR DEFERRED ARRANGEMENT UNDER SECTION 401(k) AND (ii) THE LESSER OF 200% OF 2 PLUS THE LESSER OF SUCH DEFERRAL PERCENTAGE OR CONTRIBUTION PERCENTAGE. THE WORD "LESSER" SHALL BE SUBSTITUTED FOR "GREATER" IN (i), ABOVE, AND "GREATER" SHALL BE SUBSTITUTED FOR "LESSER" AFTER "2 PLUS THE" IN (ii) IF BY SUBSTITUTING SUCH TERMS WOULD RESULT IN A LARGER AGGREGATE LIMIT.

(5) SPECIAL RULE:

(a) IN THE EVENT THAT THIS PLAN SATISFIES THE REQUIREMENTS OF SECTIONS 401(m), 401(a)(4), OR 410(b) OF THE INTERNAL REVENUE SERVICE CODE ONLY IF AGGREGATED WITH ONE OR MORE OTHER PLANS, OR IF ONE OR MORE OTHER PLANS SATISFY THE REQUIREMENTS OF SUCH SECTIONS OF THE INTERNAL REVENUE SERVICE CODE ONLY IF AGGREGATED WITH THIS PLAN, THEN THIS SECTION SHALL BE APPLIED BY DETERMINING THE DEFERRAL PERCENTAGE TEST UNDER INTERNAL REVENUE SERVICE CODE SECTION 401(m) OF EMPLOYEES AS IF ALL SUCH PLANS WERE A SINGLE PLAN. FOR PLAN YEARS BEGINNING AFTER DECEMBER 31, 1989, PLANS MAY BE AGGREGATED IN ORDER TO SATISFY SECTION 401(m) OF THE INTERNAL REVENUE SERVICE CODE ONLY IF THEY HAVE THE SAME PLAN YEAR.

(6) HIGHLY COMPENSATED EMPLOYEE: FOR PURPOSES OF THIS SECTION, AN EMPLOYEE IS TREATED AS A "HIGHLY COMPENSATED EMPLOYEE" (HCE) IF:

(a) DURING THE PRECEDING YEAR, THE EMPLOYEE RECEIVED COMPENSATION IN EXCESS OF \$80,000, TO BE INDEXED FOR COST-OF-LIVING INCREASES; AND THE EMPLOYEE WAS ALSO IN THE TOP-PAID TWENTY PERCENT (20%) OF EMPLOYEES DURING THAT YEAR; OR

(b) THE EMPLOYEE WAS A FIVE PERCENT (5%) OWNER AT ANY TIME DURING THE YEAR OR THE PRECEDING YEAR.

(c) RULES OF CONSTRUCTION. THE DETERMINATION OF WHO IS A HIGHLY COMPENSATED EMPLOYEE, INCLUDING THE DETERMINATIONS OF THE NUMBER AND IDENTITY OF EMPLOYEES IN THE TOP-PAID GROUP, WILL BE MADE IN ACCORDANCE WITH SECTION 414(q) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE AND THE REGULATIONS THEREUNDER.

(D) Allocation of earnings, losses, charges and changes in fair market value of the net assets of the trust fund: Earnings and losses of the Trust Fund, third party and administrative charges and changes in the fair market value of the net assets of the Trust Fund shall be allocated under the direction of the Trustee AT LEAST quarterly to the Participants as of each regular evaluation date, in the ratio that the total dollar value of the interest of each such Participant in the Trust Fund bears to the aggregate dollar value of all of such interests of all such Participants.

(E) Participant's Accounts: The Board shall maintain, or cause the City or Trustee to maintain, an account for each Participant showing the dollar value of his current interest in the Trust Fund resulting from any contributions made by the City, which account shall be known as the City contributions account. Separate accounts to be known as Participants' contributions accounts shall also be kept, showing the contributions of each Participant and the earnings, losses and changes in fair market value thereof.

(F) Evaluation Dates: The regular evaluation dates of the Trust Fund shall be AT LEAST the last bank business day of each calendar quarter at which time the Board shall determine, or cause the Trustee to determine, the value of the net assets of the Trust Fund, i.e., the value of all of the assets of the Trust Fund at fair market value thereof, less all liabilities, both as known to the Trustee, including the value of the contribution of the City and the Participants for that quarter. If an event DESCRIBED IN SECTION 14-1-7(A) occurs between regular evaluation dates requiring a distribution of any part of a Participant's interest in the Trust Fund, the dollar value of such Participant's interest shall be adjusted to reflect the contributions made after the last evaluation date without any earnings, losses or other changes. The dollar value of his interest as so adjusted shall be the amount which shall be distributed to such Participant or his Beneficiary.

(G) Vesting of Participants' Interests:

(1) A Participant's interest in the contributions made by him and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. The interest of a Participant in the contributions made by the City, ~~his proportionate share of the contributions made by the State of Colorado,~~ and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times.

(2) Any interest in the Trust Fund shall be and become payable to a Participant or his Beneficiaries only as and to the extent provided in this chapter; and a Participant who dies having designated a Beneficiary shall cease to have any interest hereunder or in his separate trust account, and his Beneficiary shall become entitled to distribution thereof as herein provided by virtue of the terms of this chapter and not as a result of any transfer of said interest or account.

(H) Vesting Upon Termination of Plan or Discontinuance of Contributions: Notwithstanding the provisions of subsections ~~(F)~~ and ~~(G)~~ of this section, upon the termination of the Plan or upon the complete discontinuance of contributions under the Plan to the Trust Fund, the interests of all Participants shall become fully and completely vested and nonforfeitable for all purposes.

14-1-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY.

(A) Retirement Date:

(1) Normal Retirement: The normal retirement age for each Participant shall be sixty-five (65), and on the last day of the month in which his sixty-fifth birthday occurs, he shall be entitled to retire voluntarily. The City may, if it so desires, continue a Contributing Participant in active service after he has attained his normal retirement age with the consent of such Participant, and at any time thereafter the City may, at its option, retire such Participant or such Participant may VOLUNTARILY retire. Until actual retirement, a Contributing Participant shall continue to participate in the Plan.

(2) Early Retirement: Any Contributing Participant who has attained the age of fifty-five (55) may elect to retire earlier than the normal retirement age.

(B) Beneficiaries-:

(1) Designation of Beneficiaries: Each Participant shall have the right to designate a Beneficiary or Beneficiaries and one or more contingent Beneficiaries to receive his interest in the Trust Fund upon his death, such designation to be made in the form prescribed by and delivered to the Board. The Participant shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Board, and no notice to any Beneficiary nor consent by a Beneficiary shall be required to effect any such change or revocation.

(2) Determination of a Beneficiary when there is no designated Beneficiary: If a Participant shall fail to designate a Beneficiary before his death, or if all designated Beneficiaries, or contingent Beneficiaries should die, cease to exist, or disclaim their interests prior to distribution, the Board shall direct the Trustee to pay the Participant's entire interest in the Trust Fund to his surviving spouse, if any, or if none, then to the personal representative of his estate. If, however, no personal representative shall have been appointed, and actual notice thereof given to the Board within one hundred twenty (120) days after his death, the Board may direct the Trustee to pay the Participant's entire interest to such person or persons as may be entitled thereto under the laws of the State where such Participant resided at the date of his death, and in such case, the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

(3) Insurance Policies: The Beneficiary of any insurance or annuity contract on a Participant's life shall be determined and designated as provided in Section 14-1-8(A).

14-1-7: DISTRIBUTION FROM TRUST FUND

(A) When Interests Become Distributable and Effect Thereof: When a Participant dies, suffers total disability, retires or terminates his employment for any other reason, his interest shall thereupon become distributable. When a Participant's interest shall have become distributable, such Participant's interest shall remain a part of the Trust Fund until it is distributed.

(B) Information to be Furnished to Board: For the purpose of enabling the Board to determine the Participant's distributable interest in the Trust Fund, the Board shall be entitled to rely upon information provided to the Board by the City with respect to the date of the Participant's termination of employment and other such information as is needed and requested.

(C) Distribution of Interests:

(1) Distribution Upon Retirement or Total Disability: If a Participant retires after attaining normal or early retirement age or becomes totally disabled, his share of this plan shall be distributed commencing no later than sixty (60) days after either the end of the plan year in which he retires, or the required distribution commencement date set forth in subsection (D) (E) of this section, unless he elects to defer benefits pursuant to paragraph (5) of this subsection.

(2) Distribution Upon Death: If a Participant dies, his interest shall be distributed, commencing no later than sixty (60) days after either the end of the plan year in which the Participant's death occurs or the date the Trustee determines the identity of the Beneficiary, whichever is later, unless the Beneficiary elects to defer benefits pursuant to paragraph (5) of this subsection.

(3) Distribution Upon Other Termination of Employment: If a Contributing Participant terminates his employment for any reason other than retirement after attaining normal or early retirement age, total disability, or death, his share of this plan shall be distributed commencing no later than one hundred twenty (120) days from the end of the calendar quarter in which the employee terminated employment, unless he elects to defer benefits pursuant to paragraph (5) of this subsection.

(4) Insurance and Annuity Contracts: If there has been an investment in a life insurance or annuity contract for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in this Plan, obtain an absolute assignment of any such life insurance or annuity contract by informing the Board of his election. If said election is not exercised within thirty (30) days after the termination of employment, and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. ANY ANNUITY PURCHASED OR ACQUIRED BY THE TRUSTEE AND DISTRIBUTED TO A PARTICIPANT UNDER THE PROVISIONS OF THIS SUBSECTION (C) SHALL, WITH RESPECT TO SUCH PARTICIPANT, BE NONTRANSFERABLE AND THE ANNUITY CONTRACT WILL SO PROVIDE. AFTER DECEMBER 31, 1996, NO NEW LIFE INSURANCE CONTRACTS MAY BE ADOPTED AS PENSION INVESTMENTS.

(5) Election to Defer Benefits: A Participant may elect, with the consent of the Board, to have the commencement of distribution of his benefit deferred until a date later than the date specified in paragraph (1), (2) or (3) of this subsection, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (E) of this section. If a Participant makes an election described in this section, such election shall be made by submitting to the Board, before the date distribution would otherwise commence, a written request, signed by the Participant, which describes the benefit and the date on which the payment of such benefit shall commence if the deferral is approved by the Board. Any change to the terms of the deferral must be resubmitted in writing to the Board for approval UNLESS THE CHANGE IN TERMS IS A REQUEST FOR THE ROLLOVER OF FUNDS TO AN INDIVIDUAL RETIREMENT ACCOUNT OR A QUALIFIED PLAN. No election to defer OR CHANGE THE METHOD OF PAYMENT MAY BE MADE MORE THAN ONCE EVERY SIX MONTHS ~~benefits may be initiated or changed~~, once payments have commenced.

(6) Distribution of Contributions: Any other provision of this subsection (C) to the contrary notwithstanding, a Participant, in the event of the termination of his employment for any reason, shall be entitled to receive payment in one lump sum of his interest in the Trust Fund provided he makes written demand therefor upon the Board. A PARTICIPANT'S INTEREST THAT IS LESS THAN OR EQUAL TO THE MINIMUM DOLLAR AMOUNT AS PRESCRIBED BY THE INTERNAL REVENUE SERVICE MAY BE DISTRIBUTED WITHOUT RECEIVING WRITTEN APPLICATION FROM THE PARTICIPANT.

~~(7) Annuities Shall be Non Transferable: Any annuity purchased or acquired by the Trustee and distributed to a Participant under the provisions of this subsection (C) shall, with respect to such Participant, be nontransferable and the annuity contract will so provide.~~

(D) TRANSFERS BETWEEN QUALIFIED PLANS:

(1) IN GENERAL: THE TRUSTEE AND THE BOARD, UPON THEIR MUTUAL AGREEMENT, ARE AUTHORIZED TO RECEIVE AND ADD TO THE INTEREST OF ANY PARTICIPANT HIS VESTED INTEREST IN THE ASSETS HELD UNDER ANY OTHER QUALIFIED EMPLOYEE RETIREMENT PLAN OR INDIVIDUAL RETIREMENT ACCOUNT IF SUCH TRANSFER SATISFIES THE REQUIREMENTS UNDER LAW FOR TRANSFERS BETWEEN QUALIFIED PLANS OR ROLLOVER CONTRIBUTIONS.

IN SUCH EVENT, THE ASSETS SO RECEIVED SHALL BE FULLY VESTED AND SHALL BE HELD IN A SEPARATE ACCOUNT AND SHALL BE ADMINISTERED AND DISTRIBUTED PURSUANT TO THE PROVISIONS OF THIS PLAN AND TRUST. THE TRUSTEE IS ALSO AUTHORIZED, AT THE DIRECTION OF THE BOARD AND AT THE REQUEST OF THE PARTICIPANT, TO TRANSFER SUCH PARTICIPANT'S VESTED INTEREST WHICH HAS BECOME DISTRIBUTABLE UNDER SUBSECTION (A) HEREOF, DIRECTLY TO ANOTHER QUALIFIED PLAN OR AN INDIVIDUAL RETIREMENT ACCOUNT FOR THE BENEFIT OF SUCH PARTICIPANT, PROVIDED SUCH TRANSFER SATISFIES THE REQUIREMENTS UNDER LAW FOR SUCH TRANSFERS.

(2) FOR DISTRIBUTIONS MADE ON OR AFTER JANUARY 1, 1993: NOTWITHSTANDING ANY PROVISION OF THE PLAN TO THE CONTRARY THAT WOULD OTHERWISE LIMIT A DISTRIBUTEES ELECTION UNDER THIS SECTION, A DISTRIBUTEE MAY ELECT, AT THE TIME AND IN THE MANNER PRESCRIBED BY THE PLAN ADMINISTRATOR, TO HAVE ANY PORTION OF AN ELIGIBLE ROLLOVER DISTRIBUTION PAID DIRECTLY TO AN ELIGIBLE RETIREMENT PLAN SPECIFIED BY THE DISTRIBUTEE IN A DIRECT ROLLOVER.

~~(D)~~(E) Required Distribution Commencement Date: Distribution of a Participant's interest must begin no later than the April 1 of the calendar year following ~~the calendar year in which takes place~~ the later of the ~~date~~ YEAR the Participant attains the age of seventy and one half (70 1/2) or the YEAR ~~date~~ the Participant retires.

~~(E)~~(F) Spendthrift Provisions:

(1) General Rule: Except as otherwise provided in this Chapter, all amounts payable pursuant to this chapter by the Trustee shall be paid only to the person or persons entitled thereto, and all such payments shall be paid directly into the hands of such person or persons and not into the hands of any other person or corporation whatsoever, and such payments shall not be liable for the debts, contracts or engagements of any such person or persons, or taken in execution by attachment or garnishment or by any other legal or equitable proceedings; nor shall any such person or persons have any right to alienate, anticipate, commute, pledge, encumber or assign any such payments or the benefits, proceeds or avails thereof; provided, that nothing in this chapter shall affect, restrict or abridge any right of setoff or lien which the City may have by law, preclude a Participant from pledging as security a part or all of his interest in the Trust Fund to the Westminster Federal Credit Union, to the extent permitted by law, or affect, restrict or abridge any right of setoff, lien or collateral which such Credit Union or the City itself may have against such Participant's interest in the Trust Fund.

(2) Qualified Domestic Relations Order: Paragraph (1) of this Subsection shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant OR ALTERNATE PAYEE pursuant to a qualified domestic relations order ~~under Federal Internal Revenue Code Section 414(p)~~ SETTING FORTH THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE DIVISION OF BENEFITS PURSUANT TO COLORADO REVISED STATUTES, SECTION 14-10-113. A LUMP SUM ~~D~~distribution ~~may~~ WILL be made pursuant to such an order ~~at any time on or~~ WITHIN ONE HUNDRED AND TWENTY (120) DAYS after the date ON which ~~is ten (10) years before the Contributing Participant's normal retirement age.~~ A CERTIFIED COURT ORDER APPROVING SUCH AN AGREEMENT PERMITTING SUCH A DISTRIBUTION HAS BEEN SUBMITTED TO AND RECEIVED BY THE BOARD. The Board shall establish such reasonable procedures as are necessary to determine the ~~qualified status~~ COMPLIANCE of a domestic relations order WITH THE REQUIREMENTS OF COLORADO REVISED STATUTES, SECTION 14-10-113 and to administer distributions under such qualified orders. SUCH PROCEDURES MAY BE AT THE DISCRETION OF THE BOARD, INCLUDING STANDARDIZED FORMS TO BE USED FOR SUCH MARITAL AGREEMENTS AND ORDERS. A person who obtains a right to a benefit payable to a Participant pursuant to a qualified domestic relations order shall not have rights to vote in elections held pursuant to this Plan.

~~(F)~~(G) Manner of Distribution: A Participant's interest may be distributed by one or more of the following methods:

(1) Lump Sum Distribution: The Participant's interest may be paid to the Participant or his Beneficiary by the distribution of the total balance of his account in one lump sum. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the trustee within such time as the Board shall prescribe.

(2) Installments: The Participant's interest may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed twenty (20) years and not in installment frequency greater than monthly. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the trustee within such time as the Board shall prescribe. ~~Such elective and amount and frequency of distribution shall not be subject to change except by approval of the Board.~~ In no instance shall any changes in this type of distribution be allowed more than once ~~annually~~ EVERY SIX MONTHS.

~~(3) Annuities: The Participant's interest may be distributed in a single life annuity for the Participant, or an annuity for the life of a Participant with a survivor annuity for the life of his spouse, whether or not it is a qualified joint and survivor annuity, provided that the survivor annuity is no greater than the amount of the annuity payable during the joint lives of the Participant and his spouse. Any annuity purchased or acquired by the trustee and distributed to an employee under the provisions of this section or any other provision of this Chapter shall, with respect to such employee, be nontransferable and the annuity contract will so provide.~~

(3) Other Methods: Notwithstanding the foregoing provisions, any interest which has become distributable for any reason, may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

(4) If the Participant or Beneficiary fails to notify the Trustee or Board of the manner of distribution preferred by the date distribution would otherwise commence the Participant's interest shall be distributed in substantially equal monthly installments over twenty (20) years UNLESS THE PARTICIPANT'S INTEREST MEETS THE MINIMUM AUTOMATIC DISTRIBUTION ALLOWED BY INTERNAL REVENUE SERVICE REGULATIONS.

~~(G)~~(H) Limitation on Duration of Payments: No distribution shall be made over a period exceeding twenty (20) years. To the extent distribution is made after the Participant attains the age of seventy and one-half (70 1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and his Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

~~(H)~~(I) Withdrawals: A Participant may not at any time withdraw any part of his interest in the Trust Fund, except upon death, disability, retirement or termination of service as provided in this Chapter.

~~(I)~~(J) Special Rules for Distributions after the Participant's Death:

(1) Distributions Commencing Prior to Death: If distribution of a Participant's interest has commenced prior to the Participant's death in accordance with Subsection ~~(G)~~ (H) of this Section, the remaining interest of the Participant shall be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

(2) Distributions Commencing After Death: If distribution of a Participant's interest did not commence prior to his death, the entire interest of the Participant shall be distributed within five (5) years after the death of the Participant, provided that a distribution commencing within one (1) year after the Participant's death to or for the benefit of a designated Beneficiary over the longer of the life or the life expectancy of the designated Beneficiary will be treated as having been distributed within such five (5) year period. If the surviving spouse of the Participant is the designated Beneficiary, distribution is not required to commence until the date on which the Participant would have attained the age of seventy and one-half (70-1/2) and, if distribution had not commenced as of the date of death of such surviving spouse, the provisions of this paragraph shall be applied as if such spouse were the Participant.

(3) Beneficiaries: If a Participant should die after receiving some part, but not all, of his account, the remaining balance thereof shall be distributed to his Beneficiary in a manner determined pursuant to this subsection. If the Beneficiary of the Participant should die, cease to exist, or disclaim his interest prior to the completion of distribution of the Participant's interest, the remaining distribution shall be made to the contingent Beneficiary designated by the Participant, if any. If any contingent Beneficiary should die or disclaim his interest, distribution of the remainder of the Participant's interest shall be distributed in a manner determined pursuant to this subsection to the recipient determined pursuant to Section 14-1-6.

14-1-8: INSURANCE COMPANY CONTRACTS:

(A) Insurance or Annuity Contracts:

(1) If a Participant has, under the provisions of the prior City retirement plan, already purchased an ordinary life or retirement income insurance contract, the account of the Participant on whose life the contract is obtained shall be charged with the amount of all premiums thereon. The Trustee shall continue to have the right to receive each payment that may be due during the Participant's lifetime. Any death benefit shall be payable directly to the Beneficiary named in any such contract on the Participant's life and the Participant shall have the right, either directly or through the Trustee, to change the Beneficiary from time to time on any such contract and to elect settlement options thereunder for the benefit of the Beneficiary. The Trustee shall have the right to exercise all other options and privileges contained in the contract.

(2) A Participant may not purchase any individual insurance or annuity contract through the Plan.

(3) AFTER DECEMBER 31, 1996, THE CITY SHALL NOT PURCHASE ANY GROUP INSURANCE OR ANNUITY CONTRACT FOR PENSION PARTICIPANTS.

(B) Limitations on Life Insurance or Annuity Contracts for Participants' Benefit: All investments in life insurance or annuity contracts (other than "key man insurance") shall be subject to the following limitations:

(1) The aggregate premiums for such life insurance or annuity contracts, in the case of each Participant, shall be no more than thirty-five percent (35%) of the aggregate of the City's contributions allocated to him at any particular time;

(2) The Board shall direct the Trustee to convert the entire value of any such life insurance contract at or before the Participant's actual retirement to provide either cash value or periodic income, or the Board may direct the Trustee to distribute the insurance contract directly to the Participant at retirement;

(3) In the event payment of any premium would cause aggregate premiums to exceed the limitation set forth in paragraph (1) of this subsection, then such payment shall not be made, but, on the contrary, each insurance or annuity contract pertaining thereto shall be thereupon converted to a paid up contract, or the face amount of such contract shall be reduced to a face amount, the premium payments on which would not exceed the limitation prescribed in paragraph (1) of this subsection; and

(4) If the Board directs the Trustee to invest any portion of the Trust Fund in such insurance or annuity contracts, such investment shall be made in such a manner that the operation of this Chapter shall be fair and equitable (and nondiscriminatory) in its application to all Participants.

(C) Dividends: If dividends are paid on any contract issued by the Insurer, they shall, in the discretion of the Board, either be used to provide additional benefits under such contract or used and applied in reduction of the next premium due and payable thereon.

(D) Limitation of Participant's Rights in Insurance or Annuity Contracts: The fact that any contract is issued or based on the life of a Participant shall not vest any right, title or interest in such contract in such Participant except at the time or times and upon the terms and conditions especially set forth in this Chapter. Subject to the provisions of Section 14-1-8(A), the Trustee shall be the sole owner of all right title and interest in and to each such contract, but the Board shall nevertheless direct the Trustee as to the exercise of all rights, options and privileges in each such contract.

(E) Protective Provisions for Life Insurance Company: No life insurance company shall be deemed to be a party to the Plan nor shall it be responsible for the validity of the Plan. The certificate of the Trustee as to any matter may be relied upon by any life insurance company as conclusive evidence of any matters mentioned therein, and such company shall be fully protected in taking or permitting any action on the faith thereof and shall incur no liability or responsibility for so doing. No such company shall be required to examine the provisions of this Chapter or to question any act of the Trustee or the Board, nor shall such company be required to ascertain that any act of the Trustee or the Board is authorized by this Chapter.

14-1-9: POLICE PENSION BOARD:

(A) Appointment of Board:

(1) The Board shall consist of five (5) members: one (1) shall be the current City Finance Director; one (1) shall be appointed by the City Manager to serve at his pleasure; and three (3) shall be Contributing Participants, elected by a majority of the voting Participants. One of the three elected members must be an unclassified employee as defined in the Personnel Rules and Regulations. **THE TRUSTEE SHALL SERVE AS CHAIRPERSON OF THE BOARD.**

(2) The three (3) to be elected shall be elected for three (3) year staggered terms, with the term of one such member expiring in December of each year. The procedure to be followed in initially electing such members shall be established by the ~~Finance Director~~ TRUSTEE. After the first year of the election, procedures shall be established by the Board.

(B) Duties and Powers of the Board: The Board shall be charged with the administration of this Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution. The decisions of the Board shall be conclusive and binding on all parties.

(1) The Board shall, from time to time, direct the Trustee concerning the payments to be made out of the Trust Fund pursuant to this Chapter. The Board shall also have the power to direct the Trustee with respect to all investments and reinvestments of the Trust Fund, and shall have such other powers respecting the administration of the Trust Fund as may be conferred upon in this Chapter. The Board may employ for the Trust Fund an Investment Advisor and may rely on such Advisor's recommendations with respect to the investment of all or a portion of the Trust Fund. If the Board shall employ an Investment Advisor, it shall execute any letters or agreements necessary for the employment of such Advisor or it may direct the Trustee to execute any such letters or agreement. The fees of such Investment Advisor shall be paid from the Trust Fund as an expense of the Trust. The Trustee shall be fully protected from any action of such Investment Advisor and shall not be liable to any person or organization for any investments made by such Advisor or for any acts or omissions made upon the direction or recommendation of such Advisor.

(2) The Board shall have the power to direct the Trustee to enter into and execute contracts as investment vehicles for the Trust Funds. The Board shall have the further power to direct the Trustee to terminate any such contract at any time subject to the provisions of such contract.

(3) If the Trustee enters into a contract at the direction of the Board which permits the right of Participants to direct the investment of ~~his~~ THEIR interest in the Trust Fund in forms of investment offered, the Board shall provide the opportunity to Participants to make options as to investment. Unless the Board shall otherwise determine, any such investment direction may be changed by a Participant only at the end of a calendar quarter. Neither the Trustee nor the Board shall be held liable for any losses or changes to a Participant's interest that result from that Participant's choice of investment option.

(C) Organization and Operation of Board: The Board may adopt such RULES AND procedures as it deems desirable for the conduct of its affairs, appoint one of its own members chairman, and appoint a secretary or other agents, none of whom need be a member of the Board, but any of whom may be, but need not be, an officer or employee of the City. It may delegate to any agent such duties and powers, both ministerial and discretionary, as it deems appropriate, excepting only that all matters involving investment of funds, interpretation of the Plan and settlement of disputes shall be determined by the Board. Any determination of the Board may be made by a majority of the Board at a meeting thereof, or without a meeting by a resolution or memorandum signed by all members, and shall be final and conclusive on the City, the Trustee, all Participants and Beneficiaries claiming any rights under this Chapter, and as to all third parties dealing with the Board or with the Trustee. All notices, directions, information and other communications from the Board to the Trustee shall be in writing.

(D) Matters Affecting Board Members: In any matter affecting any member of the Board in his individual capacity as a Participant under this Chapter, separate and apart from his status as a member of the group of Participants, such interested member shall have no authority or vote in the determination of such matter as a member of the Board, but the Board shall determine such matter as if said interested member were not a member of the Board; provided, however, that this shall not be deemed to take from said interested member any of his rights as a Participant. In the event that the remaining members of the Board should be unable to agree on any matter so affecting an interested member because of an equal division of voting, the matter shall be deemed to have been defeated.

(E) Compensation and Expenses of Board: The members of the Board shall serve without compensation in addition to their regular City compensation. All members shall be reimbursed by the City for any necessary expenditures incurred in the discharge of their duties as members of said Board. Such reimbursement, and the compensation of all agents, counsel or other persons retained or employed by the Board, shall be fixed by the Board and shall be paid from the Trust Fund or, in the discretion of the City Manager, by the City.

(F) Records of the Board: The Board shall keep a record of all of its proceedings and shall keep or cause to be kept all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Chapter and properly to reflect the affairs thereof, and to determine the amount of vested and/or forfeitable interests of the respective Participants in the Trust Fund, and the amount of all benefits. As a part thereof, it shall maintain or cause to be maintained separate accounts for each Participant as provided for in Section 14-1-5(A)(3). Any person dealing with the Board may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the secretary of the Board or by a majority of the members of the Board as evidence of an action taken or resolution adopted by the Board.

(G) Immunity from Liability: No bond or other security shall be required of any member of the Board except as may be otherwise required by law. No member of the Board shall be liable or responsible to any person or party for any matter or thing whatsoever, except only for his own gross negligence or willful misconduct.

(H) Resignation and Removal of Members; Appointment of Successors:

(1) Any member of the Board may resign at any time by giving written notice to the other members and to the City Manager, effective as therein stated, otherwise upon receipt of such notice.

(2) Whether or not he remains a Participant, no Board member may remain on the Board if he terminates employment with the City for whatever reason.

(3) No appointed Board member may remain on the Board if he ceases to hold one of the positions designated.

(4) Upon the death, resignation or removal of any elected Board member, a successor to complete his term shall be elected within thirty (30) days in the manner set forth in subsection (A) of this section.

14-1-10: POWERS AND DUTIES OF THE TRUSTEE:

(A) Investment of Trust Fund:

(1) It shall be the duty of the Trustee to hold the funds from time to time received from the City and the Participants, and subject to the direction of the Board, to manage, invest and reinvest the Trust Fund and the income therefrom pursuant to the provisions of this Chapter, without distinction between principal and income. The Trustee shall be responsible only for such sums as shall actually be received. The Trustee shall have no duty to collect any sums from the City or the Participants.

(2) The Trustee shall have the power to invest and/or reinvest any and all money or property of any description at any time held by it and constituting a part of the Trust Fund without previous application to, or subsequent ratification of, the City Council, the City Manager, any court, tribunal or commission, or any Federal or State governmental agency, in accordance with the following powers:

(a) The Trustee may invest in real property and all interests therein, in bonds, notes, debentures, mortgages, commercial paper, preferred stocks, common stocks, or other securities, rights, obligations or property, real or personal, including shares or certificates of participation issued by regulated investment companies or regulated investment trusts, shares or units of participation in qualified common trust funds or qualified pooled funds, and in life insurance and annuity contracts. In making investments or reinvestments, the Trustee shall not be limited by the proportion which the investments to be made, either alone or with any property of the same or similar character then held or acquired, may bear to the entire amount of the Trust Fund, and the Trustee shall not be bound as to the character of any investment provided by any constitutional provision, statute, rule of court or custom governing the investment of trust funds, providing only that the Trustee shall exercise the judgment and care, under the circumstances then prevailing, which people of prudence, discretion and intelligence exercise in the management of their own affairs.

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

(c) If directed by the Board, the Trustee shall enter into contracts as investment vehicles for the plan, which contracts shall then become a part of this plan. The Trustee shall then be authorized to sign such other documents and take such other actions as might be necessary or appropriate to carry out the terms of such contracts. The Trustee may enter into such contracts as Trustee of this Plan alone, or as Trustee of this Plan and as Trustee of the City's General Employee AND/OR FIRE Pension Plan in which case the funds of the two OR MORE plans may be co-mingled for investment purposes.

(d) To the extent the Trustee is directed by the Board to make a particular investment, the Trustee shall be held harmless from any loss or other liability arising therefrom.

(B) Administrative Powers of the Trustee: The Trustee shall have all powers necessary or advisable to carry out the provisions of this Plan and all inherent, implied and statutory powers now or hereafter provided by law, including specifically the power to do any of the following:

(1) To cause any securities or other property to be registered and held in its name as Trustee or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer.

(2) To sell, grant option to sell, exchange, pledge, encumber, mortgage, deed in trust or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best, and it may retain, hold, maintain or continue any securities or investments which it may hold as part of the Trust Fund for such length of time as it may deem advisable.

(3) To abandon, compromise, contest and arbitrate claims on demands; to institute, compromise and defend actions at law (but without obligation to do so), all at the risk and expense of the Trust Fund.

(4) To borrow money for this Trust, with the approval of the Board, upon such terms and conditions as the Trustee shall deem advisable, and to secure the repayment thereof by the mortgage or pledge of any asset of the Trust Fund.

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

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

(C) Immunity of Trustee: No bond or other security shall be required of the Trustee or any successor trustee except as otherwise provided by law. The Trustee shall not be liable for any mistake of judgment or other action taken in good faith or for any loss to the Trust Fund unless such loss results from its gross negligence, willful misconduct or bad faith.

(D) Advice of Board or Counsel:

(1) If, at any time, the Trustee is in doubt concerning any action which it should take in connection with the administration of the Trust, it may request the Board to advise it with respect thereto and shall be protected in relying upon the advice or direction of the Board.

(2) The Trustee may also consult with legal counsel, who may be counsel for the City, or Trustee's own counsel, with respect to the meaning or construction of this Chapter or Trustee's obligations or duties, and shall be fully protected from any responsibility with respect to any action taken or omitted by them in good faith pursuant to the advice of such counsel.

(E) Taxes, Expenses and Fees of the Trustee: The Trustee shall charge against and pay from the Trust Fund any taxes which may be imposed upon the Trust Fund or the income thereof, or upon or with respect to the interest of any person therein which the Trustee is required to pay.

(1) The reasonable expenses of the Trustee incurred in the administration of the Plan, including the fees of any corporate co-trustee which might be appointed as may be mutually agreed upon from time to time by the Trustee and the Board, and attorney's fees incurred by the Trustee, shall be chargeable to and paid by the Trust Fund, provided that the City may pay all or part of such expenses and fees in the discretion of the City Manager.

(2) All expenses incurred in the preparation and adoption of the Plan shall be paid by the City.

(F) Records and Accounts of the Trustee: The Trustee shall keep all such records and accounts which may be necessary in the administration and conduct of this Chapter. The Trustee's records and accounts shall be open to inspection by the City, the Board, and the Participant of his own accounts, during business hours.

(1) All income, profits, recoveries, contributions, forfeitures, and any and all moneys, securities and properties of any kind at any time received or held by the Trustee shall be held for investment purposes as a commingled Trust Fund. Separate accounts or records may be maintained for operational and accounting purposes, but no such account or record shall be considered as segregating any funds or property from any other funds or property contained in the commingled fund, except as otherwise provided in this Chapter.

(2) After the close of each year of the Trust, the Trustee shall render to the City and the Board an accounting of the Trust Fund for such year. If no objections to any such accounting are filed within a period of sixty (60) days after it has been delivered to the City and the Board, it shall be deemed to have been approved and shall constitute a full and complete discharge and release to the Trustees from the City and the Board and all other persons having or claiming any interest in the Trust Fund.

(G) Resignation and Removal of Trustee: The City, by action of the City Manager, may in its discretion appoint an additional non-voting trustee to act as co-trustee with the City Finance Director, which may, but need not, be a bank or trust company organized under the laws of Colorado or the United States authorized by law to administer trusts and maintaining and operating a full-time trust department.

(1) Any Trustee other than the City Finance Director may resign its or his duties as Trustee at any time by filing with the City Manager its or his written resignation. No such resignation shall take effect until thirty (30) days from the date thereof, provided that if a successor Trustee shall have been appointed prior to the expiration of said period, the resignation shall be effective immediately.

(2) Any Trustee other than the City Finance Director may be removed by the City, by action of the City Manager, at any time by giving thirty (30) days notice in writing to such Trustee. Such removal shall be effected by delivering to such Trustee written notice of his removal, executed by the City Manager.

(3) All the provisions set forth in this Chapter with respect to the Trustee shall relate to all successor Trustees and if more than one Trustee is then acting, reference to the term "Trustee" shall mean "Trustees".

(4) In any event any corporate co-trustee at any time acting hereunder shall be merged, or consolidated with, or shall sell or transfer substantially all of its assets and business to another corporation, whether State or Federal or shall be in any manner reorganized or reincorporated, then the resulting or acquiring corporation shall thereupon be substituted ipso facto for such corporate Trustee hereunder without the execution of any instrument and without any action upon the part of the City, any Participant or Beneficiary of any deceased Participant, or any other person having or claiming to have an interest in the Trust Fund or under the Plan.

14-1-11: CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN:

(A) Continuance of the Plan not a Contractual Obligation of the City: It is the expectation of the City that it will continue this Plan indefinitely, but the continuance of the Plan is not assumed as a contractual obligation by the City, and the right is reserved to the City by action of its City Council to discontinue this Plan at any time. The discontinuance of this Plan by the City shall, in no event, have the effect of revesting any part of the Trust Fund in the City.

(B) Termination of Plan: This Plan shall continue in full force and effect until terminated ~~and~~ OR discontinued by the City by action of its City Council. Notice of such termination shall be given to the Trustee by an instrument in writing executed by the City Manager pursuant to the action of its City Council.

(C) Distribution of Trust Fund on Termination of Plan: If the Plan shall, at any time, be terminated by the terms of this Section, the Trustee shall immediately convert the entire Trust Fund, other than insurance and annuity contracts, to cash. The value of the interest of each respective Participant or Beneficiary in the Trust Fund shall be vested in its entirety as of the date of the termination of the Plan. The Trustee shall, as soon as possible, distribute to each Participant or Beneficiary outright his entire interest in the Trust Fund.

(D) Amendments to Plan:

(1) The City, by action of its City Council, may at any time amend this Chapter; provided, however, that no such amendment shall:

(a) Divert the Trust Fund to purposes other than for the exclusive benefit of the Participants and their Beneficiaries;

(b) Decrease any Participant's share of this plan;

(c) Discriminate in favor of employees who are officers, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees; or

~~(d) Until no longer required by State Statute, become effective until approved by at least 65% of the Participants of the Plan.~~ FAIL TO COMPLY WITH STATE STATUTES FOR VOTING FOR POLICE PENSION PLANS.

(2) Notwithstanding anything herein to the contrary, however, this Chapter may be amended, if necessary, WITHOUT REQUIRING THE APPROVAL OF THE PLAN PARTICIPANTS to conform to the provisions and requirements of the Federal Internal Revenue Code or any amendments thereto, and no such amendment shall be considered prejudicial to the interest of any Participant or Beneficiary hereunder.

14-1-12: MISCELLANEOUS:

~~(A) Transfers Between Qualified Plans: The Trustee, at the direction of the Board, is authorized to receive and add to any Participant's share of this plan the amount of his vested interest in the assets held under any other qualified employee retirement plan or individual retirement account if such transfer satisfies the requirements under law for transfers between qualified plans or rollover contributions. In such event the assets so received shall be fully vested and shall be held in such Participant's account and shall be administered and distributed pursuant to the provisions of this Chapter. The Trustee is also authorized to transfer such Participant's vested share of this plan which has become distributable under Section 14-1-7, directly to another qualified plan or an individual retirement account, provided such transfer satisfies the requirements under law for such transfers.~~

~~(B)~~(A) Benefits to be Provided Solely from the Trust Fund: All benefits payable under this Plan shall be paid or provided for solely from the Trust Fund, and the City assumes no liability or responsibility therefore.

~~(C)~~(B) Notices from Participants to be Filed with Board: Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each Participant shall be evidenced by a written notice therefore signed by the Participant on a form furnished by the Board for such purpose and filed with the Board, which shall not be effective until received by the Board.

~~(D)~~(C) Text to Control: The headings of sections and subsections are included solely for convenience or reference. If there be any conflict between such headings and the text of this Chapter, the text shall control.

~~(E)~~(D) Law Governing: This Plan shall be construed under the laws of the State of Colorado and the Trustee shall be liable to account only in the courts of Colorado. All contributions received by the Trustee pursuant to this Chapter shall be deemed to have been received in Colorado.

~~(F)~~(E) Severability: In the event any provision of this Chapter shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions.

On the contrary, such remaining provisions shall be fully severable and this Chapter shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

~~(G)~~(F) Plan for Exclusive Benefit of Participants; Reversion Prohibited: This Plan has been entered into for the exclusive benefit of the Participants and their Beneficiaries. Under no circumstances shall any funds contribute to or held by the Trustee hereunder at any time revert to or be used by or enjoyed by the City nor shall any such funds or assets at any time be used other than for the exclusive benefit of the Participants or their Beneficiaries.

Section 2. Title XIV, Chapter 2 of the Westminster Municipal Code is hereby repealed and reenacted as follows:

14-2-1: NAME AND PURPOSE OF PLAN; HISTORY:

(A) The City OF WESTMINSTER does hereby establish its ~~City of Westminster~~ General Employee Pension Plan, which is a qualified deferred money purchase pension plan. The Plan is created for the exclusive benefit of the City's eligible employees who qualify as participants and their Beneficiaries. The Plan is intended to qualify under Section 401(a) of the Federal Internal Revenue Code and the Trust created pursuant to the Plan is intended to be exempt under Section 501(a) of such Code and all provisions of this Plan shall be construed in accordance with this intention. Since this is a governmental plan, it is not the intention of the City to have the Plan comply with the provisions of the Federal Internal Revenue Code after the enactment of the Employee Retirement Income Security Act of 1984, except to the extent that changes to the Code apply to governmental plans.

(B) On October 1, 1977, the City merged the assets of the Police Pension Fund and the Firefighter's Pension Fund into the restated Employee's Pension Plan. Effective January 6, 1986, the City withdrew all employees who were not police officers or firefighters from the Employee's Pension Plan by a transfer of their aggregate interest into the Plan created in this chapter. The original plan, formerly known as the Employee's Pension Plan and Trust Agreement, was then renamed the Police and Fire Pension Plan.

(C) PRIOR COVERAGE UNDER OTHER CITY FUNDED PENSION PLANS: ANY EMPLOYEE WHO WAS FORMERLY A PARTICIPANT IN THE EMPLOYEE'S PENSION PLAN AND TRUST AGREEMENT OR THE POLICE AND FIRE PENSION PLAN SHALL AUTOMATICALLY HAVE HIS INTEREST IN SUCH PLAN, WHETHER HELD BY INVESTMENT AGENTS, THE TRUSTEE, OR THE CITY, TRANSFERRED TO THIS PLAN UPON BECOMING ELIGIBLE TO BE A PARTICIPANT IN THIS PLAN. UPON TRANSFER OF THE EMPLOYEE'S INTEREST WITHOUT A BREAK IN MUNICIPAL SERVICE THE EMPLOYEE HAS THE SAME PARTICIPANT STATUS AS THE EMPLOYEE HAS UNDER THE OTHER PLAN.

14-2-2: DEFINITIONS: When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural:

(A) "BENEFICIARY": Any person OR ENTITY who, pursuant to Section 14-2-6(B) becomes entitled to receive all or any part of a Participant's interest upon the Participant's death.

(B) "BOARD": The General Employee Pension Board established in this Chapter.

(C) "CITY": The City of Westminster, Colorado.

(D) "COMPENSATION": The base pay of a Participant for services rendered to the City, including longevity pay, but excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to this Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan OR A SALARY REDUCTION PLAN OR PRE-TAX MEDICAL PLAN. COMPENSATION FOR PART-TIME EMPLOYEES IS THE PAY EARNED FOR THE AMOUNT OF FULL TIME EQUIVALENTS (FTE'S) BUDGETED FOR THEIR POSITIONS.

(E) "CONTRIBUTING PARTICIPANT": Any employee who is making contributions to this Plan whether or not the City is contributing.

(F) "DIRECT ROLLOVER": A DIRECT ROLLOVER IS A PAYMENT BY THE PLAN TO THE ELIGIBLE RETIREMENT PLAN SPECIFIED BY THE DISTRIBUTE.

(G) "DISTRIBUTE": A DISTRIBUTE INCLUDES AN EMPLOYEE OR FORMER EMPLOYEE. IN ADDITION, THE EMPLOYEE'S OR FORMER EMPLOYEE'S SURVIVING SPOUSE AND THE EMPLOYEE'S OR FORMER EMPLOYEE'S SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE PAYEE UNDER A QUALIFIED DOMESTIC RELATIONS ORDER, AS DEFINED IN SECTION 414(p) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE, ARE DISTRIBUTES WITH REGARD TO THE INTEREST OF THE SPOUSE OR FORMER SPOUSE.

(H) "ELIGIBLE RETIREMENT PLAN": AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT DESCRIBED IN SECTION 408(a) OF THE FEDERAL INTERNAL REVENUE SERVICE (IRS) CODE, AN INDIVIDUAL RETIREMENT ANNUITY DESCRIBED IN SECTION 408(b) OF THE IRS CODE, AN ANNUITY PLAN DESCRIBED IN SECTION 403(a) OF THE IRS CODE, OR A QUALIFIED TRUST DESCRIBED IN SECTION 401(a) OF THE IRS CODE, THAT ACCEPTS THE DISTRIBUTE'S ELIGIBLE ROLLOVER DISTRIBUTION. HOWEVER, IN THE CASE OF AN ELIGIBLE ROLLOVER DISTRIBUTION TO THE SURVIVING SPOUSE, AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT OR INDIVIDUAL RETIREMENT ANNUITY.

(I) "ELIGIBLE ROLLOVER DISTRIBUTION": AN ELIGIBLE ROLLOVER DISTRIBUTION IS ANY DISTRIBUTION OF ALL OR ANY PORTION OF THE BALANCE TO THE CREDIT OF THE DISTRIBUTE, EXCEPT THAT AN ELIGIBLE ROLLOVER DISTRIBUTION DOES NOT INCLUDE: ANY DISTRIBUTION THAT IS ONE OF A SERIES OF SUBSTANTIALLY EQUAL PERIOD PAYMENTS (NOT LESS FREQUENTLY THAN ANNUALLY) MADE FOR THE LIFE (OR LIFE EXPECTANCY) OF THE DISTRIBUTE OR THE JOINT LIVES (OR JOINT LIFE EXPECTANCIES) OF THE DISTRIBUTE AND THE DISTRIBUTE'S DESIGNATED BENEFICIARY, OR FOR A SPECIFIED PERIOD OF TEN YEARS OR MORE; ANY DISTRIBUTION TO THE EXTENT SUCH DISTRIBUTION IS REQUIRED UNDER SECTION 401(a)(9) OF THE INTERNAL REVENUE SERVICE CODE; AND THE PORTION OF ANY DISTRIBUTION THAT IS NOT INCLUDIBLE IN GROSS INCOME (DETERMINED WITHOUT REGARD TO THE EXCLUSION FOR NET UNREALIZED APPRECIATION WITH RESPECT TO EMPLOYER SECURITIES).

(F)(J) "EMPLOYEE": Any person who fills an authorized position that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding firefighters and police officers as defined in this Chapter, temporary employees, elected officials, independent contractors, volunteers and part-time employees scheduled to work less than twenty (20) hours in a seven day cycle.

(G)(K) "FIREFIGHTER": Any person who is employed in the Fire Department except clerical employees and volunteers.

(H)(L) "FULL PARTICIPANT": Any employee who is qualified to receive employer contributions under this Plan.

~~(I)~~(M) "INACTIVE PARTICIPANT": Any person who has been a contributing participant to this plan or a preceding pension plan of the City who is no longer an employee but who has not received full distribution of ~~his full share~~ ALL RESPECTIVE INTEREST in the plan.

~~(J)~~(N) "INTEREST": The amount of a participant's share in the trust fund including City contributions, employee contributions and earnings.

~~(K)~~(O) "PARTICIPANT": Any contributing participant or inactive participant.

~~(L)~~(P) "THE PLAN": The Pension Plan established in this chapter and all subsequent amendments thereto.

~~(M)~~(Q) "PLAN YEAR": The City's fiscal year which is the calendar year, which shall be the fiscal year of the trust fund established pursuant to this Plan.

~~(N)~~(R) "POLICE OFFICER": Any person who is employed by the City as a recognized law enforcement officer and who has sworn to enforce the ordinances of the City; the laws of the State of Colorado and the United States of America. The term Police Officer shall not include dispatchers, clerical employees, animal control personnel, civilian administrative personnel, reserve officers, code enforcement personnel and any other employees who do not regularly enforce the traffic and criminal codes and ordinances of the City and State.

~~(O)~~(S) "TERMINATION OF EMPLOYMENT": The cessation of a person's status as an "Employee" as defined in this section. If the person, upon termination of employment, becomes eligible to participate in either the Police or Fire Pension Plan, without a break in municipal service, the employee's interest shall be transferred to that plan and the person shall retain his participant status. Termination due to dismissal shall become effective on the date after the employee's grievance rights, if any, have lapsed or, if a grievance is filed, on the date of the final decision by the City.

~~(P)~~(T) "TOTAL DISABILITY": A disability which permanently renders a participant unable to perform satisfactorily the usual duties of his employment with the City as determined by the Board and which results in his termination of employment with the City.

~~(Q)~~(U) "TRUST FUND": The assets of the trust established pursuant to this Plan out of which the benefits under this Plan shall be paid including all income of whatever nature earned by the fund and all increases in fair market value.

~~(R)~~(V) "TRUSTEE": The Trustee of the trust fund established pursuant to this Plan who shall always be the current acting Finance Director of the City of Westminster and any duly qualified corporate co-trustee appointed pursuant to Section 14-2-10 and any duly appointed and qualified successor trustees.

14-2-3: PARTICIPATION OF EMPLOYEES:

(A) Participants.

(1) Contributing Participant: Each employee hired on or after January 6, 1986 shall become a Contributing Participant in the Plan on the date the employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). Each person who is an employee on January 6, 1986 but who has not yet completed twenty-two (22) months of service with the City may elect to become a Contributing Participant on January 6, 1986, or upon the attainment of the age of eighteen (18), whichever is later. The election shall be made on a form prescribed by the Board and must be signed by the employee and submitted to the Trustee by January 6, 1986, or such later date as prescribed by the Board. Any employee who is not a Contributing Participant on the date he becomes eligible to be a Full Participant will begin making mandatory contributions on the same date as employer contributions begin. By accepting employment with the City, each employee shall be deemed to have consented to the terms and provisions of this Plan.

(2) Full Participant: No matter when an employee becomes a Contributing Participant, each employee shall become a Full Participant, eligible to receive employer contributions on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18).

(3) Last Pay Period of Contribution: The City shall not make any contribution for the account of a Full Participant for the pay period in which his employment shall terminate for any reason unless such Participant is employed on the last date of such pay period. No Participant may make contributions to the Plan, other than changes in the valuation of OR earnings on his undistributed interest in the Plan, after termination of employment or loss of status as an employee as defined in this Chapter.

(4) Determination of Service: For the purpose of determining eligibility to become a Full Participant, service shall be determined in accordance with the following rules:

(a) An employee who completes twenty-two (22) months of continuous municipal service as defined in Chapter 24 of Title I of this Code, shall be eligible as a Full Participant on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) calendar months of service with the City AND HAS ATTAINED THE AGE OF EIGHTEEN (18), provided such employee is still employed on such date and has not severed his employment (as provided in subsection (d) of this section) during such twenty-two (22) month period.

(b) A leave of absence without pay other than for military service shall be considered a break in continuous municipal service unless municipal service is extended pursuant to Section 1-24-10(v) of this Code. Neither the City nor the employee shall be required to contribute to the participant's account during a leave of absence without pay.

(c) Any employee who has entered or enters the armed forces of the United States shall be presumed to be on a leave of absence, regardless of the length of such service, and such leave of absence shall not be considered as a break in continuity of service or a termination of employment, provided he returns to the employ of the City within ninety (90) days of the date on which he shall have the right to release from military service or from the hospital in the event of service-caused disability, without intervening employment elsewhere.

(d) Dismissal or voluntary termination of employment shall be considered as a break in continuity of service; subsequent re-employment shall be deemed to be new employment, and the employee will be subject to the eligibility requirements as if such employee were a new employee, whether or not such employee was formerly a Full Participant. However, if the City reinstates an employee subsequent to dismissal, this paragraph shall not apply.

(e) The provisions of this paragraph (4) shall be applied to all employees and Participants in a like manner.

(B) Board to Determine Participants.

(1) The City shall deliver to the Board in writing such information from the City's records with respect to employees and their compensation as the Board may require in order to determine the identity and interests of the Participants, and otherwise to perform its duties hereunder.

(2) Any information given by the City to the Board pursuant to subsection (B) of this section shall, for all purposes of this Chapter, be binding on all parties in interest; provided that whenever any employee proves to the satisfaction of the City that his period of employment or his compensation as so given is incorrect, the City shall correct such information and so advise the Board.

(3) The determination of the Board as to the identity of the respective Participants and as to their respective interests shall be binding upon the City and Trustee, all employees, all Participants and all Beneficiaries.

~~(C) Prior Coverage Under Other City Funded Pension Plans: Any employee as defined in this Chapter who was formerly a participant in the Employee's Pension Plan and Trust Agreement, Police and Fire Pension Plan, Police Pension Plan or Fire Pension Plan, shall automatically have his interest in such plan, whether held by investment agents, the Trustee, or the City, transferred to this plan upon becoming eligible to be a participant in this plan. Upon transfer of the employee's interest without a break in municipal service the employee has the same participant status as the employee has under the other plan.~~

14-2-4: CONTRIBUTIONS BY THE CITY AND PARTICIPANTS

(A) Contributions by the City.

(1) Determination of Contribution by the City: ON OR AFTER JANUARY 6, 1986, each pay period the City shall contribute to the credit of each Full Participant's account, ten and one-quarter percent (10.25%) of each Full Participant's compensation for that pay period, provided that during any period in which the City is required to make contributions on behalf of Participants under the Federal Insurance Contributions Act or the Social Security Act, the contribution to this Plan for each Participant shall be offset by the amount of the old age survivors and disability insurance ("OASDI") portion of the Social Security taxes paid by the City for such Participant. This offset shall not exceed the City contribution.

(2) Time and Method of Payment of Contribution by the City: The contributions of the City shall be made every pay period and shall be credited to the Plan on each pay day.

(B) Contributions by Contributing Participants.

(1) Mandatory Employee Contributions:

(a) Each Contributing Participant must contribute to the Trust Fund a percentage of his compensation for each pay period as follows: for the pay periods commencing January ~~5, 1987, and ending December 20, 1987, five percent (5%); thereafter six percent (6%)~~ 1, 1997, EIGHT PERCENT (8%) AND FOR THE PAY PERIODS COMMENCING JANUARY 1, 1998, AND THEREAFTER, TEN PERCENT (10%) ~~provided that~~ OR THE PERCENTAGE AT LEAST EQUAL TO THE OASDI TAX RATE. During any period in which the contributing participant is required to make contributions under the Federal Insurance Contributions Act or the Social Security Act, the mandatory contribution to this plan by each contributing participant shall be offset by the OASDI taxes paid by the participant, except that no offset for OASDI taxes shall reduce the mandatory contribution to this plan for a participant to less than two percent (2%) of that contributing participant's compensation for that pay period.

(b) For the pay period commencing December 21, 1987, and thereafter, the contribution provided by this paragraph shall be picked up and paid by the City, as employer, as provided in Section 414(h) of the Internal Revenue Service Code and the Participant's gross income shall be reduced by the amount of the contribution picked up by the City.

(c) Each Participant, as a condition to his employment, shall be deemed to have authorized the City to reduce the participant's compensation by such amount from each of his paychecks and to transmit such amount directly to the Trustee, according to the provisions of this chapter.

(d) Separate accounts shall be maintained for the mandatory contributions of the employees prior to the pick up of such contributions by the City and the contributions picked up by the City.

(2) Voluntary Contributions:

(a) Subject to the provisions of Section 14-2-5(B) each Contributing Participant may elect to contribute to the Trust Fund an amount not to exceed ten percent (10%) of his compensation for each pay period in addition to the mandatory contributions required in paragraph (1) of this subsection.

(b) The amount, if any, which a Contributing Participant voluntarily contributes to the Trust Fund may vary from year to year and may be contributed through payroll deductions or in one lump sum, annually, or both, provided that a lump sum contribution for any year must be paid directly by the Contributing Participant instead of through a payroll deduction. ~~Once a payroll deduction is authorized, it may not be revised more often than once during any six month period.~~ A CONTRIBUTING PARTICIPANT MAY HAVE THE OPTION OF INCREASING, DECREASING, OR TERMINATING HIS VOLUNTARY CONTRIBUTION AT ANY TIME. No Participant shall have any obligation to make any voluntary contribution.

(c) For purposes of this Section, amounts representing the Participant's interest in another qualified pension plan transferred in accordance with Section 14-2-12(A) of this Code, shall not be considered voluntary contributions.

(3) Payment of Participant Contributions: The contributions of the employee shall be withheld every pay period and shall be credited to the plan on each payday.

(C) RETIREMENT MEDICAL SAVINGS ACCOUNT:

(1) SUBJECT TO APPROVAL BY THE INTERNAL REVENUE SERVICE, EACH PARTICIPANT SHALL HAVE THE OPTION OF DESIGNATING UP TO 25% OF HIS MANDATORY AND CITY CONTRIBUTION TO BE USED FOR FUTURE MEDICAL EXPENSES AS PROVIDED FOR IN SECTION 401(h) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE. CONTRIBUTIONS TO THE MEDICAL SAVINGS ACCOUNT WILL NOT BE TAXED AT RETIREMENT NOR UPON USE FOR MEDICAL PURPOSES DURING RETIREMENT. THE RETIREMENT MEDICAL SAVINGS ACCOUNTS WILL BE SUBJECT TO THE RULES AND REQUIREMENTS ISSUED BY THE CITY MANAGER.

(2) CONTRIBUTIONS DESIGNATED FOR FUTURE HEALTH COSTS UNDER SECTION 401(h) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE AS DESCRIBED IN SUBSECTION C(1) OF THIS SECTION SHALL BE MAINTAINED IN SEPARATE ACCOUNTS.

~~(C)~~(D) City's Obligations.

(1) The adoption and continuance of the Plan as set forth in this Chapter shall not be deemed to constitute a contract between the City and any employee or Participant, nor to be consideration for, or an inducement or condition of, the employment of any person. Nothing in this chapter shall be deemed to give any employee or contributing Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any employee or contributing Participant at any time, nor shall it be deemed to give the City the right to require the employee or contributing Participant to remain in its employ, nor shall it interfere with the right of any employee or contributing Participant to terminate his employment at any time. (A1727)

(2) The City shall not incur any liability whatsoever to the Trust Fund, any Participant or his Beneficiaries, the Trustee, or any other person, for anything done or omitted by the Trustee, or for the loss or depreciation, in whole or in part, of the Trust Fund.

14-2-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS:

(A) Allocation of Employer Contributions: The contributions made by the employer to the credit of the account of each Full Participant shall be allocated to the account of each such Participant as of the end of each pay period. Any allocation shall be subject to the limitations set forth in subsection (B) of this section.

(B) Limitations on Allocations:

(1) General Rule: In no event may a Participant receive an allocation for any year which, when combined with his allocation under any other defined contribution plan established by the City, exceeds the lesser of twenty-five percent (25%) of his compensation for such year or \$30,000, provided such figure shall change to conform with any adjustment for changes in the cost of living after the enactment of the Tax Equity and Fiscal Responsibility Act of 1982, as provided by law or regulation. For the purpose of applying the foregoing limitation, the limitation year shall be the plan year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations: For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and non-deductible contributions made by the Participant, provided that for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of his compensation for the year, or one-half (1/2) of the non-deductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. EXCEPT THAT, FOR THE PLAN YEARS BEGINNING ON OR AFTER JANUARY 1, 1994, ALLOCATIONS MAY NOT BE BASED ON COMPENSATION IN EXCESS OF THE ANNUAL LIMITATION OF \$150,000.00, SUBJECT TO ADJUSTMENT AS PROVIDED FOR BY LAW OR REGULATION, FOR THE ACCOUNT OF ANY INDIVIDUAL PARTICIPANT. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer which is a common member with the employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded Amounts: Any amount not mentioned in paragraph (2) of this subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, rollover contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of Excess: In the event an allocation would otherwise exceed the limitations of this section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this section. If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the employer. If the employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the employer is discretionary, and if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the employer contribution to each of the Plans. If this plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limits, shall be returned to the employer.

(5) Defined Benefit Plans: In any year if a Participant in this Plan is or ever has been a Participant in a defined benefit plan maintained by the employer, then the sum of the Defined Benefit Plan fraction and the Defined Contribution Plan fraction (both as prescribed by law) for such Participant for such year shall not exceed 1.0. In any year if the sum of the Defined Benefit Plan fraction on behalf of a Participant would exceed 1.0, then the allocation under this plan shall be reduced to the extent necessary so that the sum of such fractions does not exceed 1.0. For purposes of this Section, the limitation year shall be the plan year.

The Defined Benefit Plan fraction for any Participant shall be the fraction, the numerator of which is the projected annual benefit of the Participant under the plan (determined as of the close of the year), and the denominator of which is the lesser of (i) the product of 1.25 multiplied by the maximum dollar limitation for benefits set forth in subsection 415(b)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the percentage limitation set forth under Subsection 415(b)(1)(B) of the Federal Internal Revenue Code with respect to such Participant for such year. The Defined Contribution Plan fraction shall be the fraction, the numerator of which is the sum of the annual additions to the Participant's account as of the close of the year for such year and all prior years, and the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the employer:

(i) The product of 1.25 multiplied by the dollar limitation in effect under Subsection 415(c)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Subsection 415(c)(1)(B) of the Federal Internal Revenue Code with respect to such individual under such plan for such year with respect to dollar limitations.

(6) Compensation: For the purposes of applying the limitations of this subsection (B), compensation means the total amount paid by the employer to a Participant for services rendered to the employer which are included in the taxable income of the Participant, PROVIDED THAT FOR LIMITATION YEARS BEGINNING AFTER DECEMBER 31, 1997, COMPENSATION FOR THE PURPOSES OF THIS SECTION SHALL NOT BE REDUCED BY VOLUNTARY SALARY DEFERRALS OR REDUCTIONS FOR A PARTICIPANT UNDER A PLAN ESTABLISHED UNDER FEDERAL INTERNAL REVENUE SERVICE CODE SECTIONS 125, 457, 401(k), OR 403(b).

(C) CONTRIBUTION PERCENTAGE TEST FOR MATCHING AND EMPLOYEE CONTRIBUTIONS.

(1) GENERAL RULE: THE AVERAGE CONTRIBUTION PERCENTAGE IN ANY YEAR OF ALL PARTICIPANTS WHO ARE HIGHLY COMPENSATED EMPLOYEES MAY NOT EXCEED THE GREATER OF THE FOLLOWING AMOUNTS:

(a) 125% OF THE AVERAGE CONTRIBUTION PERCENTAGE FOR SUCH YEAR OF ALL PARTICIPANTS WHO ARE NOT HIGHLY COMPENSATED EMPLOYEES; OR

(b) THE AVERAGE CONTRIBUTION PERCENTAGE FOR SUCH YEAR OF ALL PARTICIPANTS WHO ARE NOT HIGHLY COMPENSATED EMPLOYEES, PLUS TWO PERCENTAGE POINTS (2%), LIMITED TO TWO TIMES THE AVERAGE CONTRIBUTION PERCENTAGE FOR ALL SUCH PARTICIPANTS.

FOR PURPOSES OF THE FOREGOING, THE AVERAGE CONTRIBUTION PERCENTAGE IS THE AVERAGE OF THE SUM OF THE CITY CONTRIBUTIONS UNDER SECTION 14-2-4(A) ALLOCATED TO THE ACCOUNTS OF THE APPLICABLE PARTICIPANT PLUS SUCH PARTICIPANT'S VOLUNTARY NON-DEDUCTIBLE CONTRIBUTIONS, DIVIDED BY THE TOTAL COMPENSATION OF SUCH PARTICIPANT FOR EACH SUCH PARTICIPANT. IF THE AMOUNT TO BE CONTRIBUTED BY THE CITY AND ALLOCATED TO THE ACCOUNTS OF PARTICIPANTS WHO ARE HIGHLY COMPENSATED EMPLOYEES EXCEEDS THE FOREGOING LIMITATIONS, THEN THE AMOUNT SO ALLOCATED SHALL BE REDUCED, BEGINNING WITH THE HIGHEST DOLLAR AMOUNT OF CONTRIBUTION AMONG SUCH PARTICIPANTS, TO THE EXTENT NECESSARY TO SATISFY SUCH LIMITATION AND SUCH EXCESS AMOUNT, TOGETHER WITH EARNINGS THEREON, AND SHALL BE DISTRIBUTED TO SUCH PARTICIPANTS NO LATER THAN 2-1/2 MONTHS AFTER THE END OF THE PLAN YEAR IN WHICH SUCH CONTRIBUTIONS WERE MADE.

(2) ADJUSTMENT OF CONTRIBUTION PERCENTAGE: THE EMPLOYER MAY IN ITS DISCRETION MAKE CONTRIBUTIONS TO THE PLAN, WHICH SHALL BE DESIGNATED AS ADDITIONAL MATCHING CONTRIBUTIONS AND WHICH SHALL BE ALLOCATED TO THE ACCOUNTS OF PARTICIPANTS WHO ARE NOT HIGHLY COMPENSATED EMPLOYEES, IN ORDER TO INCREASE THE AVERAGE CONTRIBUTION PERCENTAGE OF SUCH PARTICIPANTS. IN APPLYING THE LIMITATION ABOVE, THE ADMINISTRATOR SHALL TAKE INTO ACCOUNT SUCH DESIGNATED EMPLOYER CONTRIBUTIONS.

(3) EXCESS AGGREGATE CONTRIBUTIONS: EMPLOYER CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS IN EXCESS OF THE LIMITATIONS OF THIS SECTION ARE EXCESS AGGREGATE CONTRIBUTIONS.

(4) DISPOSITION OF EXCESS AGGREGATE CONTRIBUTIONS.

(a) GENERAL RULE: NOTWITHSTANDING ANY OTHER PROVISION OF THIS PLAN, EXCESS AGGREGATE CONTRIBUTIONS, PLUS ANY INCOME AND MINUS ANY LOSS ALLOCABLE THERETO, SHALL BE FORFEITED, IF FORFEITABLE, OR IF NOT FORFEITABLE, DISTRIBUTED NO LATER THAN THE LAST DAY OF EACH PLAN YEAR TO PARTICIPANTS TO WHOSE ACCOUNTS SUCH EXCESS AGGREGATE CONTRIBUTIONS WERE ALLOCATED FOR THE PRECEDING PLAN YEAR. IF SUCH EXCESS AGGREGATE CONTRIBUTIONS ARE DISTRIBUTED MORE THAN 2-1/2 MONTHS AFTER THE LAST DAY OF THE PLAN YEAR IN WHICH SUCH EXCESS AMOUNTS AROSE, A 10% EXCISE TAX WILL BE IMPOSED ON THE EMPLOYER MAINTAINING THE PLAN WITH RESPECT TO THOSE AMOUNTS. EXCESS AGGREGATE CONTRIBUTIONS SHALL BE TREATED AS ANNUAL ADDITIONS UNDER THE PLAN.

(b) DETERMINATION OF INCOME OR LOSS: EXCESS AGGREGATE CONTRIBUTIONS SHALL BE ADJUSTED FOR ANY INCOME OR LOSS UP TO THE DATE OF DISTRIBUTION. THE INCOME OR LOSS ALLOCABLE TO EXCESS AGGREGATE CONTRIBUTIONS IS THE SUM OF: (i) INCOME OR LOSS ALLOCABLE TO THE PARTICIPANT'S EMPLOYEE CONTRIBUTION ACCOUNT, MATCHING CONTRIBUTION ACCOUNT (IF ANY, AND IF ALL AMOUNTS THEREIN ARE NOT USED IN THE DEFERRAL PERCENTAGE TEST UNDER INTERNAL REVENUE SERVICE CODE SECTION 401(k)) AND, IF APPLICABLE, QUALIFIED NON-ELECTIVE CONTRIBUTION ACCOUNT AND ELECTIVE DEFERRAL ACCOUNT FOR THE PLAN YEAR MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS SUCH PARTICIPANT'S EXCESS AGGREGATE CONTRIBUTIONS FOR THE YEAR AND THE DENOMINATOR OF WHICH IS THE PARTICIPANT'S ACCOUNT BALANCE(S) ATTRIBUTABLE TO CONTRIBUTION PERCENTAGE AMOUNTS WITHOUT REGARD TO ANY INCOME OR LOSS OCCURRING DURING SUCH PLAN YEAR; AND (ii) 10% OF THE AMOUNT DETERMINED UNDER (i) MULTIPLIED BY THE NUMBER OF WHOLE CALENDAR MONTHS BETWEEN THE END OF THE PLAN YEAR AND THE DATE OF DISTRIBUTION, COUNTING THE MONTH OF DISTRIBUTION IF DISTRIBUTION OCCURS AFTER THE 15TH OF SUCH MONTH.

(c) FORFEITURES OF EXCESS AGGREGATE CONTRIBUTIONS: FORFEITURES OF EXCESS AGGREGATE CONTRIBUTIONS SHALL BE APPLIED TO REDUCE EMPLOYER CONTRIBUTIONS.

(d) ACCOUNTING FOR EXCESS AGGREGATE CONTRIBUTIONS: EXCESS AGGREGATE CONTRIBUTIONS SHALL BE FORFEITED, IF FORFEITABLE OR DISTRIBUTED ON A PRO RATA BASIS FROM THE PARTICIPANT'S EMPLOYEE CONTRIBUTION ACCOUNT, EMPLOYER CONTRIBUTION ACCOUNT, AND QUALIFIED MATCHING CONTRIBUTION ACCOUNT, IF ANY, (AND, IF APPLICABLE, THE PARTICIPANT'S QUALIFIED NON-ELECTIVE CONTRIBUTION ACCOUNT OR ELECTIVE DEFERRAL ACCOUNT, OR BOTH).

(e) AGGREGATE LIMIT: FOR PURPOSES OF THIS SECTION, THE TERM "AGGREGATE LIMIT" SHALL MEAN THE SUM OF (i) 125% OF THE GREATER OF THE DEFERRAL PERCENTAGE OF THE NON-HIGHLY COMPENSATED EMPLOYEES FOR THE PLAN YEAR OR THE CONTRIBUTION PERCENTAGE OF THE NON-HIGHLY COMPENSATED EMPLOYEES UNDER THE PLAN SUBJECT TO INTERNAL REVENUE SERVICE CODE SECTION 401(m) FOR THE PLAN YEAR BEGINNING WITH OR WITHIN THE PLAN YEAR OF THE CASH OR DEFERRED ARRANGEMENT UNDER SECTION 401(k) AND (ii) THE LESSER OF 200% OF 2 PLUS THE LESSER OF SUCH DEFERRAL PERCENTAGE OR CONTRIBUTION PERCENTAGE. THE WORD "LESSER" SHALL BE SUBSTITUTED FOR "GREATER" IN (i), ABOVE, AND "GREATER" SHALL BE SUBSTITUTED FOR "LESSER" AFTER "2 PLUS THE" IN (ii) IF BY SUBSTITUTING SUCH TERMS WOULD RESULT IN A LARGER AGGREGATE LIMIT.

(5) SPECIAL RULE:

(a) IN THE EVENT THAT THIS PLAN SATISFIES THE REQUIREMENTS OF SECTIONS 401(m), 401(a)(4), OR 410(b) OF THE INTERNAL REVENUE SERVICE CODE ONLY IF AGGREGATED WITH ONE OR MORE OTHER PLANS, OR IF ONE OR MORE OTHER PLANS SATISFY THE REQUIREMENTS OF SUCH SECTIONS OF THE INTERNAL REVENUE SERVICE CODE ONLY IF AGGREGATED WITH THIS PLAN, THEN THIS SECTION SHALL BE APPLIED BY DETERMINING THE DEFERRAL PERCENTAGE TEST UNDER INTERNAL REVENUE SERVICE CODE SECTION 401(m) OF EMPLOYEES AS IF ALL SUCH PLANS WERE A SINGLE PLAN. FOR PLAN YEARS BEGINNING AFTER DECEMBER 31, 1989, PLANS MAY BE AGGREGATED IN ORDER TO SATISFY SECTION 401(m) OF THE INTERNAL REVENUE SERVICE CODE ONLY IF THEY HAVE THE SAME PLAN YEAR.

(6) HIGHLY COMPENSATED EMPLOYEE: FOR PURPOSES OF THIS SECTION, AN EMPLOYEE IS TREATED AS A "HIGHLY COMPENSATED EMPLOYEE" (HCE) IF:

(a) DURING THE PRECEDING YEAR, THE EMPLOYEE RECEIVED COMPENSATION IN EXCESS OF \$80,000, TO BE INDEXED FOR COST-OF-LIVING INCREASES; AND THE EMPLOYEE WAS ALSO IN THE TOP-PAID TWENTY PERCENT (20%) OF EMPLOYEES DURING THAT YEAR; OR

(b) THE EMPLOYEE WAS A FIVE PERCENT (5%) OWNER AT ANY TIME DURING THE YEAR OR THE PRECEDING YEAR.

(c) RULES OF CONSTRUCTION. THE DETERMINATION OF WHO IS A HIGHLY COMPENSATED EMPLOYEE, INCLUDING THE DETERMINATIONS OF THE NUMBER AND IDENTITY OF EMPLOYEES IN THE TOP-PAID GROUP, WILL BE MADE IN ACCORDANCE WITH SECTION 414(q) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE AND THE REGULATIONS THEREUNDER.

~~(C)~~ (D) Allocation of earnings, losses, charges and changes in fair market value of the net assets of the trust fund: Earnings and losses of the Trust Fund, third party and administrative charges and changes in the fair market value of the net assets of the Trust Fund shall be allocated under the direction of the Trustee AT LEAST quarterly to the Participants as of each regular evaluation date, in the ratio that the total dollar value of the interest of each such Participant in the Trust Fund bears to the aggregate dollar value of all of such interests of all such Participants.

~~(D)~~ (E) Participant's Accounts: The Board shall maintain, or cause the City or Trustee to maintain, an account for each Participant showing the dollar value of his current interest in the Trust Fund resulting from any contributions made by the City, which account shall be known as the City contributions account. Separate accounts to be known as Participants' contributions accounts shall also be kept, showing the contributions of each Participant and the earnings, losses and changes in fair market value thereof.

~~(E)~~ (F) Evaluation Dates: The regular evaluation dates of the Trust Fund shall be AT LEAST the last bank business day of each calendar quarter at which time the Board shall determine, or cause the Trustee to determine, the value of the net assets of the Trust Fund, i.e., the value of all of the assets of the Trust Fund at fair market value thereof, less all liabilities, both as known to the Trustee, including the value of the contribution of the City and the Participants for that quarter. If an event DESCRIBED IN SECTION 14-2-7 (A) occurs between regular evaluation dates requiring a distribution of any part of a Participant's interest in the Trust Fund, the dollar value of such Participant's interest shall be adjusted to reflect the contributions made after the last evaluation date without any earnings, losses or other changes. The dollar value of his interest as so adjusted shall be the amount which shall be distributed to such Participant or his Beneficiary.

~~(F)~~ (G) Vesting of Participant's Interests:

(1) A Participant's interest in the contributions made by him and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. The interest of a Participant in the contributions made by the City, and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times.

(2) Any interest in the Trust Fund shall be and become payable to a Participant or his Beneficiaries only as and to the extent provided in this Chapter; and a Participant who dies having designated a Beneficiary shall cease to have any interest hereunder or in his separate trust account, and his Beneficiary shall become entitled to distribution thereof as herein provided by virtue of the terms of this Chapter and not as a result of any transfer of said interest or account.

~~(G)~~ (H) Vesting Upon Termination of Plan or Discontinuance of Contributions: Notwithstanding the provisions of subsection ~~(F)~~ (G) of this section, upon the termination of the Plan or upon the complete discontinuance of contributions under the Plan to the Trust Fund, the interests of all Participants shall become fully and completely vested and non-forfeitable for all purposes.

14-2-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY:

(A) Retirement Date:

(1) Normal retirement: The normal retirement age for each Participant shall be sixty-five (65), and on the last day of the month in which his sixty-fifth birthday occurs, he shall be entitled to retire voluntarily. The City may, if it so desires, continue a contributing Participant in active service after he has attained his normal retirement age with the consent of such Participant, and at any time thereafter the City may, at its option, retire such Participant or such Participant may VOLUNTARILY retire. Until actual retirement, a contributing Participant shall continue to participate in the Plan.

(2) Early Retirement: Any contributing participant who has attained the age of fifty-five (55) may elect to retire earlier than the normal retirement age.

(B) Beneficiaries:

(1) Designation of Beneficiaries: Each Participant shall have the right to designate a Beneficiary or Beneficiaries and one or more contingent Beneficiaries to receive his interest in the Trust Fund upon his death, such designation to be made in the form prescribed by and delivered to the Board. The Participant shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Board, and no notice to any Beneficiary nor consent by a Beneficiary shall be required to effect any such change or revocation.

(2) Determination of a Beneficiary when there is no designated Beneficiary: If a Participant shall fail to designate a Beneficiary before his death, or if all designated Beneficiaries, or contingent Beneficiaries should die, cease to exist, or disclaim their interests prior to distribution, the Board shall direct the Trustee to pay the participant's entire interest in the Trust Fund to his surviving spouse, if any, or if none, then to the personal representative of his estate. If, however, no personal representative shall have been appointed, and actual notice thereof given to the Board within one hundred twenty (120) days after his death, the Board may direct the Trustee to pay the participant's entire interest to such person or persons as may be entitled thereto under the laws of the State where such participant resided at the date of his death, and in such case, the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

(3) Insurance Policies: The Beneficiary of any insurance or annuity contract on a Participant's life shall be determined and designated as provided in Section 14-2-8(A).

14-2-7: DISTRIBUTION FROM TRUST FUND

(A) When Interests Become Distributable and Effect Thereof: When a Participant dies, suffers total disability, retires or terminates his employment for any other reason, his interest ~~in the Trust Fund~~ shall thereupon become distributable ~~as hereinafter provided in subsection (C) of this section.~~ When a Participant's interest shall have become distributable, such Participant's interest shall remain a part of the Trust Fund until it is distributed.

(B) Information to be Furnished to Board: For the purpose of enabling the Board to determine the Participant's distributable interest in the Trust Fund, the Board shall be entitled to rely upon information provided to the Board by the City with respect to the date of the participant's termination of employment and other such information as is needed and requested.

(C) Distribution of Interests:

(1) Distribution Upon Retirement or Total Disability: If a Participant retires after attaining normal or early retirement age or becomes totally disabled, his share of this plan shall be distributed commencing no later than sixty (60) days after either the end of the plan year in which he retires, or the required distribution commencement date set forth in subsection ~~(D)~~ (E) of this section, unless he elects to defer benefits pursuant to paragraph (5) of this subsection.

(2) Distribution Upon Death: If a Participant dies, his interest shall be distributed, commencing no later than sixty (60) days after the end of the plan year in which the participant's death occurs or ~~THE such later~~ date the Trustee determines the identity of the beneficiary, **WHICHEVER IS LATER, UNLESS THE BENEFICIARY ELECTS TO DEFER BENEFITS PURSUANT TO PARAGRAPH (5) OF THIS SUBSECTION.**

(3) Distribution Upon Other Termination of Employment: If a Contributing Participant terminates his employment for any reason other than retirement after attaining normal or early retirement age, total disability, or death, his share of this plan shall be distributed commencing no later than one hundred twenty (120) days from the end of the calendar quarter in which the employee terminated employment, **UNLESS HE ELECTS TO DEFER BENEFITS PURSUANT TO PARAGRAPH (5) OF THIS SUBSECTION.**

(4) Insurance and Annuity Contracts: If there has been an investment in a life insurance or annuity contract for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in this Plan, obtain an absolute assignment of any such life insurance or annuity contract by informing the Board of his election. If said election is not exercised within thirty (30) days after the termination of employment, and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. ANY ANNUITY PURCHASED OR ACQUIRED BY THE TRUSTEE AND DISTRIBUTED TO A PARTICIPANT UNDER THE PROVISIONS OF THIS SUBSECTION (C) SHALL, WITH RESPECT TO SUCH PARTICIPANT, BE NONTRANSFERABLE AND THE ANNUITY CONTRACT WILL SO PROVIDE. AFTER DECEMBER 31, 1996, NO NEW LIFE INSURANCE CONTRACTS MAY BE ADOPTED AS PENSION INVESTMENTS.

(5) Election to Defer Benefits: A Participant may elect, with the consent of the Board, to have the commencement of DISTRIBUTION OF his benefit deferred until a date later than the date specified in paragraph (1), (2) or (3) of this subsection, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (DE) of this section. If a Participant makes an election described in this section, such election shall be made by submitting to the Board, ~~within thirty (30) days of the date of termination,~~ BEFORE THE DATE DISTRIBUTION WOULD OTHERWISE COMMENCE, a written request, signed by the Participant, which describes the benefit and the date on which the payment of such benefit shall commence IF THE DEFERRAL IS APPROVED BY THE BOARD. ANY CHANGE TO THE TERMS OF THE DEFERRAL MUST BE RESUBMITTED IN WRITING TO THE BOARD FOR APPROVAL UNLESS THE CHANGE IN TERMS IS A REQUEST FOR THE ROLLOVER OF FUNDS TO AN INDIVIDUAL RETIREMENT ACCOUNT OR A QUALIFIED PLAN. NO ELECTION TO DEFER OR CHANGE THE METHOD OF PAYMENT MAY BE MADE MORE THAN ONCE EVERY SIX MONTHS ONCE PAYMENTS HAVE COMMENCED.

(6) Distribution of Contributions: Any other provision of this subsection (C) to the contrary notwithstanding, a Participant, in the event of the termination of his employment for any reason, shall be entitled to receive payment in one lump sum of his interest in the Trust Fund provided he makes written demand therefor upon the Board. A PARTICIPANT'S INTEREST THAT IS LESS THAN OR EQUAL TO THE MINIMUM DOLLAR AMOUNT AS PRESCRIBED BY THE INTERNAL REVENUE SERVICE MAY BE DISTRIBUTED WITHOUT RECEIVING WRITTEN APPLICATION FROM THE PARTICIPANT.

~~(7) Annuities Shall be Non Transferable: Any annuity purchased or acquired by the Trustee and distributed to a Participant under the provisions of this subsection (C) shall, with respect to such Participant, be non transferable and the annuity contract will so provide.~~

(D) TRANSFERS BETWEEN QUALIFIED PLANS:

(1) IN GENERAL: THE TRUSTEE AND THE BOARD, UPON THEIR MUTUAL AGREEMENT, ARE AUTHORIZED TO RECEIVE AND ADD TO THE INTEREST OF ANY PARTICIPANT HIS VESTED INTEREST IN THE ASSETS HELD UNDER ANY OTHER QUALIFIED EMPLOYEE RETIREMENT PLAN OR INDIVIDUAL RETIREMENT ACCOUNT IF SUCH TRANSFER SATISFIES THE REQUIREMENTS UNDER LAW FOR TRANSFERS BETWEEN QUALIFIED PLANS OR ROLLOVER CONTRIBUTIONS. IN SUCH EVENT, THE ASSETS SO RECEIVED SHALL BE FULLY VESTED AND SHALL BE HELD IN A SEPARATE ACCOUNT AND SHALL BE ADMINISTERED AND DISTRIBUTED PURSUANT TO THE PROVISIONS OF THIS PLAN AND TRUST. THE TRUSTEE IS ALSO AUTHORIZED, AT THE DIRECTION OF THE BOARD AND AT THE REQUEST OF THE PARTICIPANT, TO TRANSFER SUCH PARTICIPANT'S VESTED INTEREST WHICH HAS BECOME DISTRIBUTABLE UNDER SUBSECTION (A) HEREOF, DIRECTLY TO ANOTHER QUALIFIED PLAN OR AN INDIVIDUAL RETIREMENT ACCOUNT FOR THE BENEFIT OF SUCH PARTICIPANT, PROVIDED SUCH TRANSFER SATISFIES THE REQUIREMENTS UNDER LAW FOR SUCH TRANSFERS.

(2) FOR DISTRIBUTIONS MADE ON OR AFTER JANUARY 1, 1993: NOTWITHSTANDING ANY PROVISION OF THE PLAN TO THE CONTRARY THAT WOULD OTHERWISE LIMIT A DISTRIBUTEES ELECTION UNDER THIS SECTION, A DISTRIBUTEE MAY ELECT, AT THE TIME AND IN THE MANNER PRESCRIBED BY THE PLAN ADMINISTRATOR, TO HAVE ANY PORTION OF AN ELIGIBLE ROLLOVER DISTRIBUTION PAID DIRECTLY TO AN ELIGIBLE RETIREMENT PLAN SPECIFIED BY THE DISTRIBUTEE IN A DIRECT ROLLOVER.

~~(D)~~ (E) Required Distribution Commencement Date: Distribution of a Participant's interest must begin no later than the April 1 of the calendar year following ~~the calendar year in which takes place~~ the later of the ~~date~~ YEAR the Participant attains the age of seventy and one half (70 1/2) or the ~~date~~ YEAR the Participant retires.

~~(E)~~ (F) Spendthrift Provisions:

(1) General Rule: Except as otherwise provided in this Chapter, all amounts payable pursuant to this Chapter by the Trustee shall be paid only to the person or persons entitled thereto, and all such payments shall be paid directly into the hands of such person or persons and not into the hands of any other person or corporation whatsoever, and such payments shall not be liable for the debts, contracts or engagements of any such person or persons, or taken in execution by attachment or garnishment or by any other legal or equitable proceedings; nor shall any such person or persons have any right to alienate, anticipate, commute, pledge, encumber or assign any such payments or the benefits, proceeds or avails thereof; provided, that nothing in this Chapter shall affect, restrict or abridge any right of setoff or lien which the City may have by law, preclude a Participant from pledging as security a part or all of his interest in the Trust Fund to the Westminster Federal Credit Union, to the extent permitted by law, or affect, restrict or abridge any right of set off, lien or collateral which such Credit Union or the City itself may have against such Participant's interest in the Trust Fund.

(2) Qualified Domestic Relations Order: Paragraph (1) of this Subsection shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant OR ALTERNATE PAYEE pursuant to a qualified domestic relations order ~~under Federal Internal Revenue Code Section 414(p)~~ SETTING FORTH THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE DIVISION OF BENEFITS PURSUANT TO COLORADO REVISED STATUTES, SECTION 14-10-113. A LUMP SUM ~~distribution may~~ WILL be made pursuant to such an order ~~at any time on or~~ WITHIN ONE HUNDRED TWENTY (120) DAYS after the date ON which is ~~ten (10) years before the contributing participant's normal retirement age~~ A CERTIFIED COURT ORDER APPROVING SUCH AN AGREEMENT PERMITTING SUCH A DISTRIBUTION HAS BEEN SUBMITTED TO AND RECEIVED BY THE BOARD. The Board shall establish such reasonable procedures as are necessary to determine the ~~qualified status~~ COMPLIANCE of a domestic relations order WITH THE REQUIREMENTS OF COLORADO REVISED STATUTES, SECTION 14-10-113 and to administer distributions under such qualified order. SUCH PROCEDURES MAY BE AT THE DISCRETION OF THE BOARD, INCLUDING STANDARDIZED FORMS TO BE USED FOR SUCH MARITAL AGREEMENTS AND ORDERS. A person who obtains a right to a benefit payable to a participant pursuant to a qualified domestic relations order shall have no rights to vote in elections held pursuant to this plan.

~~(F)~~ (G) Manner of Distribution: A Participant's interest MAY BE DISTRIBUTED BY ~~shall become distributable, including both employee and employer contributions and interest thereon, such distribution may be made in~~ one or more of the following methods:

(1) Lump Sum Distribution: The Participant's interest may be paid to the Participant or his Beneficiary by the distribution of the total balance of his account in one lump sum. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the trustee within such time as the Board shall prescribe.

(2) Installments: The Participant's interest may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed twenty (20) years and not in installment frequency greater than monthly. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the trustee within such time as the Board shall prescribe. ~~Such elective and amount and frequency of distribution shall not be subject to change except by approval of the Board.~~ In no instance shall any changes in this type of distribution be allowed more than once ~~annually~~ EVERY SIX MONTHS.

~~(3) Annuities: The participant's interest may be distributed in a single life annuity for the participant, or an annuity for the life of a participant with a survivor annuity for the life of his spouse, whether or not it is a qualified joint and survivor annuity, provided that the survivor annuity is no greater than the amount of the annuity payable during the joint lives of the participant and his spouse. Any annuity purchased or acquired by the trustee and distributed to an employee under the provisions of this section or any other provision of this Chapter shall, with respect to such employee, be nontransferable and the annuity contract will so provide.~~

(3) Other Methods: Notwithstanding the foregoing provisions, any interest which has become distributable for any reason, may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

(4) If the Participant or Beneficiary fails to notify the trustee or Board of the manner of distribution preferred by the date distribution would otherwise commence, the Participant's interest shall be distributed in substantially equal monthly installments over twenty (20) years, UNLESS THE PARTICIPANT'S ACCOUNT BALANCE MEETS THE MINIMUM AUTOMATIC DISTRIBUTION AMOUNT ALLOWED BY THE INTERNAL REVENUE SERVICE REGULATIONS.

~~(G)~~ (H) Limitation on Duration of Payments: ~~Whenever an amount becomes distributable to a participant, such amount shall be distributed~~ NO DISTRIBUTION SHALL BE MADE over a period not exceeding twenty (20) years. To the extent distribution is made after the Participant attains the age of seventy and one-half (70 1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and his Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

~~(H)~~ (I) Withdrawals: A Participant may not at any time withdraw any part of his interest in the Trust Fund, except upon death, disability, retirement or termination of service as provided in this Chapter.

~~(I)~~ (J) Special Rules for Distributions after the Participant's Death:

(1) Distributions Commencing Prior to Death: If distribution of a Participant's interest has commenced prior to the Participant's death in accordance with subsection ~~(G)~~ (H) of this Section, the remaining interest of the Participant shall be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

(2) Distributions Commencing After Death: If distribution of a Participant's interest did not commence prior to his death, the entire interest of the Participant shall be distributed within five (5) years after the death of the Participant, provided that a distribution commencing within one (1) year after the Participant's death to or for the benefit of a designated Beneficiary over the longer of the life or the life expectancy of the designated Beneficiary will be treated as having been distributed within such five (5) year period. If the surviving spouse of the Participant is the designated Beneficiary, distribution is not required to commence until the date on which the Participant would have attained the age of seventy and one-half (70-1/2) and, if distribution had not commenced as of the date of death of such surviving spouse, the provisions of this paragraph shall be applied as if such spouse were the Participant.

(3) Beneficiaries: If a Participant should die after receiving some part, but not all, of his account, the remaining balance thereof shall be distributed to his Beneficiary in a manner determined pursuant to this subsection. If the Beneficiary of the Participant should die, cease to exist, or disclaim his interest prior to the completion of distribution of the Participant's interest, the remaining distribution shall be made to the contingent Beneficiary designated by the Participant, if any. If any contingent Beneficiary should die or disclaim his interest, distribution of the remainder of the Participant's interest shall be distributed in a manner determined pursuant to this subsection to the recipient determined pursuant to Section 14-2-6.

14-2-8: INSURANCE COMPANY CONTRACTS:

(A) Insurance or Annuity Contracts:

(1) If a Participant has, under the provisions of the prior City retirement plan, already purchased an ordinary life or retirement income insurance contract, the account of the Participant on whose life the contract is obtained shall be charged with the amount of all premiums thereon. The Trustee shall continue to have the right to receive each payment that may be due during the Participant's lifetime. Any death benefit shall be payable directly to the Beneficiary named in any such contract on the Participant's life and the Participant shall have the right, either directly or through the Trustee, to change the Beneficiary from time to time on any such contract and to elect settlement options thereunder for the benefit of the Beneficiary. The Trustee shall have the right to exercise all other options and privileges contained in the contract.

(2) A Participant may not purchase any individual insurance or annuity contract through the Plan.

(3) AFTER DECEMBER 31, 1996, THE CITY SHALL NOT PURCHASE ANY NEW GROUP INSURANCE CONTRACTS OR ANNUITIES FOR PENSION PARTICIPANTS.

(B) Limitations on Life Insurance or Annuity Contracts for Participants' Benefit: All investments in life insurance or annuity contracts (other than "key man insurance") shall be subject to the following limitations:

(1) The aggregate premiums for such life insurance or annuity contracts, in the case of each Participant, shall be no more than thirty-five percent (35%) of the aggregate of the City's contributions allocated to him at any particular time;

(2) The Board shall direct the Trustee to convert the entire value of any such life insurance contract at or before the Participant's actual retirement to provide either cash value or periodic income, or the Board may direct the Trustee to distribute the insurance contract directly to the Participant at retirement;

(3) In the event payment of any premium would cause aggregate premiums to exceed the limitation set forth in paragraph (1) of this subsection, then such payment shall not be made, but, on the contrary, each insurance or annuity contract pertaining thereto shall be thereupon converted to a paid up contract, or the face amount of such contract shall be reduced to a face amount, the premium payments on which would not exceed the limitation prescribed in paragraph (1) of this subsection; and

(4) If the Board directs the Trustee to invest any portion of the Trust Fund in such insurance or annuity contracts, such investment shall be made in such a manner that the operation of this Chapter shall be fair and equitable (and nondiscriminatory) in its application to all Participants.

(C) Dividends: If dividends are paid on any contract issued by the Insurer, they shall, in the discretion of the Board, either be used to provide additional benefits under such contract or used and applied in reduction of the next premium due and payable thereon.

(D) Limitation of Participant's Rights in Insurance or Annuity Contracts: The fact that any contract is issued or based on the life of a Participant shall not vest any right, title or interest in such contract in such Participant except at the time or times and upon the terms and conditions especially set forth in this Chapter. Subject to the provisions of Section 14-2-8(A) the Trustee shall be the sole owner of all right title and interest in and to each such contract, but the Board shall nevertheless direct the Trustee as to the exercise of all rights, options and privileges in each such contract.\

(E) Protective Provisions for Life Insurance Company: No life insurance company shall be deemed to be a party to the Plan nor shall it be responsible for the validity of the Plan. The certificate of the Trustee as to any matter may be relied upon by any life insurance company as conclusive evidence of any matters mentioned therein, and such company shall be fully protected in taking or permitting any action on the faith thereof and shall incur no liability or responsibility for so doing. No such company shall be required to examine the provisions of this Chapter or to question any act of the Trustee or the Board, nor shall such company be required to ascertain that any act of the Trustee or the Board is authorized by this Chapter.

14-2-9: GENERAL EMPLOYEE PENSION BOARD:

(A) Appointment of Board:

(1) The Board shall consist of five (5) members: one (1) shall be the current City Finance Director; one (1) shall be appointed by the City Manager to serve at his pleasure; and three (3) shall be Contributing Participants elected by a majority of the voting Participants. One of the three elected members shall be an unclassified employee as defined in ~~Chapter 24 of Title I of this Code~~ THE PERSONNEL RULES AND REGULATIONS. In no case shall more than one elected member be from the same department. THE TRUSTEE SHALL SERVE AS CHAIRPERSON OF THE BOARD.

(2) The three (3) to be elected shall be elected for three (3) year staggered terms, with the term of one such member expiring in December of each year. ~~The two elected members on the board in September, 1987 shall complete their terms. Members elected to replace them shall be elected for three (3) year terms. In the fall of 1987, an unclassified employee shall be elected for a term ending in December 1989, and successors to this position on the Board shall be elected for three (3) year terms.~~ THE PROCEDURE TO BE FOLLOWED IN INITIALLY ELECTING SUCH MEMBERS SHALL BE ESTABLISHED BY THE TRUSTEE. AFTER THE FIRST YEAR OF THE ELECTION, PROCEDURES SHALL BE ESTABLISHED BY THE BOARD.

(B) Duties and Powers of the Board: The Board shall be charged with the administration of this Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution. The decisions of the Board shall be conclusive and binding on all parties.

(1) The Board shall, from time to time, direct the Trustee concerning the payments to be made out of the Trust Fund pursuant to this Chapter.

The Board shall also have the power to direct the Trustee with respect to all investments and reinvestments of the Trust Fund, and shall have such other powers respecting the administration of the Trust Fund as may be conferred upon it in this Chapter. The Board may employ for the Trust Fund an Investment Advisor and may rely on such Advisor's recommendations with respect to the investment of all or a portion of the Trust Fund. If the Board shall employ an Investment Advisor, it shall execute any letters or agreements necessary for the employment of such Advisor or it may direct the Trustee to execute any such letters or agreement. The fees of such Investment Advisor shall be paid from the Trust Fund as an expense of the Trust. The Trustee shall be fully protected from any action of such Investment Advisor and shall not be liable to any person or organization for any investments made by such Advisor or for any acts or omissions made upon the direction or recommendation of such Advisor.

(2) The Board shall have the power to direct the Trustee to enter into and execute contracts as investment vehicles for the Trust Funds. The Board shall have the further power to direct the Trustee to terminate any such contract at any time subject to the provisions of such contract.

(3) If the Trustee enters into a contract at the direction of the Board which permits the right of Participants to direct the investment of ~~his~~ THEIR interest in the Trust Fund in forms of investment offered, the Board shall provide the opportunity to Participants to make options as to investment. Unless the Board shall otherwise determine, any such investment direction may be changed by a Participant only at the end of a calendar quarter. Neither the Trustee nor the Board shall be held liable for any losses or changes to a Participant's interest that result from that Participant's choice of investment option.

(C) Organization and Operation of Board: The Board may adopt such RULES AND procedures as it deems desirable for the conduct of its affairs, appoint one of its own members chairman, and appoint a secretary or other agents, none of whom need be a member of the Board, but any of whom may be, but need not be, an officer or employee of the City. It may delegate to any agent such duties and powers, both ministerial and discretionary, as it deems appropriate, excepting only that all matters involving investment of funds, interpretation of the Plan and settlement of disputes shall be determined by the Board. Any determination of the Board may be made by a majority of the Board at a meeting thereof, or without a meeting by a resolution or memorandum signed by all members, and shall be final and conclusive on the City, the Trustee, all Participants and Beneficiaries claiming any rights under this Chapter, and as to all third parties dealing with the Board or with the Trustee. All notices, directions, information and other communications from the Board to the Trustee shall be in writing.

(D) Matters Affecting Board Members: In any matter affecting any member of the Board in his individual capacity as a Participant under this Chapter, separate and apart from his status as a member of the group of Participants, such interested member shall have no authority or vote in the determination of such matter as a member of the Board, but the Board shall determine such matter as if said interested member were not a member of the Board; provided, however, that this shall not be deemed to take from said interested member any of his rights as a Participant. In the event that the remaining members of the Board should be unable to agree on any matter so affecting an interested member because of an equal division of voting, the matter shall be deemed to have been defeated.

(E) Compensation and Expenses of Board: The members of the Board shall serve without compensation in addition to their regular City compensation. All members shall be reimbursed by the City for any necessary expenditures incurred in the discharge of their duties as members of said Board. Such reimbursement, and the compensation of all agents, counsel or other persons retained or employed by the Board, shall be fixed by the Board and shall be paid from the Trust Fund or, in the discretion of the City Manager, by the City.

(F) Records of the Board: The Board shall keep a record of all of its proceedings and shall keep or cause to be kept all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Chapter and properly to reflect the affairs thereof, and to determine the amount of vested and/or forfeitable interests of the respective Participants in the Trust Fund, and the amount of all benefits. As a part thereof, it shall maintain or cause to be maintained separate accounts for each Participant as provided for in Section 14-2-5(A)(3). Any person dealing with the Board may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the secretary of the Board or by a majority of the members of the Board as evidence of an action taken or resolution adopted by the Board.

(G) Immunity from Liability: No bond or other security shall be required of any member of the Board except as may be otherwise required by law. No member of the Board shall be liable or responsible to any person or party for any matter or thing whatsoever, except only for his own gross negligence or willful misconduct.

(H) Resignation and Removal of Members; Appointment of Successors:

(1) Any member of the Board may resign at any time by giving written notice to the other members and to the City Manager, effective as therein stated, otherwise upon receipt of such notice.

(2) Whether or not he remains a participant, no Board member may remain on the Board if he terminates employment with the City for whatever reason.

(3) No appointed Board member may remain on the Board if he ceases to hold one of the positions designated.

(4) No elected Board member may remain on the Board as an elected member if he transfers, for whatever reason, to a department in which another elected Board member works.

(5) Upon the death, resignation or removal of any elected Board member, a successor to complete his term shall be elected within thirty (30) days in the manner set forth in subsection (A) of this section.

14-2-10: POWERS AND DUTIES OF THE TRUSTEE:

(A) Investment of Trust Fund:

(1) It shall be the duty of the Trustee to hold the funds from time to time received from the City and the Participants, and subject to the direction of the Board, to manage, invest and reinvest the Trust Fund and the income therefrom pursuant to the provisions of this Chapter, without distinction between principal and income. The Trustee shall be responsible only for such sums as shall actually be received. The Trustee shall have no duty to collect any sums from the City or the Participants.

(2) The Trustee shall have the power to invest and/or reinvest any and all money or property of any description at any time held by it and constituting a part of the Trust Fund without previous application to, or subsequent ratification of, the City Council, the City Manager, any court, tribunal or commission, or any Federal or State governmental agency, in accordance with the following powers:

(a) The Trustee may invest in real property and all interests therein, in bonds, notes, debentures, mortgages, commercial paper, preferred stocks, common stocks, or other securities, rights, obligations or property, real or personal, including shares or certificates of participation issued by regulated investment companies or regulated investment trusts, shares or units of participation in qualified common trust funds or qualified pooled funds, and in life insurance and annuity contracts. In making investments or reinvestments, the Trustee shall not be limited by the proportion which the investments to be made, either alone or with any property of the same or similar character then held or acquired, may bear to the entire amount of the Trust Fund, and the Trustee shall not be bound as to the character of any investment provided by any constitutional provision, statute, rule of court or custom governing the investment of trust funds, providing only that the Trustee shall exercise the judgment and care, under the circumstances then prevailing, which people of prudence, discretion and intelligence exercise in the management of their own affairs.

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

(c) If directed by the Board, the Trustee shall enter into contracts as investment vehicles for the plan, WHICH CONTRACTS SHALL THEN BECOME A PART OF THIS PLAN. The Trustee shall then be authorized to sign such other documents and take such other actions as might be necessary or appropriate to carry out the terms of such contracts. The Trustee may enter into such contracts as Trustee of this Plan alone, or as Trustee of this Plan and as Trustee of the City's Police and/OR Fire Pension Plan in which case the funds of the two OR MORE plans may be co-mingled for investment purposes.

(d) To the extent the Trustee is directed by the Board ~~or the City~~ to make a particular investment, the Trustee shall be held harmless from any loss or other liability arising therefrom.

(B) Administrative Powers of the Trustee: The Trustee shall have all powers necessary or advisable to carry out the provisions of this Plan and all inherent, implied and statutory powers now or hereafter provided by law, including specifically the power to do any of the following:

(1) To cause any securities or other property to be registered and held in its name as Trustee or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer.

(2) To sell, grant option to sell, exchange, pledge, encumber, mortgage, deed in trust or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best, and it may retain, hold, maintain or continue any securities or investments which it may hold as part of the Trust Fund for such length of time as it may deem advisable.

(3) To abandon, compromise, contest and arbitrate claims on demands; to institute, compromise and defend actions at law (but without obligation to do so), all at the risk and expense of the Trust Fund.

(4) To borrow money for this Trust, WITH THE APPROVAL OF THE BOARD, upon such terms and conditions as the Trustee shall deem advisable, and to secure the repayment thereof by the mortgage or pledge of any asset of the Trust Fund.

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

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

(C) Immunity of Trustee: No bond or other security shall be required of the Trustee or any successor trustee except as otherwise provided by law. The Trustee shall not be liable for any mistake of judgment or other action taken in good faith or for any loss to the Trust Fund unless such loss results from its gross negligence, willful misconduct or bad faith.

(D) Advice of Board or Counsel:

(1) If, at any time, the Trustee is in doubt concerning any action which it should take in connection with the administration of the Trust, it may request the Board to advise it with respect thereto and shall be protected in relying upon the advice or direction of the Board.

(2) The Trustee may also consult with legal counsel, who may be counsel for the City, or Trustee's own counsel, with respect to the meaning or construction of this Chapter or Trustee's obligations or duties, and shall be fully protected from any responsibility with respect to any action taken or omitted by them in good faith pursuant to the advice of such counsel.

(E) Taxes, Expenses and Fees of the Trustee: The Trustee shall charge against and pay from the Trust Fund any taxes which may be imposed upon the Trust Fund or the income thereof, or upon or with respect to the interest of any person therein which the Trustee is required to pay.

(1) The reasonable expenses of the Trustee incurred in the administration of the Plan, including the fees of any corporate co-trustee which might be appointed as may be mutually agreed upon from time to time by the Trustee and the Board, and attorney's fees incurred by the Trustee, shall be chargeable to and paid by the Trust Fund, provided that the City may pay all or part of such expenses and fees in the discretion of the City Manager.

(2) All expenses incurred in the preparation and adoption of the Plan shall be paid by the City.

(F) Records and Accounts of the Trustee: The Trustee shall keep all such records and accounts which may be necessary in the administration and conduct of this Chapter. The Trustee's records and accounts shall be open to inspection by the City, the Board, and the Participant of his own accounts, during business hours.

(1) All income, profits, recoveries, contributions, forfeitures, and any and all moneys, securities and properties of any kind at any time received or held by the Trustee shall be held for investment purposes as a commingled Trust Fund. Separate accounts or records may be maintained for operational and accounting purposes, but no such account or record shall be considered as segregating any funds or property from any other funds or property contained in the commingled fund, except as otherwise provided in this Chapter.

(2) After the close of each year of the Trust, the Trustee shall render to the City and the Board an accounting of the Trust Fund for such year. If no objections to any such accounting are filed within a period of sixty (60) days after it has been delivered to the City and the Board, it shall be deemed to have been approved and shall constitute a full and complete discharge and release to the Trustees from the City and the Board and all other persons having or claiming any interest in the Trust Fund.

(G) Resignation and Removal of Trustee: The City, by action of the City Manager, may in its discretion appoint an additional NON-VOTING trustee to act as co-trustee with the City Finance Director, which may, but need not, be a bank or trust company organized under the laws of Colorado or the United States authorized by law to administer trusts and maintaining and operating a full-time trust department.

(1) Any Trustee other than the City Finance Director may resign its or his duties as Trustee at any time by filing with the City Manager its or his written resignation. No such resignation shall take effect until thirty (30) days from the date thereof, provided that if a successor Trustee shall have been appointed prior to the expiration of said period, the resignation shall be effective immediately.

(2) Any Trustee other than the City Finance Director may be removed by the City, by action of the City Manager, at any time by giving thirty (30) days notice in writing to such Trustee. Such removal shall be effected by delivering to such Trustee written notice of his removal, executed by the City Manager.

(3) All the provisions set forth in this Chapter with respect to the Trustee shall relate to all successor Trustees and if more than one Trustee is then acting, reference to the term "Trustee" shall mean "Trustees".

(4) In any event any corporate co-Trustee at any time acting hereunder shall be merged, or consolidated with, or shall sell or transfer substantially all of its assets and business to another corporation, whether State or Federal or shall be in any manner reorganized or reincorporated, then the resulting or acquiring corporation shall thereupon be substituted ipso facto for such corporate Trustee hereunder without the execution of any instrument and without any action upon the part of the City, any Participant or Beneficiary of any deceased Participant, or any other person having or claiming to have an interest in the Trust Fund or under the Plan.

14-2-11: CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN

(A) Continuance of the Plan not a Contractual Obligation of the City: It is the expectation of the City that it will continue this Plan indefinitely, but the continuance of the Plan is not assumed as a contractual obligation by the City, and the right is reserved to the City by action of its City Council to discontinue this Plan at any time. The discontinuance of this Plan by the City shall, in no event, have the effect of reverting any part of the Trust Fund in the City.

(B) Termination of Plan: This Plan shall continue in full force and effect until terminated or discontinued by the City by action of its City Council. Notice of such termination shall be given to the Trustee by an instrument in writing executed by the City Manager pursuant to the action of ~~the~~ ITS City Council.

(C) Distribution of Trust Fund on Termination of Plan: If the Plan shall, at any time, be terminated by the terms of this section, the Trustee shall immediately convert the entire Trust Fund, other than insurance and annuity contracts, to cash. The value of the interest of each respective Participant or Beneficiary in the Trust Fund shall be vested in its entirety as of the date of the termination of the Plan. The Trustee shall, as soon as possible, distribute to each Participant or Beneficiary outright his entire interest in the Trust Fund.

(D) Amendments to the Plan:

(1) The City, by action of its City Council, may at any time amend this Chapter; provided, however, that no such amendment shall:

(a) Divert the Trust Fund to purposes other than for the exclusive benefit of the Participants and their Beneficiaries;

(b) Decrease the Participant's share of this plan; or

(c) Discriminate in favor of employees who are officers, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees.

(2) Notwithstanding anything herein to the contrary, however, this Chapter may be amended, if necessary, WITHOUT REQUIRING THE APPROVAL OF THE PLAN PARTICIPANTS to conform to the provisions and requirements of the Federal Internal Revenue Code or any amendments thereto, and no such amendment shall be considered prejudicial to the interest of any Participant or Beneficiary hereunder.

14-2-12: MISCELLANEOUS

~~(A) Transfers Between Qualified Plans: The Trustee, at the direction of the Board, is authorized to receive and add to any Participant's share of this plan the amount of his vested interest in the assets held under any other qualified employee retirement plan or individual retirement account if such transfer satisfies the requirements under law for transfers between qualified plans or rollover contributions. In such event the assets so received shall be fully vested and shall be held in such Participant's account and shall be administered and distributed pursuant to the provisions of this Chapter. The Trustee is also authorized to transfer such Participant's vested share of this plan which has become distributable under Section 14-2-7, directly to another qualified plan or an individual retirement account, provided such transfer satisfies the requirements under law for such transfers.~~

~~(B)~~ (A) Benefits to be Provided Solely from the Trust Fund: All benefits payable under this Plan shall be paid or provided for solely from the Trust Fund, and the City assumes no liability or responsibility therefore.

~~(C)~~ (B) Notices from Participants to be Filed with Board: Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each participant shall be evidenced by a written notice therefore signed by the Participant on a form furnished by the Board for such purpose and filed with the Board, which shall not be effective until received by the Board.

~~(D)~~ (C) Text to Control: The headings of sections and subsections are included solely for convenience or reference. If there be any conflict between such headings and the text of this Chapter, the text shall control.

~~(E)~~ (D) Law Governing: This Plan shall be construed, under the laws of the State of Colorado and the Trustee shall be liable to account only in the courts of Colorado. All contributions received by the Trustee pursuant to this Chapter shall be deemed to have been received in Colorado.

~~(F)~~ (E) Severability: In the event any provision of this Chapter shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions.

On the contrary, such remaining provisions shall be fully severable and this Chapter shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

~~(G)~~ (F) Plan for Exclusive Benefit of Participants; Reversion Prohibited: This Plan has been entered into for the exclusive benefit of the Participants and their Beneficiaries. Under no circumstances shall any funds contributed to or held by the Trustee hereunder at any time revert to or be used by or enjoyed by the City nor shall any such funds or assets at any time be used other than for the exclusive benefit of the Participants or their Beneficiaries.

Section 3. Title XIV, Chapter 3 of the Official Code of the City of Wewstminster is hereby repealed and reenacted as follows:

14-3-1: NAME AND PURPOSE OF PLAN:

(A) The City OF WESTIMINSTER does hereby establish its Fire Pension Plan, which is a qualified deferred money purchase pension plan. The Plan is created for the exclusive benefit of the City's eligible employees who qualify as participants and their Beneficiaries. The Plan is intended to qualify under Section 401(a) of the Federal Internal Revenue Service Code and the Trust created pursuant to the Plan is intended to be exempt under Section 501(a) of such Code and all provisions of this Plan shall be construed in accordance with this intention. Since this is a governmental plan, it is not the intention of the City to have the Plan comply with the provisions of the Federal Internal Revenue Code after the enactment of the Employee Retirement Income Security Act of 1984, except to the extent that changes to the Code apply to governmental plans.

(B) Prior Coverage Under the Participant's Other City Funded Pension Plans: Upon the approval of this Plan by at least sixty-five percent (65%) of the Participants, any employee who was formerly a Participant in the Employee's Pension Plan and Trust Agreement, THE General Employee Pension Plan OR THE Police and Fire Pension Plan ~~or Fire Pension Plan~~ shall automatically have his interest in such plan, whether held by investment agents, the Trustee, or the City, transferred to this Plan upon becoming eligible to be a Participant in this Plan. Upon transfer of the employee's interest, without a break in municipal service, the employee shall have the same participant status as the employee had under the other plan. Any contributions due from the City, or withheld from the employee for the pay period ending January 5, 1986 will be paid directly into this Plan.

14-3-2: DEFINITIONS: When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise and further provided that the masculine gender shall include the feminine, and the singular shall include the plural:

(A) "BENEFICIARY": Any person OR ENTITY who, pursuant to Section 14-3-6(B) becomes entitled to receive all or any part of a Participant's interest upon the Participant's death.

(B) "BOARD": The Fire Pension Plan Board established in this Chapter.

(C) "CITY": The City of Westminster, Colorado.

(D) "COMPENSATION": The base pay of a Participant for services rendered to the City, including longevity pay, but excluding overtime pay, bonuses, insurance premiums, pension and retirement benefits, and all contributions by the City to this Plan, to any health, accident or welfare fund or plan, or any similar benefit. Compensation shall be computed prior to any salary reduction for mandatory contributions picked up by the City or amounts deferred under a deferred compensation plan OR A SALARY REDUCTION PLAN OR PRE-TAX MEDICAL PLAN. COMPENSATION FOR PART-TIME EMPLOYEES IS THE PAY EARNED FOR THE AMOUNT OF FULL TIME EQUIVALENTS (FTE'S) BUDGETED FOR THEIR POSITIONS.

(E) "CONTRIBUTING PARTICIPANT": Any employee who is making contributions to this Plan whether or not the City is contributing.

(F) "DIRECT ROLLOVER": A DIRECT ROLLOVER IS A PAYMENT BY THE PLAN TO THE ELIGIBLE RETIREMENT PLAN SPECIFIED BY THE DISTRIBUTE.

(G) "DISTRIBUTE": A DISTRIBUTE INCLUDES AN EMPLOYEE OR FORMER EMPLOYEE. IN ADDITION, THE EMPLOYEE'S OR FORMER EMPLOYEE'S SURVIVING SPOUSE AND THE EMPLOYEE'S OR FORMER EMPLOYEE'S SPOUSE OR FORMER SPOUSE WHO IS THE ALTERNATE PAYEE UNDER A QUALIFIED DOMESTIC RELATIONS ORDER, AS DEFINED IN SECTION 414(p) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE, ARE DISTRIBUTES WITH REGARD TO THE INTEREST OF THE SPOUSE OR FORMER SPOUSE.

(H) "ELIGIBLE RETIREMENT PLAN": AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT DESCRIBED IN SECTION 408(a) OF THE FEDERAL INTERNAL REVENUE SERVICE (IRS) CODE, AN INDIVIDUAL RETIREMENT ANNUITY DESCRIBED IN SECTION 408(b) OF THE IRS CODE, AN ANNUITY PLAN DESCRIBED IN SECTION 403(a) OF THE IRS CODE, OR A QUALIFIED TRUST DESCRIBED IN SECTION 401(a) OF THE IRS CODE, THAT ACCEPTS THE DISTRIBUTEES ELIGIBLE ROLLOVER DISTRIBUTION. HOWEVER, IN THE CASE OF AN ELIGIBLE ROLLOVER DISTRIBUTION TO THE SURVIVING SPOUSE, AN ELIGIBLE RETIREMENT PLAN IS AN INDIVIDUAL RETIREMENT ACCOUNT OR INDIVIDUAL RETIREMENT ANNUITY.

(I) "ELIGIBLE ROLLOVER DISTRIBUTION": AN ELIGIBLE ROLLOVER DISTRIBUTION IS ANY DISTRIBUTION OF ALL OR ANY PORTION OF THE BALANCE TO THE CREDIT OF THE DISTRIBUTEES, EXCEPT THAT AN ELIGIBLE ROLLOVER DISTRIBUTION DOES NOT INCLUDE: ANY DISTRIBUTION THAT IS ONE OF A SERIES OF SUBSTANTIALLY EQUAL PERIOD PAYMENTS (NOT LESS FREQUENTLY THAN ANNUALLY) MADE FOR THE LIFE (OR LIFE EXPECTANCY) OF THE DISTRIBUTEES OR THE JOINT LIVES (OR JOINT LIFE EXPECTANCIES) OF THE DISTRIBUTEES AND THE DISTRIBUTEES DESIGNATED BENEFICIARY, OR FOR A SPECIFIED PERIOD OF TEN YEARS OR MORE; ANY DISTRIBUTION TO THE EXTENT SUCH DISTRIBUTION IS REQUIRED UNDER SECTION 401(a)(9) OF THE INTERNAL REVENUE SERVICE CODE; AND THE PORTION OF ANY DISTRIBUTION THAT IS NOT INCLUDIBLE IN GROSS INCOME (DETERMINED WITHOUT REGARD TO THE EXCLUSION FOR NET UNREALIZED APPRECIATION WITH RESPECT TO EMPLOYER SECURITIES).

(F)(J) "EMPLOYEE": Any person who fills an authorized position that is scheduled to work at least twenty (20) hours during a seven day cycle, excluding firefighters and police officers as defined in this Chapter, temporary employees, elected officials, independent contractors, volunteers and part-time employees scheduled to work less than twenty (20) hours in a seven day cycle.

(G)(K) "FIREFIGHTER": Any person who is employed in the Fire Department except clerical employees and volunteers.

(H)(L) "FULL PARTICIPANT": Any employee who is qualified to receive employer contributions under this Plan.

(I)(M) "INACTIVE PARTICIPANT": Any person who has been a contributing participant to this plan or a preceding pension plan of the City who is no longer an employee but who has not received full distribution of ~~his full share~~ ALL RESPECTIVE INTEREST in the plan.

(J)(N) "INTEREST": The amount of a participant's share in the trust fund including City contributions, employee contributions and earnings.

(K)(O) "PARTICIPANT": Any contributing participant or inactive participant.

(L)(P) "THE PLAN": The Pension Plan established in this chapter and all subsequent amendments thereto.

(M)(Q) "PLAN YEAR": The City's fiscal year which is the calendar year, which shall be the fiscal year of the trust fund established pursuant to this Plan.

(N)(R) "TERMINATION OF EMPLOYMENT": The cessation of a person's status as an "Employee" as defined in this section. If the person, upon termination of employment, becomes eligible to participate in either the Police or Fire Pension Plan, without a break in municipal service, the employee's interest shall be transferred to that plan and the person shall retain his participant status. Termination due to dismissal shall become effective on the date after the employee's grievance rights, if any, have lapsed or, if a grievance is filed, on the date of the final decision by the City.

(O)(S) "TOTAL DISABILITY": A disability which permanently renders a participant unable to perform satisfactorily the usual duties of his employment with the City as determined by the Board and which results in his termination of employment with the City.

(P)(T) "TRUST FUND": The assets of the trust established pursuant to this Plan out of which the benefits under this Plan shall be paid including all income of whatever nature earned by the fund and all increases in fair market value.

(Q)(U) "TRUSTEE": The Trustee of the trust fund established pursuant to this Plan who shall always be the current acting Finance Director of the City of Westminster and any duly qualified corporate co-trustee appointed pursuant to Section 14-2-10 and any duly appointed and qualified successor trustees.

14-3-3: PARTICIPATION OF EMPLOYEES:

(A) Participants.

(1) Contributing Participant: Each employee hired on or after January 6, 1986 shall become a Contributing Participant in the Plan on the date the employee becomes a regular or qualified part-time employee and has attained the age of eighteen (18). Each person who was an employee on January 6, 1986, had the option to elect to become a Contributing Participant on January 6, 1986. Any employee who is not a Contributing Participant on the date he becomes eligible to be a Full Participant will begin making mandatory contributions on the same date as employer contributions begin. By accepting employment with the City, each employee shall be deemed to have consented to the terms and provisions of this Plan.

(2) Full Participant: No matter when an employee becomes a Contributing Participant, each employee shall become a Full Participant, eligible to receive employer contributions, on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18).

(3) Last Pay period of Contribution: The City shall not make any contribution for the account of a Full Participant for the pay period in which his employment shall terminate for any reason unless such Participant is employed on the last date of such pay period. No Participant may make contributions to the Plan, other than changes in the valuation of or earnings on his undistributed interest in the Plan, after his termination of employment or loss of status as an employee as defined in this Chapter.

(4) Determination of Service: For the purpose of determining eligibility to become a Full Participant, service shall be determined in accordance with the following rules:

(a) An employee ~~shall~~ WHO COMPLETES twenty-two (22) months of continuous municipal service as defined in Chapter 24 of Title I of this Code, shall be eligible as a Full Participant on the first day of the pay period coinciding with or immediately following the date on which the employee has completed twenty-two (22) months of service with the City and has attained the age of eighteen (18), provided such employee is still employed on such date and has not severed his employment (as provided in subsection (d) of this section) during such twenty-two (22) month period.

(b) A leave of absence without pay other than for military service shall be considered a break in continuous municipal service unless municipal service is extended, pursuant to Section 1-24-10(V) of this Code. Neither the City nor the employee shall be required to contribute to the Participant's account during a leave of absence without pay.

(c) Any employee who has entered or enters the armed forces of the United States shall be presumed to be on a leave of absence, regardless of the length of such service, and such leave of absence shall not be considered as a break in continuity of service or a termination of employment, provided he returns to the employ of the City within ninety (90) days of the date on which he shall have the right to release from military service or from the hospital in the event of service-caused disability, without intervening employment elsewhere.

(d) Dismissal or voluntary termination of employment shall be considered as a break in continuity of service; subsequent reemployment shall be deemed to be new employment, and the employee will be subject to the eligibility requirements as if such employee were a new employee, whether or not such employee was formerly a Full Participant. However, if the City reinstates an employee subsequent to dismissal, this paragraph shall not apply.

(e) The provisions of this paragraph (4) shall be applied to all employees and Participants in a like manner.

(B) Board to Determine Participants.

(1) The City shall deliver to the Board in writing such information from the City's records with respect to employees and their compensation as the Board may require in order to determine the identity and interests of the Participants, and otherwise to perform its duties hereunder.

(2) Any information given by the City to the Board pursuant to subsection (B) of this section shall, for all purposes of this Chapter, be binding on all parties in interest; provided that whenever any employee proves to the satisfaction of the City that his period of employment or his compensation as so given is incorrect, the City shall correct such information and so advise the Board.

(3) The determination of the Board as to the identity of the respective Participants and as to their respective interests shall be binding upon the City and Trustee, all employees, all Participants and all Beneficiaries.

14-3-4: CONTRIBUTIONS BY THE CITY, THE STATE OF COLORADO AND PARTICIPANTS

(A) Contributions by the City.

(1) Determination of Contribution by the City: On and after January 6, 1986, each pay period the City shall contribute to the credit of each Full Participant's account, ten and one-quarter percent (10.25%) of each Full Participant's compensation for that pay period, provided that during any period in which the City is required to make contributions on behalf of Participants under the Federal Insurance Contributions Act or the Social Security Act, the contribution to this Plan for each Participant shall be offset by the amount of the old age survivors and disability insurance ("OASDI") portion of the Social Security taxes paid by the City for such Participant. This offset shall not exceed the City contribution.

(2) Time and Method of Payment of Contribution by the City: The contributions of the City shall be made every pay period and shall be credited to the Plan on each payday.

(B) Contributions by State of Colorado: All monies from the State of Colorado contributed on behalf of paid Firefighters each year will be credited to the account of each Firefighter in the ratio that his full months of service as a Firefighter for the City relates to the full months of service of all other Firefighters who are Participants in the Plan for that year.

(C) Contributions by Contributing Participants.

(1) Mandatory Employee Contributions:

(a) Each Contributing Participant must contribute to the Trust Fund a percentage of his compensation for each pay period as follows: ~~for the pay periods commencing January 5, 1987, and ending December 20, 1987 five percent (5%); thereafter six percent (6%)~~ FOR THE PAY PERIODS COMMENCING JANUARY 1, 1997, EIGHT PERCENT (8%) AND FOR THE PAY PERIODS COMMENCING JANUARY 1, 1998, AND THEREAFTER, TEN PERCENT (10%) ~~provided that~~ OR THE PERCENTAGE AT LEAST EQUAL TO THE OASDI TAXES. During any period in which the contributing participant is required to make contributions under the Federal Insurance Contributions Act or the Social Security Act, the mandatory contribution to this plan by each contributing participant SHALL BE OFFSET BY THE OASDI TAXES PAID BY THE PARTICIPANT, except that no offset for OASDI taxes shall reduce the mandatory contribution to this plan for a participant to less than two percent (2%) of that contributing participant's compensation for that pay period.

(b) For the pay period commencing December 21, 1987, and thereafter, the contribution provided by this paragraph shall be picked up and paid by the City, as Employer, as provided in section 414(h) of the Federal Internal Revenue Service Code and the Participant's gross income shall be reduced by the amount of the contributions picked up by the City.

(c) Each Participant, as a condition to his employment, shall be deemed to have authorized the City to reduce the Participant's compensation by such amount from each of his paychecks and to transmit such amount directly to the Trustee, according to the provisions of this Chapter.

(d) Separate accounts shall be maintained for the mandatory contributions of the Employees prior to the pick up of such contributions by the City and the contributions picked up by the City.

(2) Voluntary Contributions:

(a) Subject to the provisions of Section 14-3-5(B), each Contributing Participant may elect to contribute to the Trust Fund an amount not to exceed ten percent (10%) of his compensation for each pay period in addition to the mandatory contributions required in paragraph (1) of this subsection.

(b) The amount, if any, which a Contributing Participant voluntarily contributes to the Trust Fund may vary from year to year and may be contributed through payroll deductions or in one lump sum, annually, or both, provided that a lump sum contribution for any year must be paid directly by the Contributing Participant instead of through a payroll deduction. ~~Once a payroll deduction is authorized, it may not be revised more often than once during any six month period.~~ A CONTRIBUTING PARTICIPANT MAY HAVE THE OPTION OF INCREASING, DECREASING, OR TERMINATING HIS VOLUNTARY CONTRIBUTION AT ANY TIME. No Participant shall have any obligation to make any voluntary contribution.

(c) For purposes of this Section, amounts representing the Participant's interest in another qualified pension plan transferred in accordance with Section 14-3-12(A), shall not be considered voluntary contributions.

(3) Payment of Participant Contributions: The contributions of the employee shall be withheld every pay period and shall be credited to the Plan on each payday.

(D) RETIREMENT MEDICAL SAVINGS ACCOUNTS:

(1) SUBJECT TO APPROVAL BY THE INTERNAL REVENUE SERVICE, EACH PARTICIPANT SHALL HAVE THE OPTION OF DESIGNATING UP TO 25% OF HIS MANDATORY AND CITY CONTRIBUTIONS TO BE USED FOR FUTURE MEDICAL EXPENSES AS PROVIDED FOR IN SECTION 401(h) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE. CONTRIBUTIONS TO THE MEDICAL SAVINGS ACCOUNTS WILL NOT BE TAXED AT RETIREMENT NOR UPON USE FOR MEDICAL EXPENSES DURING RETIREMENT. THE RETIREMENT MEDICAL SAVINGS ACCOUNTS WILL BE SUBJECT TO THE RULES AND REQUIREMENTS ISSUED BY THE CITY MANAGER.

(2) CONTRIBUTIONS DESIGNATED FOR FUTURE HEALTH BENEFITS UNDER SECTION 401(h) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE AS DESCRIBED IN SUBSECTION C(1) OF THIS SECTION SHALL BE MAINTAINED IN SEPARATE ACCOUNTS.

(D)(E) City's Obligations.

(1) The adoption and continuance of the Plan as set forth in this Chapter shall not be deemed to constitute a contract between the City and any employee or Participant, nor to be consideration for, or an inducement or condition of, the employment of any person. Nothing in this Chapter shall be deemed to give any employee or Contributing Participant the right to be retained in the employ of the City, or to interfere with the right of the City to discharge any employee or Contributing Participant at any time, nor shall it be deemed to give the City the right to require the employee or Contributing Participant to remain in its employ, nor shall it interfere with the right of any employee or Contributing Participant to terminate his employment at any time.

(2) The City shall not incur any liability whatsoever to the Trust Fund, any Participant or his Beneficiaries, the Trustee, or any other person, for anything done or omitted by the Trustee, or for the loss or depreciation, in whole or in part, of the Trust Fund.

14-3-5: DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS:

(A) Allocation of Employer Contributions: The contributions made by the employer to the credit of the account of each Full Participant shall be allocated to the account of each such Participant as of the end of each pay period. Any allocation shall be subject to the limitations set forth in subsection (B) of this section.

(B) Limitations on Allocations:

(1) General Rule: In no event may a Participant receive an allocation for any year which, when combined with his allocation under any other defined contribution plan established by the City, exceeds the lesser of twenty-five percent (25%) of his compensation for such year or \$30,000, provided such figure shall change to conform with any adjustment for changes in the cost of living after the enactment of the Tax Equity and Fiscal Responsibility Act of 1982, as provided by law or regulation. For the purpose of applying the foregoing limitation, the limitation year shall be the plan year. If a short limitation year is created as a result of a change in the limitation year, the dollar limitation for such short limitation year shall be the dollar limitation set forth in this subsection multiplied by a fraction, the numerator of which is the number of months in such short year and the denominator of which is twelve (12).

(2) Allocations: For the purpose of applying the limitations of this Section, the allocation to the Participant shall include the following amounts allocated to the account of a Participant for a limitation year: Employer contributions, forfeitures, and nondeductible contributions made by the Participant, provided that for years beginning before 1987, only nondeductible contributions in excess of six percent (6%) of his compensation for the year, or one-half (1/2) of the nondeductible contributions made by the Participant, whichever shall be less, shall be counted as an allocation. EXCEPT THAT, FOR THE PLAN YEARS BEGINNING ON OR AFTER JANUARY 1, 1994, ALLOCATIONS MAY NOT BE BASED ON COMPENSATION IN EXCESS OF THE ANNUAL LIMITATION OF \$150,000.00, SUBJECT TO ADJUSTMENT AS PROVIDED BY LAW OR REGULATION, FOR THE ACCOUNT OF ANY INDIVIDUAL PARTICIPANT. For the purpose of applying the limitations of this Section, compensation from and allocations received under any retirement plan maintained by any other employer which is a common member with the employer of either a controlled group of businesses or an affiliated service group, as prescribed by law or regulation, shall be counted.

(3) Excluded Amounts: Any amount not mentioned in paragraph (2) of this subsection shall not be considered an allocation. The amounts not considered as allocations include deductible Participant contributions, roll over contributions and transfers from other qualified plans allocated to the account of a Participant.

(4) Treatment of Excess: In the event an allocation would otherwise exceed the limitations of this section, any non-deductible voluntary contribution by the Participant which is counted as part of such allocation shall be returned to such Participant to the extent necessary to reduce such allocation on a level in compliance with the limitations of this section. If after such return of contributions there still remains an excess, the excess over such limitations shall be held in a suspense account until such amount can be applied to reduce the next contribution by the employer. If the employer maintains more than one qualified defined contribution plan, the excess shall be considered to have first occurred in the Plan to which the contribution of the employer is discretionary, and if there is no such plan, the excess shall be treated as having occurred in all defined contribution plans on a pro rata basis based upon the employer contribution to each of the Plans. If this plan is terminated when there is an amount held in such a suspense account, the amount held in such account, which cannot be allocated to Participants without exceeding the foregoing limit, shall be returned to the employer.

(5) Defined Benefit Plans: In any year if a Participant in this Plan is or ever has been a Participant in a defined benefit plan maintained by the employer, then the sum of the Defined Benefit Plan fraction and the Defined Contribution Plan fraction (both as prescribed by law) for such Participant for such year shall not exceed 1.0. In any year if the sum of the Defined Benefit Plan fraction on behalf of a Participant would exceed 1.0, then the allocation under this plan shall be reduced to the extent necessary so that the sum of such fractions does not exceed 1.0. For purposes of this Section, the limitation year shall be the plan year. The Defined Benefit Plan fraction for any Participant shall be the fraction, the numerator of which is the projected annual benefit of the Participant under the plan (determined as of the close of the year), and the denominator of which is the lesser of (i) the product of 1.25 multiplied by the maximum dollar limitation for benefits set forth in subsection 415(b)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the percentage limitation set forth under Subsection 415(b)(1)(B) of the Federal Internal Revenue Code with respect to such Participant for such year. The Defined Contribution Plan fraction shall be the fraction, the numerator of which is the sum of the annual additions to the Participant's account as of the close of the year for such year and all prior years, and the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the employer: (i) The product of 1.25 multiplied by the dollar limitation in effect under Subsection 415(c)(1)(A) of the Federal Internal Revenue Code for such year, or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Subsection 415(c)(1)(B) of the Federal Internal Revenue Code with respect to such individual under such plan for such year with respect to dollar limitations.

(6) Compensation: For the purposes of applying the limitations of this subsection (B), compensation means the total amount paid by the employer to a Participant for services rendered to the employer which are included in the taxable income of the Participant, PROVIDED THAT FOR LIMITATION YEARS BEGINNING AFTER DECEMBER 31, 1997, COMPENSATION FOR THE PURPOSES OF THIS SECTION SHALL NOT BE REDUCED BY VOLUNTARY SALARY DEFERRALS OR REDUCTIONS FOR A PARTICIPANT UNDER A PLAN ESTABLISHED UNDER FEDERAL INTERNAL REVENUE SERVICE CODE SECTIONS 125, 457, 401(k), OR 403(b).

(C) CONTRIBUTION PERCENTAGE TEST FOR MATCHING AND EMPLOYEE CONTRIBUTIONS.

(1) GENERAL RULE: THE AVERAGE CONTRIBUTION PERCENTAGE IN ANY YEAR OF ALL PARTICIPANTS WHO ARE HIGHLY COMPENSATED EMPLOYEES MAY NOT EXCEED THE GREATER OF THE FOLLOWING AMOUNTS:

(a) 125% OF THE AVERAGE CONTRIBUTION PERCENTAGE FOR SUCH YEAR OF ALL PARTICIPANTS WHO ARE NOT HIGHLY COMPENSATED EMPLOYEES; OR

(b) THE AVERAGE CONTRIBUTION PERCENTAGE FOR SUCH YEAR OF ALL PARTICIPANTS WHO ARE NOT HIGHLY COMPENSATED EMPLOYEES, PLUS TWO PERCENTAGE POINTS (2%), LIMITED TO TWO TIMES THE AVERAGE CONTRIBUTION PERCENTAGE FOR ALL SUCH PARTICIPANTS.

FOR PURPOSES OF THE FOREGOING, THE AVERAGE CONTRIBUTION PERCENTAGE IS THE AVERAGE OF THE SUM OF THE CITY CONTRIBUTIONS UNDER SECTION 14-3-4(A) ALLOCATED TO THE ACCOUNTS OF THE APPLICABLE PARTICIPANT PLUS SUCH PARTICIPANT'S VOLUNTARY NON-DEDUCTIBLE CONTRIBUTIONS, DIVIDED BY THE TOTAL COMPENSATION OF SUCH PARTICIPANT FOR EACH SUCH PARTICIPANT. IF THE AMOUNT TO BE CONTRIBUTED BY THE CITY AND ALLOCATED TO THE ACCOUNTS OF PARTICIPANTS WHO ARE HIGHLY COMPENSATED EMPLOYEES EXCEEDS THE FOREGOING LIMITATIONS, THEN THE AMOUNT SO ALLOCATED SHALL BE REDUCED, BEGINNING WITH THE HIGHEST DOLLAR AMOUNT OF CONTRIBUTION AMONG SUCH PARTICIPANTS, TO THE EXTENT NECESSARY TO SATISFY SUCH LIMITATION AND SUCH EXCESS AMOUNT, TOGETHER WITH EARNINGS THEREON, AND SHALL BE DISTRIBUTED TO SUCH PARTICIPANTS NO LATER THAN 2-1/2 MONTHS AFTER THE END OF THE PLAN YEAR IN WHICH SUCH CONTRIBUTIONS WERE MADE.

(2) ADJUSTMENT OF CONTRIBUTION PERCENTAGE: THE EMPLOYER MAY IN ITS DISCRETION MAKE CONTRIBUTIONS TO THE PLAN, WHICH SHALL BE DESIGNATED AS ADDITIONAL MATCHING CONTRIBUTIONS AND WHICH SHALL BE ALLOCATED TO THE ACCOUNTS OF PARTICIPANTS WHO ARE NOT HIGHLY COMPENSATED EMPLOYEES, IN ORDER TO INCREASE THE AVERAGE CONTRIBUTION PERCENTAGE OF SUCH PARTICIPANTS. IN APPLYING THE LIMITATION ABOVE, THE ADMINISTRATOR SHALL TAKE INTO ACCOUNT SUCH DESIGNATED EMPLOYER CONTRIBUTIONS.

(3) EXCESS AGGREGATE CONTRIBUTIONS: EMPLOYER CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS IN EXCESS OF THE LIMITATIONS OF THIS SECTION ARE EXCESS AGGREGATE CONTRIBUTIONS.

(4) DISPOSITION OF EXCESS AGGREGATE CONTRIBUTIONS.

(a) GENERAL RULE: NOTWITHSTANDING ANY OTHER PROVISION OF THIS PLAN, EXCESS AGGREGATE CONTRIBUTIONS, PLUS ANY INCOME AND MINUS ANY LOSS ALLOCABLE THERETO, SHALL BE FORFEITED, IF FORFEITABLE, OR IF NOT FORFEITABLE, DISTRIBUTED NO LATER THAN THE LAST DAY OF EACH PLAN YEAR TO PARTICIPANTS TO WHOSE ACCOUNTS SUCH EXCESS AGGREGATE CONTRIBUTIONS WERE ALLOCATED FOR THE PRECEDING PLAN YEAR. IF SUCH EXCESS AGGREGATE CONTRIBUTIONS ARE DISTRIBUTED MORE THAN 2-1/2 MONTHS AFTER THE LAST DAY OF THE PLAN YEAR IN WHICH SUCH EXCESS AMOUNTS AROSE, A 10% EXCISE TAX WILL BE IMPOSED ON THE EMPLOYER MAINTAINING THE PLAN WITH RESPECT TO THOSE AMOUNTS. EXCESS AGGREGATE CONTRIBUTIONS SHALL BE TREATED AS ANNUAL ADDITIONS UNDER THE PLAN.

(b) DETERMINATION OF INCOME OR LOSS: EXCESS AGGREGATE CONTRIBUTIONS SHALL BE ADJUSTED FOR ANY INCOME OR LOSS UP TO THE DATE OF DISTRIBUTION. THE INCOME OR LOSS ALLOCABLE TO EXCESS AGGREGATE CONTRIBUTIONS IS THE SUM OF: (i) INCOME OR LOSS ALLOCABLE TO THE PARTICIPANT'S EMPLOYEE CONTRIBUTION ACCOUNT, MATCHING CONTRIBUTION ACCOUNT (IF ANY, AND IF ALL AMOUNTS THEREIN ARE NOT USED IN THE DEFERRAL PERCENTAGE TEST UNDER INTERNAL REVENUE SERVICE CODE SECTION 401(k)) AND, IF APPLICABLE, QUALIFIED NON-ELECTIVE CONTRIBUTION ACCOUNT AND ELECTIVE DEFERRAL ACCOUNT FOR THE PLAN YEAR MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS SUCH PARTICIPANT'S EXCESS AGGREGATE CONTRIBUTIONS FOR THE YEAR AND THE DENOMINATOR OF WHICH IS THE PARTICIPANT'S ACCOUNT BALANCE(S)

ATTRIBUTABLE TO CONTRIBUTION PERCENTAGE AMOUNTS WITHOUT REGARD TO ANY INCOME OR LOSS OCCURRING DURING SUCH PLAN YEAR; AND (ii) 10% OF THE AMOUNT DETERMINED UNDER (i) MULTIPLIED BY THE NUMBER OF WHOLE CALENDAR MONTHS BETWEEN THE END OF THE PLAN YEAR AND THE DATE OF DISTRIBUTION, COUNTING THE MONTH OF DISTRIBUTION IF DISTRIBUTION OCCURS AFTER THE 15TH OF SUCH MONTH.

(c) FORFEITURES OF EXCESS AGGREGATE CONTRIBUTIONS: FORFEITURES OF EXCESS AGGREGATE CONTRIBUTIONS SHALL BE APPLIED TO REDUCE EMPLOYER CONTRIBUTIONS.

(d) ACCOUNTING FOR EXCESS AGGREGATE CONTRIBUTIONS: EXCESS AGGREGATE CONTRIBUTIONS SHALL BE FORFEITED, IF FORFEITABLE OR DISTRIBUTED ON A PRO RATA BASIS FROM THE PARTICIPANT'S EMPLOYEE CONTRIBUTION ACCOUNT, EMPLOYER CONTRIBUTION ACCOUNT, AND QUALIFIED MATCHING CONTRIBUTION ACCOUNT, IF ANY, (AND, IF APPLICABLE, THE PARTICIPANT'S QUALIFIED NON-ELECTIVE CONTRIBUTION ACCOUNT OR ELECTIVE DEFERRAL ACCOUNT, OR BOTH).

(e) AGGREGATE LIMIT: FOR PURPOSES OF THIS SECTION, THE TERM "AGGREGATE LIMIT" SHALL MEAN THE SUM OF (i) 125% OF THE GREATER OF THE DEFERRAL PERCENTAGE OF THE NON-HIGHLY COMPENSATED EMPLOYEES FOR THE PLAN YEAR OR THE CONTRIBUTION PERCENTAGE OF THE NON-HIGHLY COMPENSATED EMPLOYEES UNDER THE PLAN SUBJECT TO INTERNAL REVENUE SERVICE CODE SECTION 401(m) FOR THE PLAN YEAR BEGINNING WITH OR WITHIN THE PLAN YEAR OF THE CASH OR DEFERRED ARRANGEMENT UNDER SECTION 401(k) AND (ii) THE LESSER OF 200% OF 2 PLUS THE LESSER OF SUCH DEFERRAL PERCENTAGE OR CONTRIBUTION PERCENTAGE. THE WORD "LESSER" SHALL BE SUBSTITUTED FOR "GREATER" IN (i), ABOVE, AND "GREATER" SHALL BE SUBSTITUTED FOR "LESSER" AFTER "2 PLUS THE" IN (ii) IF BY SUBSTITUTING SUCH TERMS WOULD RESULT IN A LARGER AGGREGATE LIMIT.

(5) SPECIAL RULE:

(a) IN THE EVENT THAT THIS PLAN SATISFIES THE REQUIREMENTS OF SECTIONS 401(m), 401(a)(4), OR 410(b) OF THE INTERNAL REVENUE SERVICE CODE ONLY IF AGGREGATED WITH ONE OR MORE OTHER PLANS, OR IF ONE OR MORE OTHER PLANS SATISFY THE REQUIREMENTS OF SUCH SECTIONS OF THE INTERNAL REVENUE SERVICE CODE ONLY IF AGGREGATED WITH THIS PLAN, THEN THIS SECTION SHALL BE APPLIED BY DETERMINING THE DEFERRAL PERCENTAGE TEST UNDER INTERNAL REVENUE SERVICE CODE SECTION 401(m) OF EMPLOYEES AS IF ALL SUCH PLANS WERE A SINGLE PLAN. FOR PLAN YEARS BEGINNING AFTER DECEMBER 31, 1989, PLANS MAY BE AGGREGATED IN ORDER TO SATISFY SECTION 401(m) OF THE INTERNAL REVENUE SERVICE CODE ONLY IF THEY HAVE THE SAME PLAN YEAR.

(6) HIGHLY COMPENSATED EMPLOYEE: FOR PURPOSES OF THIS SECTION, AN EMPLOYEE IS TREATED AS A "HIGHLY COMPENSATED EMPLOYEE" (HCE) IF:

(a) DURING THE PRECEDING YEAR, THE EMPLOYEE RECEIVED COMPENSATION IN EXCESS OF \$80,000, TO BE INDEXED FOR COST-OF-LIVING INCREASES; AND THE EMPLOYEE WAS ALSO IN THE TOP-PAID TWENTY PERCENT (20%) OF EMPLOYEES DURING THAT YEAR; OR

(b) THE EMPLOYEE WAS A FIVE PERCENT (5%) OWNER AT ANY TIME DURING THE YEAR OR THE PRECEDING YEAR.

(c) RULES OF CONSTRUCTION. THE DETERMINATION OF WHO IS A HIGHLY COMPENSATED EMPLOYEE, INCLUDING THE DETERMINATIONS OF THE NUMBER AND IDENTITY OF EMPLOYEES IN THE TOP-PAID GROUP, WILL BE MADE IN ACCORDANCE WITH SECTION 414(q) OF THE FEDERAL INTERNAL REVENUE SERVICE CODE AND THE REGULATIONS THEREUNDER.

(C) (D) Allocation of earnings, losses, charges and changes in fair market value of the net assets of the trust fund: Earnings and losses of the Trust Fund, third party and administrative charges and changes in the fair market value of the net assets of the Trust Fund shall be allocated under the direction of the Trustee AT LEAST quarterly to the Participants as of each regular evaluation date, in the ratio that the total dollar value of the interest of each such Participant in the Trust Fund bears to the aggregate dollar value of all of such interests of all such Participants.

(D) (E) Participant's Accounts: The Board shall maintain, or cause the City or Trustee to maintain, an account for each Participant showing the dollar value of his current interest in the Trust Fund resulting from any contributions made by the City, which account shall be known as the City contributions account. Separate accounts to be known as Participants' contributions accounts shall also be kept, showing the contributions of each Participant and the earnings, losses and changes in fair market value thereof.

(E) (F) Evaluation Dates: The regular evaluation dates of the Trust Fund shall be AT LEAST the last bank business day of each calendar quarter at which time the Board shall determine, or cause the Trustee to determine, the value of the net assets of the Trust Fund, i.e., the value of all of the assets of the Trust Fund at fair market value thereof, less all liabilities, both as known to the Trustee, including the value of the contribution of the City and the Participants for that quarter. If an event DESCRIBED IN SECTION 14-3-7(A) occurs between regular evaluation dates requiring a distribution of any part of a Participant's interest in the Trust Fund, the dollar value of such Participant's interest shall be adjusted to reflect the contributions made after the last evaluation date without any earnings, losses or other changes. The dollar value of his interest as so adjusted shall be the amount which shall be distributed to such Participant or his Beneficiary.

(F)(G) Vesting of Participants' Interests:

(1) A Participant's interest in the contributions made by him and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times. The interest of a Participant in the contributions made by the City, ~~his proportionate share of the contributions made by the State of Colorado,~~ and the earnings, losses and changes in fair market value thereof, shall be fully vested at all times.

(2) Any interest in the Trust Fund shall be and become payable to a Participant or his Beneficiaries only as and to the extent provided in this chapter; and a Participant who dies having designated a Beneficiary shall cease to have any interest hereunder or in his separate trust account, and his Beneficiary shall become entitled to distribution thereof as herein provided by virtue of the terms of this chapter and not as a result of any transfer of said interest or account.

(G)(H) Vesting Upon Termination of Plan or Discontinuance of Contributions: Notwithstanding the provisions of subsections ~~(F) and (G)~~ of this section, upon the termination of the Plan or upon the complete discontinuance of contributions under the Plan to the Trust Fund, the interests of all Participants shall become fully and completely vested and nonforfeitable for all purposes.

14-3-6: RETIREMENT DATE; DESIGNATION OF BENEFICIARY:

(A) Retirement Date:

(1) Normal retirement: The normal retirement age for each Participant shall be sixty-five (65), and on the last day of the month in which his sixty-fifth birthday occurs, he shall be entitled to retire voluntarily. The City may, if it so desires, continue a Contributing Participant in active service after he has attained his normal retirement age with the consent of such Participant, and at any time thereafter the City may, at its option, retire such Participant or such Participant may VOLUNTARILY retire. Until actual retirement, a Contributing Participant shall continue to participate in the Plan.

(2) Early retirement: Any Contributing Participant who has attained the age of fifty-five (55) may elect to retire earlier than the normal retirement age.

(B) Beneficiaries:

(1) Designation of Beneficiaries: Each Participant shall have the right to designate a Beneficiary or Beneficiaries and one or more contingent Beneficiaries to receive his interest in the Trust Fund upon his death, such designation to be made in the form prescribed by and delivered to the Board. The Participant shall have the right to change or revoke any such designation from time to time by filing a new designation or notice of revocation with the Board, and no notice to any Beneficiary nor consent by a Beneficiary shall be required to effect any such change or revocation.

(2) Determination of a Beneficiary when there is no designated Beneficiary: If a Participant shall fail to designate a Beneficiary before his death, or if all designated Beneficiaries, or contingent Beneficiaries should die, cease to exist, or disclaim their interests prior to distribution, the Board shall direct the Trustee to pay the Participant's entire interest in the Trust Fund to his surviving spouse, if any, or if none, then to the personal representative of his estate. If, however, no personal representative shall have been appointed, and actual notice thereof given to the Board within one hundred twenty (120) days after his death, the Board may direct the Trustee to pay the Participant's entire interest to such person or persons as may be entitled thereto under the laws of the State where such Participant resided at the date of his death, and in such case, the Board may require such proof of right or identity from such person or persons as the Board may deem necessary.

(3) Insurance Policies: The Beneficiary of any insurance or annuity contract on a Participant's life shall be determined and designated as provided in Section 14-3-8(A).

14-3-7: DISTRIBUTION FROM TRUST FUND:

(A) When Interests Become Distributable and Effect Thereof: When a Participant dies, suffers total disability, retires or terminates his employment for any other reason, his interest shall thereupon become distributable. When a Participant's interest shall have become distributable, such Participant's interest shall remain a part of the Trust Fund until it is distributed.

(B) Information to be Furnished to Board: For the purpose of enabling the Board to determine the Participant's distributable interest in the Trust Fund, the Board shall be entitled to rely upon information provided to the Board by the City with respect to the date of the Participant's termination of employment and other such information as is needed and requested.

(C) Distribution of Interests:

(1) Distribution Upon Retirement or Total Disability:

If a Participant retires after attaining normal or early retirement age or becomes totally disabled, his share of this plan shall be distributed commencing no later than sixty (60) days after either the end of the plan year in which he retires, or the required distribution commencement date set forth in subsection (D) (E) of this section, unless he elects to defer benefits pursuant to paragraph (5) of this subsection.

(2) Distribution Upon Death: If a Participant dies, his interest shall be distributed, commencing no later than sixty (60) days after either the end of the plan year in which the Participant's death occurs or the date the Trustee determines the identity of the Beneficiary, whichever is later, unless the Beneficiary elects to defer benefits pursuant to paragraph (5) of this subsection.

(3) Distribution Upon Other Termination of Employment: If a Contributing Participant terminates his employment for any reason other than retirement after attaining normal or early retirement age, total disability, or death, his share of this plan shall be distributed commencing no later than one hundred twenty (120) days from the end of the calendar quarter in which the employee terminated employment, unless he elects to defer benefits pursuant to paragraph (5) of this subsection.

(4) Insurance and Annuity Contracts: If there has been an investment in a life insurance or annuity contract for the benefit of any Participant whose interest becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in this Plan, obtain an absolute assignment of any such life insurance or annuity contract by informing the Board of his election. If said election is not exercised within thirty (30) days after the termination of employment, and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the interest of said Participant. ANY ANNUITY PURCHASED OR ACQUIRED BY THE TRUSTEE AND DISTRIBUTED TO A PARTICIPANT UNDER THE PROVISIONS OF THIS SUBSECTION (C) SHALL, WITH RESPECT TO SUCH PARTICIPANT, BE NONTRANSFERABLE AND THE ANNUITY CONTRACT WILL SO PROVIDE. AFTER DECEMBER 31, 1996, NO NEW LIFE INSURANCE CONTRACTS MAY BE ADOPTED AS PENSION INVESTMENTS.

(5) Election to Defer Benefits: A Participant may elect, with the consent of the Board, to have the commencement of distribution of his benefit deferred until a date later than the date specified in paragraph (1), (2) or (3) of this subsection, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (D) of this section. If a Participant makes an election described in this section, such election shall be made by submitting to the Board, before the date distribution would otherwise commence, a written request, signed by the Participant, which describes the benefit and the date on which the payment of such benefit shall commence if the deferral is approved by the Board. Any change to the terms of the deferral must be resubmitted in writing to the Board for approval UNLESS THE CHANGE IN TERMS IS A REQUEST FOR THE ROLLOVER OF FUNDS TO AN INDIVIDUAL RETIREMENT ACCOUNT OR A QUALIFIED PLAN. No election to defer OR CHANGE THE METHOD OF PAYMENT MAY BE MADE MORE THAN ONCE EVERY SIX MONTHS, ~~benefits may be initiated or changed~~ once payments have commenced.

(6) Distribution of Contributions: Any other provision of this subsection (C) to the contrary notwithstanding, a Participant, in the event of the termination of his employment for any reason, shall be entitled to receive payment in one lump sum of his interest in the Trust Fund provided he makes written demand therefor upon the Board. A PARTICIPANT'S INTEREST THAT IS LESS THAN OR EQUAL TO THE MINIMUM DOLLAR AMOUNT AS PRESCRIBED BY THE INTERNAL REVENUE SERVICE MAY BE DISTRIBUTED WITHOUT RECEIVING WRITTEN APPLICATION FROM THE PARTICIPANT.

~~(7) Annuities Shall be Non Transferable: Any annuity purchased or acquired by the Trustee and distributed to a Participant under the provisions of this subsection (C) shall, with respect to such Participant, be nontransferable and the annuity contract will so provide.~~

(D) TRANSFERS BETWEEN QUALIFIED PLANS:

(1) IN GENERAL: THE TRUSTEE AND THE BOARD, UPON THEIR MUTUAL AGREEMENT, ARE AUTHORIZED TO RECEIVE AND ADD TO THE INTEREST OF ANY PARTICIPANT HIS VESTED INTEREST IN THE ASSETS HELD UNDER ANY OTHER QUALIFIED EMPLOYEE RETIREMENT PLAN OR INDIVIDUAL RETIREMENT ACCOUNT IF SUCH TRANSFER SATISFIES THE REQUIREMENTS UNDER LAW FOR TRANSFERS BETWEEN QUALIFIED PLANS OR ROLLOVER CONTRIBUTIONS. IN SUCH EVENT, THE ASSETS SO RECEIVED SHALL BE FULLY VESTED AND SHALL BE HELD IN A SEPARATE ACCOUNT AND SHALL BE ADMINISTERED AND DISTRIBUTED PURSUANT TO THE PROVISIONS OF THIS PLAN AND TRUST. THE TRUSTEE IS ALSO AUTHORIZED, AT THE DIRECTION OF THE BOARD AND AT THE REQUEST OF THE PARTICIPANT, TO TRANSFER SUCH PARTICIPANT'S VESTED INTEREST WHICH HAS BECOME DISTRIBUTABLE UNDER SUBSECTION (A) HEREOF, DIRECTLY TO ANOTHER QUALIFIED PLAN OR AN INDIVIDUAL RETIREMENT ACCOUNT FOR THE BENEFIT OF SUCH PARTICIPANT, PROVIDED SUCH TRANSFER SATISFIES THE REQUIREMENTS UNDER LAW FOR SUCH TRANSFERS.

(2) FOR DISTRIBUTIONS MADE ON OR AFTER JANUARY 1, 1993: NOTWITHSTANDING ANY PROVISION OF THE PLAN TO THE CONTRARY THAT WOULD OTHERWISE LIMIT A DISTRIBUTEES ELECTION UNDER THIS SECTION, A DISTRIBUTEE MAY ELECT, AT THE TIME AND IN THE MANNER PRESCRIBED BY THE PLAN ADMINISTRATOR, TO HAVE ANY PORTION OF AN ELIGIBLE ROLLOVER DISTRIBUTION PAID DIRECTLY TO AN ELIGIBLE RETIREMENT PLAN SPECIFIED BY THE DISTRIBUTEE IN A DIRECT ROLLOVER.

~~(D)~~(E) Required Distribution Commencement Date: Distribution of a Participant's interest must begin no later than the April 1 of the calendar year following ~~the calendar year in which takes place~~ the later of the ~~date~~ YEAR the Participant attains the age of seventy and one half (70 1/2) or the ~~date~~ YEAR the Participant retires.

~~(E)~~(F) Spendthrift Provisions:

(1) General Rule: Except as otherwise provided in this Chapter, all amounts payable pursuant to this chapter by the Trustee shall be paid only to the person or persons entitled thereto, and all such payments shall be paid directly into the hands of such person or persons and not into the hands of any other person or corporation whatsoever, and such payments shall not be liable for the debts, contracts or engagements of any such person or persons, or taken in execution by attachment or garnishment or by any other legal or equitable proceedings; nor shall any such person or persons have any right to alienate, anticipate, commute, pledge, encumber or assign any such payments or the benefits, proceeds or avails thereof; provided, that nothing in this chapter shall affect, restrict or abridge any right of setoff or lien which the City may have by law, preclude a Participant from pledging as security a part or all of his interest in the Trust Fund to the Westminster Federal Credit Union, to the extent permitted by law, or affect, restrict or abridge any right of setoff, lien or collateral which such Credit Union or the City itself may have against such Participant's interest in the Trust Fund.

(2) Qualified Domestic Relations Order: Paragraph (1) of this Subsection shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant OR ALTERNATE PAYEE pursuant to a qualified domestic relations order ~~under Federal Internal Revenue Code Section 414(p)~~ SETTING FORTH THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE DIVISION OF BENEFITS PURSUANT TO COLORADO REVISED STATUTES, SECTION 14-10-113. A LUMP SUM ~~distribution may~~ WILL be made pursuant to such an order ~~at any time on or~~ WITHIN ONE HUNDRED AND TWENTY (120) DAYS after the date ON which is ~~ten (10) years before the Contributing Participant's normal retirement age~~ A CERTIFIED COURT ORDER APPROVING SUCH AN AGREEMENT PERMITTING SUCH A DISTRIBUTION HAS BEEN SUBMITTED TO AND RECEIVED BY THE BOARD. The Board shall establish such reasonable procedures as are necessary to determine the ~~qualified status~~ COMPLIANCE of a domestic relations order WITH THE REQUIREMENTS OF COLORADO REVISED STATUTES, SECTION 14-10-113 and to administer distributions under such qualified orders. SUCH PROCEDURES MAY BE AT THE DISCRETION OF THE BOARD, INCLUDING STANDARDIZED FORMS TO BE USED FOR SUCH MARITAL AGREEMENTS AND ORDERS. A person who obtains a right to a benefit payable to a Participant pursuant to a qualified domestic relations order shall not have rights to vote in elections held pursuant to this Plan.

~~(F)~~(G) Manner of Distribution: A Participant's interest may be distributed by one or more of the following methods:

(1) Lump Sum Distribution: The Participant's interest may be paid to the Participant or his Beneficiary by the distribution of the total balance of his account in one lump sum. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in a lump sum by filing a written election with the trustee within such time as the Board shall prescribe.

(2) Installments: The Participant's interest may be paid to the Participant or his Beneficiary in substantially equal periodic installments over a period of time not to exceed twenty (20) years and not in installment frequency greater than monthly. The Participant, or his Beneficiary in the event of the Participant's death, shall have the right to have the distribution made in this manner by filing a written elective with the trustee within such time as the Board shall prescribe. ~~Such elective and amount and frequency of distribution shall not be subject to change except by approval of the Board.~~ In no instance shall any changes in this type of distribution be allowed more than once ~~annually~~ EVERY SIX MONTHS.

~~(3) Annuities: The Participant's interest may be distributed in a single life annuity for the Participant, or an annuity for the life of a Participant with a survivor annuity for the life of his spouse, whether or not it is a qualified joint and survivor annuity, provided that the survivor annuity is no greater than the amount of the annuity payable during the joint lives of the Participant and his spouse. Any annuity purchased or acquired by the trustee and distributed to an employee under the provisions of this section or any other provision of this Chapter shall, with respect to such employee, be nontransferable and the annuity contract will so provide.~~

(3) Other Methods: Notwithstanding the foregoing provisions, any interest which has become distributable for any reason, may be distributed at such time or times, in such amount or amounts, and in such manner, as the Board and the recipient of such distribution may mutually determine, including a transfer to another qualified plan or individual retirement account.

(4) If the Participant or Beneficiary fails to notify the Trustee or Board of the manner of distribution preferred by the date distribution would otherwise commence the Participant's interest shall be distributed in substantially equal monthly installments over twenty (20) years UNLESS THE PARTICIPANT'S INTEREST MEETS THE MINIMUM AUTOMATIC DISTRIBUTION ALLOWED BY INTERNAL REVENUE SERVICE REGULATIONS.

~~(G)~~(H) Limitation on Duration of Payments: No distribution shall be made over a period exceeding twenty (20) years. To the extent distribution is made after the Participant attains the age of seventy and one-half (70 1/2), if not paid in a lump sum, the distribution must be made in substantially equal periodic installments at least annually over the period prescribed in this subsection subject to a once yearly change that may accelerate payment at the election of the Participant or Beneficiary. The present value of the benefits payable solely to the Participant under any elected method must exceed fifty percent (50%) of the total benefits payable to the Participant and his Beneficiaries, unless distribution is in the form of a qualified joint and survivor annuity.

~~(H)~~(I) Withdrawals: A Participant may not at any time withdraw any part of his interest in the Trust Fund, except upon death, disability, retirement or termination of service as provided in this Chapter.

~~(I)~~(J) Special Rules for Distributions after the Participant's Death:

(1) Distributions Commencing Prior to Death: If distribution of a Participant's interest has commenced prior to the Participant's death in accordance with Subsection ~~(G)~~ (H) this Section, the remaining interest of the Participant shall be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

(2) Distributions Commencing After Death: If distribution of a Participant's interest did not commence prior to his death, the entire interest of the Participant shall be distributed within five (5) years after the death of the Participant, provided that a distribution commencing within one (1) year after the Participant's death to or for the benefit of a designated Beneficiary over the longer of the life or the life expectancy of the designated Beneficiary will be treated as having been distributed within such five (5) year period. If the surviving spouse of the Participant is the designated Beneficiary, distribution is not required to commence until the date on which the Participant would have attained the age of seventy and one-half (70-1/2) and, if distribution had not commenced as of the date of death of such surviving spouse, the provisions of this paragraph shall be applied as if such spouse were the Participant.

(3) Beneficiaries: If a Participant should die after receiving some part, but not all, of his account, the remaining balance thereof shall be distributed to his Beneficiary in a manner determined pursuant to this subsection. If the Beneficiary of the Participant should die, cease to exist, or disclaim his interest prior to the completion of distribution of the Participant's interest, the remaining distribution shall be made to the contingent Beneficiary designated by the Participant, if any. If any contingent Beneficiary should die or disclaim his interest, distribution of the remainder of the Participant's interest shall be distributed in a manner determined pursuant to this subsection to the recipient determined pursuant to Section 14-3-6.

14-3-8: INSURANCE COMPANY CONTRACTS:

(A) Insurance or Annuity Contracts:

(1) If a Participant has, under the provisions of the prior City retirement plan, already purchased an ordinary life or retirement income insurance contract, the account of the Participant on whose life the contract is obtained shall be charged with the amount of all premiums thereon. The Trustee shall continue to have the right to receive each payment that may be due during the Participant's lifetime. Any death benefit shall be payable directly to the Beneficiary named in any such contract on the Participant's life and the Participant shall have the right, either directly or through the Trustee, to change the Beneficiary from time to time on any such contract and to elect settlement options thereunder for the benefit of the Beneficiary. The Trustee shall have the right to exercise all other options and privileges contained in the contract.

(2) A Participant may not purchase any individual insurance or annuity contract through the Plan.

(3) AFTER DECEMBER 31, 1996, THE CITY SHALL NOT PURCHASE ANY NEW GROUP INSURANCE OR ANNUITY CONTRACTS FOR PENSION PARTICIPANTS.

(B) Limitations on Life Insurance or Annuity Contracts for Participants' Benefit: All investments in life insurance or annuity contracts (other than "key man insurance") shall be subject to the following limitations:

(1) The aggregate premiums for such life insurance or annuity contracts, in the case of each Participant, shall be no more than thirty-five percent (35%) of the aggregate of the City's contributions allocated to him at any particular time;

(2) The Board shall direct the Trustee to convert the entire value of any such life insurance contract at or before the Participant's actual retirement to provide either cash value or periodic income, or the Board may direct the Trustee to distribute the insurance contract directly to the Participant at retirement;

(3) In the event payment of any premium would cause aggregate premiums to exceed the limitation set forth in paragraph (1) of this subsection, then such payment shall not be made, but, on the contrary, each insurance or annuity contract pertaining thereto shall be thereupon converted to a paid up contract, or the face amount of such contract shall be reduced to a face amount, the premium payments on which would not exceed the limitation prescribed in paragraph (1) of this subsection; and

(4) If the Board directs the Trustee to invest any portion of the Trust Fund in such insurance or annuity contracts, such investment shall be made in such a manner that the operation of this Chapter shall be fair and equitable (and nondiscriminatory) in its application to all Participants.

(C) Dividends: If dividends are paid on any contract issued by the Insurer, they shall, in the discretion of the Board, either be used to provide additional benefits under such contract or used and applied in reduction of the next premium due and payable thereon.

(D) Limitation of Participant's Rights in Insurance or Annuity Contracts: The fact that any contract is issued or based on the life of a Participant shall not vest any right, title or interest in such contract in such Participant except at the time or times and upon the terms and conditions especially set forth in this Chapter. Subject to the provisions of Section 14-3-8(A), the Trustee shall be the sole owner of all right title and interest in and to each such contract, but the Board shall nevertheless direct the Trustee as to the exercise of all rights, options and privileges in each such contract.

(E) Protective Provisions for Life Insurance Company: No life insurance company shall be deemed to be a party to the Plan nor shall it be responsible for the validity of the Plan. The certificate of the Trustee as to any matter may be relied upon by any life insurance company as conclusive evidence of any matters mentioned therein, and such company shall be fully protected in taking or permitting any action on the faith thereof and shall incur no liability or responsibility for so doing. No such company shall be required to examine the provisions of this Chapter or to question any act of the Trustee or the Board, nor shall such company be required to ascertain that any act of the Trustee or the Board is authorized by this Chapter.

14-3-9: FIRE PENSION BOARD:

(A) Appointment of Board:

(1) The Board shall consist of five (5) members: one (1) shall be the current City Finance Director; one (1) shall be appointed by the City Manager to serve at his pleasure; and three (3) shall be Contributing Participants, elected by a majority of the voting Participants. One of the three elected members must be an unclassified employee as defined in the Personnel Rules and Regulations. **THE TRUSTEE SHALL SERVE AS CHAIRPERSON OF THE BOARD.**

(2) The three (3) to be elected shall be elected for three (3) year staggered terms, with the term of one such member expiring in December of each year. The procedure to be followed in initially electing such members shall be established by the ~~Finance Director~~ TRUSTEE. After the first year of the election, procedures shall be established by the Board.

(B) Duties and Powers of the Board: The Board shall be charged with the administration of this Plan and shall decide all questions arising in the administration, interpretation and application of the Plan, including all questions relating to eligibility, vesting and distribution. The decisions of the Board shall be conclusive and binding on all parties.

(1) The Board shall, from time to time, direct the Trustee concerning the payments to be made out of the Trust Fund pursuant to this Chapter. The Board shall also have the power to direct the Trustee with respect to all investments and reinvestments of the Trust Fund, and shall have such other powers respecting the administration of the Trust Fund as may be conferred upon in this Chapter. The Board may employ for the Trust Fund an Investment Advisor and may rely on such Advisor's recommendations with respect to the investment of all or a portion of the Trust Fund. If the Board shall employ an Investment Advisor, it shall execute any letters or agreements necessary for the employment of such Advisor or it may direct the Trustee to execute any such letters or agreement. The fees of such Investment Advisor shall be paid from the Trust Fund as an expense of the Trust. The Trustee shall be fully protected from any action of such Investment Advisor and shall not be liable to any person or organization for any investments made by such Advisor or for any acts or omissions made upon the direction or recommendation of such Advisor.

(2) The Board shall have the power to direct the Trustee to enter into and execute contracts as investment vehicles for the Trust Funds. The Board shall have the further power to direct the Trustee to terminate any such contract at any time subject to the provisions of such contract.

(3) If the Trustee enters into a contract at the direction of the Board which permits the right of Participants to direct the investment of ~~his~~ THEIR interest in the Trust Fund in forms of investment offered, the Board shall provide the opportunity to Participants to make options as to investment. Unless the Board shall otherwise determine, any such investment direction may be changed by a Participant only at the end of a calendar quarter. Neither the Trustee nor the Board shall be held liable for any losses or changes to a Participant's interest that result from that Participant's choice of investment option.

(C) Organization and Operation of Board: The Board may adopt such RULES AND procedures as it deems desirable for the conduct of its affairs, appoint one of its own members chairman, and appoint a secretary or other agents, none of whom need be a member of the Board, but any of whom may be, but need not be, an officer or employee of the City. It may delegate to any agent such duties and powers, both ministerial and discretionary, as it deems appropriate, excepting only that all matters involving investment of funds, interpretation of the Plan and settlement of disputes shall be determined by the Board. Any determination of the Board may be made by a majority of the Board at a meeting thereof, or without a meeting by a resolution or memorandum signed by all members, and shall be final and conclusive on the City, the Trustee, all Participants and Beneficiaries claiming any rights under this Chapter, and as to all third parties dealing with the Board or with the Trustee. All notices, directions, information and other communications from the Board to the Trustee shall be in writing.

(D) Matters Affecting Board Members: In any matter affecting any member of the Board in his individual capacity as a Participant under this Chapter, separate and apart from his status as a member of the group of Participants, such interested member shall have no authority or vote in the determination of such matter as a member of the Board, but the Board shall determine such matter as if said interested member were not a member of the Board; provided, however, that this shall not be deemed to take from said interested member any of his rights as a Participant. In the event that the remaining members of the Board should be unable to agree on any matter so affecting an interested member because of an equal division of voting, the matter shall be deemed to have been defeated.

(E) Compensation and Expenses of Board: The members of the Board shall serve without compensation in addition to their regular City compensation. All members shall be reimbursed by the City for any necessary expenditures incurred in the discharge of their duties as members of said Board. Such reimbursement, and the compensation of all agents, counsel or other persons retained or employed by the Board, shall be fixed by the Board and shall be paid from the Trust Fund or, in the discretion of the City Manager, by the City.

(F) Records of the Board: The Board shall keep a record of all of its proceedings and shall keep or cause to be kept all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Chapter and properly to reflect the affairs thereof, and to determine the amount of vested and/or forfeitable interests of the respective Participants in the Trust Fund, and the amount of all benefits. As a part thereof, it shall maintain or cause to be maintained separate accounts for each Participant as provided for in Section 14-3-5(A)(3). Any person dealing with the Board may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the secretary of the Board or by a majority of the members of the Board as evidence of an action taken or resolution adopted by the Board.

(G) Immunity from Liability: No bond or other security shall be required of any member of the Board except as may be otherwise required by law. No member of the Board shall be liable or responsible to any person or party for any matter or thing whatsoever, except only for his own gross negligence or willful misconduct.

(H) Resignation and Removal of Members; Appointment of Successors:

(1) Any member of the Board may resign at any time by giving written notice to the other members and to the City Manager, effective as therein stated, otherwise upon receipt of such notice.

(2) Whether or not he remains a Participant, no Board member may remain on the Board if he terminates employment with the City for whatever reason.

(3) No appointed Board member may remain on the Board if he ceases to hold one of the positions designated.

(4) Upon the death, resignation or removal of any elected Board member, a successor to complete his term shall be elected within thirty (30) days in the manner set forth in subsection (A) of this section.

14-3-10: POWERS AND DUTIES OF THE TRUSTEE:

(A) Investment of Trust Fund:

(1) It shall be the duty of the Trustee to hold the funds from time to time received from the City and the Participants, and subject to the direction of the Board, to manage, invest and reinvest the Trust Fund and the income therefrom pursuant to the provisions of this Chapter, without distinction between principal and income. The Trustee shall be responsible only for such sums as shall actually be received. The Trustee shall have no duty to collect any sums from the City or the Participants.

(2) The Trustee shall have the power to invest and/or reinvest any and all money or property of any description at any time held by it and constituting a part of the Trust Fund without previous application to, or subsequent ratification of, the City Council, the City Manager, any court, tribunal or commission, or any Federal or State governmental agency, in accordance with the following powers:

(a) The Trustee may invest in real property and all interests therein, in bonds, notes, debentures, mortgages, commercial paper, preferred stocks, common stocks, or other securities, rights, obligations or property, real or personal, including shares or certificates of participation issued by regulated investment companies or regulated investment trusts, shares or units of participation in qualified common trust funds or qualified pooled funds, and in life insurance and annuity contracts.

In making investments or reinvestments, the Trustee shall not be limited by the proportion which the investments to be made, either alone or with any property of the same or similar character then held or acquired, may bear to the entire amount of the Trust Fund, and the Trustee shall not be bound as to the character of any investment provided by any constitutional provision, statute, rule of court or custom governing the investment of trust funds, providing only that the Trustee shall exercise the judgment and care, under the circumstances then prevailing, which people of prudence, discretion and intelligence exercise in the management of their own affairs.

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

(c) If directed by the Board, the Trustee shall enter into contracts as investment vehicles for the plan, which contracts shall then become a part of this plan. The Trustee shall then be authorized to sign such other documents and take such other actions as might be necessary or appropriate to carry out the terms of such contracts. The Trustee may enter into such contracts as Trustee of this Plan alone, or as Trustee of this Plan and as Trustee of the City's General Employee AND/OR POLICE Pension Plan in which case the funds of the two OR MORE plans may be co-mingled for investment purposes.

(d) To the extent the Trustee is directed by the Board to make a particular investment, the Trustee shall be held harmless from any loss or other liability arising therefrom.

(B) Administrative Powers of the Trustee:

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

(1) To cause any securities or other property to be registered and held in its name as Trustee or in the name of one or more of its nominees, without disclosing the fiduciary capacity, or to keep the same in unregistered form payable to bearer.

(2) To sell, grant option to sell, exchange, pledge, encumber, mortgage, deed in trust or use any other form of hypothecation, or otherwise dispose of the whole or any part of the Trust Fund on such terms and for such property or cash, or part cash and credit, as it may deem best, and it may retain, hold, maintain or continue any securities or investments which it may hold as part of the Trust Fund for such length of time as it may deem advisable.

(3) To abandon, compromise, contest and arbitrate claims on demands; to institute, compromise and defend actions at law (but without obligation to do so), all at the risk and expense of the Trust Fund.

(4) To borrow money for this Trust, with the approval of the Board, upon such terms and conditions as the Trustee shall deem advisable, and to secure the repayment thereof by the mortgage or pledge of any asset of the Trust Fund.

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

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

(C) Immunity of Trustee: No bond or other security shall be required of the Trustee or any successor trustee except as otherwise provided by law. The Trustee shall not be liable for any mistake of judgment or other action taken in good faith or for any loss to the Trust Fund unless such loss results from its gross negligence, willful misconduct or bad faith.

(D) Advice of Board or Counsel:

(1) If, at any time, the Trustee is in doubt concerning any action which it should take in connection with the administration of the Trust, it may request the Board to advise it with respect thereto and shall be protected in relying upon the advice or direction of the Board.

(2) The Trustee may also consult with legal counsel, who may be counsel for the City, or Trustee's own counsel, with respect to the meaning or construction of this Chapter or Trustee's obligations or duties, and shall be fully protected from any responsibility with respect to any action taken or omitted by them in good faith pursuant to the advice of such counsel.

(E) Taxes, Expenses and Fees of the Trustee: The Trustee shall charge against and pay from the Trust Fund any taxes which may be imposed upon the Trust Fund or the income thereof, or upon or with respect to the interest of any person therein which the Trustee is required to pay.

(1) The reasonable expenses of the Trustee incurred in the administration of the Plan, including the fees of any corporate co-trustee which might be appointed as may be mutually agreed upon from time to time by the Trustee and the Board, and attorney's fees incurred by the Trustee, shall be chargeable to and paid by the Trust Fund, provided that the City may pay all or part of such expenses and fees in the discretion of the City Manager.

(2) All expenses incurred in the preparation and adoption of the Plan shall be paid by the City.

(F) Records and Accounts of the Trustee: The Trustee shall keep all such records and accounts which may be necessary in the administration and conduct of this Chapter. The Trustee's records and accounts shall be open to inspection by the City, the Board, and the Participant of his own accounts, during business hours.

(1) All income, profits, recoveries, contributions, forfeitures, and any and all moneys, securities and properties of any kind at any time received or held by the Trustee shall be held for investment purposes as a commingled Trust Fund. Separate accounts or records may be maintained for operational and accounting purposes, but no such account or record shall be considered as segregating any funds or property from any other funds or property contained in the commingled fund, except as otherwise provided in this Chapter.

(2) After the close of each year of the Trust, the Trustee shall render to the City and the Board an accounting of the Trust Fund for such year. If no objections to any such accounting are filed within a period of sixty (60) days after it has been delivered to the City and the Board, it shall be deemed to have been approved and shall constitute a full and complete discharge and release to the Trustees from the City and the Board and all other persons having or claiming any interest in the Trust Fund.

(G) Resignation and Removal of Trustee: The City, by action of the City Manager, may in its discretion appoint an additional non-voting trustee to act as co-Trustee with the City Finance Director, which may, but need not, be a bank or trust company organized under the laws of Colorado or the United States authorized by law to administer trusts and maintaining and operating a fulltime trust department.

(1) Any Trustee other than the City Finance Director may resign its or his duties as Trustee at any time by filing with the City Manager its or his written resignation. No such resignation shall take effect until thirty (30) days from the date thereof, provided that if a successor Trustee shall have been appointed prior to the expiration of said period, the resignation shall be effective immediately.

(2) Any Trustee other than the City Finance Director may be removed by the City, by action of the City Manager, at any time by giving thirty (30) days notice in writing to such Trustee. Such removal shall be effected by delivering to such Trustee written notice of his removal, executed by the City Manager.

(3) All the provisions set forth in this Chapter with respect to the Trustee shall relate to all successor Trustees and if more than one Trustee is then acting, reference to the term "Trustee" shall mean "Trustees".

(4) In any event any corporate co-Trustee at any time acting hereunder shall be merged, or consolidated with, or shall sell or transfer substantially all of its assets and business to another corporation, whether State or Federal or shall be in any manner reorganized or reincorporated, then the resulting or acquiring corporation shall thereupon be substituted ipso facto for such corporate Trustee hereunder without the execution of any instrument and without any action upon the part of the City, any Participant or Beneficiary of any deceased Participant, or any other person having or claiming to have an interest in the Trust Fund or under the Plan.

14-3-11: CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN:

(A) Continuation of the Plan not a Contractual Obligation of the City: It is the expectation of the City that it will continue this Plan indefinitely, but the continuance of the Plan is not assumed as a contractual obligation by the City, and the right is reserved to the City by action of its City Council to discontinue this Plan at any time. The discontinuance of this Plan by the City shall, in no event, have the effect of divesting any part of the Trust Fund in the City.

(B) Termination of Plan: This Plan shall continue in full force and effect until terminated ~~and~~ OR discontinued by the City by action of its City Council. Notice of such termination shall be given to the Trustee by an instrument in writing executed by the City Manager pursuant to the action of its City Council.

(C) Distribution of Trust Fund on Termination of Plan: If the Plan shall, at any time, be terminated by the terms of this Section, the Trustee shall immediately convert the entire Trust Fund, other than insurance and annuity contracts, to cash. The value of the interest of each respective Participant or Beneficiary in the Trust Fund shall be vested in its entirety as of the date of the termination of the Plan. The Trustee shall, as soon as possible, distribute to each Participant or Beneficiary outright his entire interest in the Trust Fund.

(D) Amendments to Plan:

(1) The City, by action of its City Council, may at any time amend this Chapter; provided, however, that no such amendment shall:

(a) Divert the Trust Fund to purposes other than for the exclusive benefit of the Participants and their Beneficiaries;

(b) Decrease any Participant's share of this plan;

(c) Discriminate in favor of employees who are officers, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees; or

(d) ~~Until no longer required by State Statute, become effective until approved by at least 65% of the Participants of the Plan.~~ FAIL TO COMPLY WITH STATE STATUTES FOR VOTING FOR FIRE PENSION PLANS.

(2) Notwithstanding anything herein to the contrary, however, this Chapter may be amended, if necessary, WITHOUT REQUIRING THE APPROVAL OF THE PLAN PARTICIPANTS to conform to the provisions and requirements of the Federal Internal Revenue Code or any amendments thereto, and no such amendment shall be considered prejudicial to the interest of any Participant or Beneficiary hereunder.

14-3-12: MISCELLANEOUS:

~~(A) Transfers Between Qualified Plans: The Trustee, at the direction of the Board, is authorized to receive and add to any Participant's share of this plan the amount of his vested interest in the assets held under any other qualified employee retirement plan or individual retirement account if such transfer satisfies the requirements under law for transfers between qualified plans or rollover contributions. In such event the assets so received shall be fully vested and shall be held in such Participant's account and shall be administered and distributed pursuant to the provisions of this Chapter. The Trustee is also authorized to transfer such Participant's vested share of this plan which has become distributable under Section 14 3 7, directly to another qualified plan or an individual retirement account, provided such transfer satisfies the requirements under law for such transfers.~~

~~(B)~~(A) Benefits to be Provided Solely from the Trust Fund: All benefits payable under this Plan shall be paid or provided for solely from the Trust Fund, and the City assumes no liability or responsibility therefore.

~~(C)~~(B) Notices from Participants to be Filed with Board: Whenever provision is made that a Participant may exercise any option or election or designate any Beneficiary, the action of each Participant shall be evidenced by a written notice therefore signed by the Participant on a form furnished by the Board for such purpose and filed with the Board, which shall not be effective until received by the Board.

~~(D)~~(C) Text to Control: The headings of sections and subsections are included solely for convenience or reference. If there be any conflict between such headings and the text of this Chapter, the text shall control.

~~(E)~~(D) Law Governing: This Plan shall be construed under the laws of the State of Colorado and the Trustee shall be liable to account only in the courts of Colorado. All contributions received by the Trustee pursuant to this Chapter shall be deemed to have been received in Colorado.

~~(F)~~(E) Severability: In the event any provision of this Chapter shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions.

On the contrary, such remaining provisions shall be fully severable and this Chapter shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

~~(G)~~(F) Plan for Exclusive Benefit of Participants; Reversion Prohibited: This Plan has been entered into for the exclusive benefit of the Participants and their Beneficiaries. Under no circumstances shall any funds contributed to or held by the Trustee hereunder at any time revert to or be used by or enjoyed by the City nor shall any such funds or assets at any time be used other than for the exclusive benefit of the Participants or their Beneficiaries.

Section 4. Severability: If any section, paragraph, clause, word or any other part of this Ordinance shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, such part deemed unenforceable shall not affect any of the remaining provisions.

Section 5. This ordinance shall take effect upon its passage after second reading.

Section 6. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 28th day of October, 1996.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this day of November, 1996.

ATTEST:

Mayor

City Clerk

Date: October 28, 1996
Subject: Resolution No. re Official Position on Amendment 13
Prepared by: Bill Christopher, City Manager

Introduction

The attached Resolution has been prepared for Council's consideration to reflect a suggested position in opposition to Amendment 13 which will appear on the November 5 ballot for Colorado voters.

Summary

In 1994, Colorado voters overwhelmingly rejected a Constitutional Amendment (Amendment 12) that would have substantially changed Colorado's initiative and referendum petition process. The proponents of the defeated Amendment 12 have resurrected this proposal and have placed what is known as Amendment 13 on the 1996 ballot. This Constitutional Amendment would create various negative impacts on the existing initiative and referendum process for governmental entities. The following concerns lead to the recommendation that City Council take a position in opposition to Amendment 13:

- * The measure would allow petitioners to place initiatives or referendums on the local level, with signatures representing 5% of the voters who voted for the Secretary of State in the last election. A handful of petitioners could hold small governments hostage under this requirement.
- * The measure reduces the power of the Secretary of State to throw out invalid signatures, almost guaranteeing an open door in.
- * Local taxpayers would incur additional costs to pay for petition validation, administration, election, and litigation expenses. Businesses would have to set aside funds to fight initiatives that target them.
- * Ordinances would not take effect until 90 days after passing, during which time a referendum petition could put the matter up to a vote. The ordinance does not become effective until an election decides the matter, which could take as long as 18 months.
- * The above provision could tend to discourage private businesses from doing business with local governments.

Staff Recommendation

Adopt Resolution No. which sets forth the City's official position of opposition to Amendment 13 which will appear on the November 5 ballot.

Background Information

Douglas Bruce and his group were unsuccessful in 1994 in getting Amendment 12 passed by Colorado voters. This proposition, which would have changed Colorado's initiative and referendum petition process, was defeated by a resounding 77% of those who voted in November 1994. The proponents of Amendment 12 from 1994 have brought back a version of Amendment 12 and have successfully placed what is known as Amendment 13 on the November 5 ballot for Colorado voters to consider. Some provisions have changed, but the centerpiece of Amendment 13 is once again a variety of provisions which would change the petition process on initiatives and referendums. If approved, Amendment 13 would extend the law of referendum far beyond anything Colorado has previously experienced. It contains several provisions that would radically alter this process and enable small groups to obstruct or delay local government actions which they do not favor.

Amendment 13 would require the governmental matters subject to referendum could not take effect until 91 days or more after post passage publication. If within that 91 days, a valid petition were to be submitted, the effective date for the measure would be postponed until the next election, which could be months away. Also, this proposed Constitutional Amendment would dramatically limit voters rights to vote promptly on citizen petitions by preventing special elections. Under Amendment 13, a vote on any citizen petition would have to await the next biennial election or single election date in early November of each year. Finally, Amendment 13 would require that any petition filed three months before an election could be considered at the next subsequent election. The results would be a complete obstruction of the public will. For example, a petition for a referendum election on a vicious dog ordinance filed on the 90th day following publication and within the three months prior to a November municipal election, would delay the ordinance from taking effect until the November election in the following year, a potential delay of 18 months.

The Colorado Constitution currently provides that the signatures of a maximum of 10% of the registered electors of a City or Town are needed to trigger a municipal referendum. This requirement is low enough to assure that the referendum is easily available, if public sentiment supports it, but large enough to deter special interests from manipulating the process for their own narrow objectives. Amendment 13 would disrupt this balance by dramatically reducing the signature requirements. Only 5% of those who voted for Secretary of State in the last election would be required to sign a petition to trigger an election. Also, on Statewide ballot issues, Amendment 13 would prevent voters from seeing or hearing summary or fiscal impact information prepared by State government. At the same time, Amendment 13 would force taxpayers to pay for mailing a 500-word political advertising piece, written by whatever activist is pushing a State ballot issue, to every registered voter in Colorado.

The League of Women Voters and the Colorado Municipal League are among groups that formally stated their opposition to Amendment 13. The League of Women Voters' publication, which includes a review of Amendment 13, points out that it makes it highly probable that fraudulent signatures would be counted, given the shortened time line for checking signatures.

The removal of the requirement for street addresses and County of residence could mean the people not affected by the issue might effect the outcome. Colorado is currently one of a minority of States that have an initiative process, and Colorado's approach is at present one of the most liberal and frequently used. The effect of changes in this proposal could result in even more initiated and voter referred ballot proposals. Taxpayers would have to bear the increased cost of conducting continuous elections.

The provision that could delay a City Council decision on a matter for up to 18 months has a chilling effect on businesses wanting to business with local governments. At the same time, it has the potential of compromising City Council's decision by a small number of individuals. The issue at hand is not whether or not one supports the initiative and referendum process; rather it is one of interjecting additional provisions that take the process too far, in Staff's opinion.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

RESOLUTION

RESOLUTION NO.

INTRODUCED BY COUNCILLORS

SERIES OF 1996

WESTMINSTER CITY COUNCIL'S OPPOSITION TO AMENDMENT 13
ON THE NOVEMBER 5, 1996 GENERAL ELECTION BALLOT

WHEREAS, Amendment 13, by delaying ordinances from taking effect until nearly three months after post-enactment publication, and by severely limiting citizens' ability to require special elections, would materially impair local governments' ability to respond promptly to the desires of their citizens; and

WHEREAS, Amendment 13, by providing that only nine ordinances per year may take effect immediately, severely limits local governments' ability to respond to bona fide emergencies and other community needs in a timely manner; and

WHEREAS, Amendment 13 will increase taxpayer costs to cover the preparation, distribution, and validation of numerous petitions and the administration of elections resulting therefrom; and

WHEREAS, Amendment 13 contains provisions designed to prevent voters from receiving balanced information concerning a ballot issue or its fiscal impact from their local governments; and

WHEREAS, Amendment 13 would allow small groups of petitioners to stall government actions that are supported by a majority of citizens; and

WHEREAS, Amendment 13, by prohibiting invalidation of petition signatures except on proof beyond a reasonable doubt and dramatically limiting the opportunity for signature protests, increases the likelihood that fraudulent signatures will contaminate the initiative and referendum petitions process; and

WHEREAS, Amendment 13, by encouraging government through an increased number of initiative and referendum petitions, will increase taxpayer costs for administering the petition process and conducting elections; and

WHEREAS, Amendment 13 is ambiguous, which could result in thousands of taxpayer dollars in attorney fees and court time being required to determine what it actually means; and

WHEREAS, the initiative and referendum process is already alive and well in Colorado as demonstrated by the number of propositions that regularly appear on State and municipal ballots; and

WHEREAS, the provisions of Amendment 13 are essentially the same as many of those contained in Amendment 12 of 1994, a measure that was rejected by 77% of Colorado voters.

NOW, THEREFORE, be it resolved that the Westminster City Council resolves that:

SECTION 1. The City of Westminster City Council opposes Amendment 13 because it would be detrimental to Colorado municipalities, including Westminster.

SECTION 2. The City encourages its citizens to become fully informed about all of the details of the Amendment and its effects on them, their community, and their state before voting on November 5.

SECTION 3. The City encourages its citizens to vote "NO" on Amendment 13.

Passed and adopted this 28th day of October, 1996.

ATTEST:

Mayor

City Clerk

Date: October 28, 1996
Subject: Exclusion of Properties From West Adams County Fire Protection District
Prepared by: Tami Berry, Legal Assistant

Introduction

City Council action is requested to approve the Stipulation and Plan for exclusion of territory from the West Adams County Fire Protection District.

Summary

The City has been negotiating with the Adams County Fire Protection District regarding the exclusion of recently annexed properties from the District.

This Stipulation will allow the City to proceed in an uncontested manner in Adams County District Court for the purpose of obtaining an Order excluding the parcels of property covered under the Stipulation.

Staff Recommendation

Approve the Stipulation and Plan for exclusion of properties from the West Adams County Fire Protection District and authorize its execution by the Mayor and City Manager on behalf of the City.

Background Information

The important components of the Stipulation are as follows: (1) An agreement that the quality of fire protection service to be provided by the City will be comparable and not inferior to the fire protection service now provided by the District; (2) Existing indebtedness of the District for which the excluded properties would remain liable; (3) An agreement that the District shall have the right to levy a mill levy not to exceed 0.5 mill against the excluded properties for five consecutive years for the District's Volunteer Firemen's Pension Fund; and (4) Transfer of fire protection service responsibilities to be effective January 1, 1997.

Vicinity maps showing the areas to be excluded are also attached.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Stipulation and Vicinity Maps

Date: October 28, 1996

Subject: Resolution No. re Exclusion From West Adams County Fire Protection District

Prepared by: Tami Berry, Legal Assistant

Introduction

City Council action is requested to adopt the attached Resolution approving the exclusion of properties from the West Adams County Fire Protection District.

Summary

This item is related to the approval of the Stipulation and Plan for exclusion appearing previously on Council's agenda.

Staff Recommendation

Adopt Resolution No. approving the exclusion of properties from the West Adams County Fire Protection District.

Background Information

In order for the City Attorney's Office to proceed with the filing of the exclusion documents, the exclusion statutes require that City Council adopt the attached Resolution indicating the City's agreement to provide the fire protection services provided by the West Adams County Fire Protection District to the area described in the Stipulation and Plan within one year from the effective date of the exclusion Order as required by statute.

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Resolution



EXCLUSION OF TERRITORY FROM THE WEST ADAMS COUNTY
FIRE PROTECTION DISTRICT

WHEREAS, it is in the public interest and a policy of the City of Westminster to eliminate the overlapping of services provided by local governments and the double taxation which may occur because of annexation when all or part of the territory lies within the boundaries of both the City of Westminster and a special district; and

WHEREAS, Colorado statutes provide an orderly procedure to eliminate such overlapping of services and double taxation, which procedure is found in section 32-1-502, et seq., C.R.S., as amended; and

WHEREAS, the City Council of the City of Westminster has been informed by City Staff and now finds that such a situation exists in the area described on Exhibit "A" attached hereto and incorporated herein by reference and that there is an overlapping of fire protection services by the City of Westminster and the West Adams County Fire Protection District and double taxation resulting from the territory described in Exhibit "A" being within the boundaries of both the City and the District; and

WHEREAS, the City Council, based upon information provided by its Staff, has found that the quality of service to be provided by the City of Westminster will not be inferior to the service provided by the West Adams County Fire Protection District in the territory described in Exhibit "A" attached hereto, based upon the Westminster Fire Department's service capability, which includes operations out of six (6) existing fire stations which are strategically located throughout the City; an extensive fleet of sophisticated firefighting and emergency medical vehicles including a snorkel fire truck, one attack unit, six fire engines, two reserve fire engines, and ALS ambulances operated by a staff of eighty-five (85) highly skilled and trained full-time firefighters and thirty-five (35) volunteer firefighters including paramedics and emergency medical technicians; and

WHEREAS, evidence gathered in previous proceedings for exclusion from other Districts, and applicable to this proceeding also, establishes that fire insurance costs for the improvements within the excluded area will not be adversely affected by such exclusion.

WHEREAS, City officials and representatives of the West Adams County Fire Protection District are negotiating the City's proposal to exclude from the Fire District, and are working towards a mutually acceptable exclusion agreement; and

WHEREAS, the City Council of the City of Westminster is willing to agree by this Resolution to provide the service provided by the West Adams County Fire Protection District to the area described in Exhibit "A" within one year from the effective date of the exclusion order as required by statute, and more specifically, immediately upon the effective date of the exclusion order;

NOW, THEREFORE, BY IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER:

1. That the City proceed at once to exclude the territory described in Exhibit "A" from the West Adams County Fire Protection District by filing its Petition in the District Court of Adams County, pursuant to the provisions of section 32-1-502, et seq., C.R.S., as amended.

2. That the City Council of the City of Westminster agrees, by this Resolution, to provide the service provided by the West Adams County Fire Protection District to the area described in Exhibit "A" within one year from the effective date of the exclusion order as required by statute, and specifically, immediately upon the effective date of the exclusion order.

3. That the quality of service to be provided by the City of Westminster will not be inferior to the service provided by the West Adams County Fire Protection District in the territory described in Exhibit "A" and the fire insurance costs for the improvements within the excluded area will not be adversely affected by such exclusion.

4. That the City Attorney is instructed to petition the Court and carry out all notification requirements as contained in applicable state statutes.

PASSED AND ADOPTED this 28th day of October, 1996.

Mayor

ATTEST:

City Clerk

Date: October 28, 1996

Subject: Resolution No. re 1997 Water Rate for Federal Heights

Prepared by: Karen Creager, Accountant

Introduction

City Council action is requested on the attached Resolution which establishes the revised rate for treated water, sold on a wholesale basis, to the City of Federal Heights, to be effective February 1, 1997.

Summary

The current rate charged to Federal Heights is \$1.850566 per thousand gallons (PTG). This rate applies to the quantity of water sold to Federal Heights up to the annual delivery amount (ADA). Water sold which exceeds the ADA is billed at a rate of 160% of the In-City commercial rate. The ADA for 1997 will be based on the 1997 Service Commitment awards which will be made in December.

The 1997 rate based on 1995 cost is \$2.303123 PTG, a 24.45% increase PTG over the 1996 rate. This increase resulted from several factors. First, debt service costs increased in 1995, the first year of debt payments on the 1994 Water and Wastewater Revenue Bonds. Second, Federal Heights purchases of treated water increased, while total water production decreased approximately 565 million gallons in 1995 compared to 1994. As Council may recall, 1995 was very wet with extreme flooding through much of the state. Because total production was low in 1995, costs were spread over a lower base, resulting in a higher rate. Finally, the City purchased approximately \$8.6 million in water rights, which increased raw water costs.

The contract with Federal Heights requires a 90 day notice of any rate change. Action by City Council at this time will cause rates to change effective February 1, 1997.

Staff Recommendation

Adopt Resolution No. which establishes a rate for treated water sold to the City of Federal Heights on a wholesale contract basis of \$2.303123 PTG, effective February 1, 1997.

Background Information

The wholesale water agreement between the City of Westminster and the City of Federal Heights provides that the rate to be charged for water sold to Federal Heights be recomputed annually.

The base rate is a function of the audited costs incurred by Westminster in the operation of its water system for 1) chemicals, power and labor, 2) plant, supplies and maintenance, 3) debt service, 4) raw water costs, 5) administrative costs, and 6) return on investment.

For the purpose of calculating the base rate, the "total water produced by the Westminster municipal water system" includes both raw water treated by Westminster and treated water purchased by Westminster (Thornton treated water) for integration into the Westminster water system. The base rate cost PTG of water of each cost category is determined as follows:

1. The total cost of all chemicals, power and labor in the treatment of raw water is divided by the total water produced;
2. The total cost for maintenance and supplies utilized in water treatment plants is divided by the total water produced;
3. The total debt service payments on facilities utilized in furnishing Federal Heights with water is divided by the total water produced;
4. The total of raw water costs (the 1975 value of the water rights held by Westminster in 1975 plus the actual cost of raw water rights acquired after 1975) is divided by 20 years. This is then multiplied by Federal Heights purchases, divided by total water production.
5. Administrative expenses incurred by the water portion of the Utility Fund is multiplied by the percentage of water sold to Federal Heights as compared to the total water produced.
6. The sum of the above described costs PTG is multiplied by a rate of return on investment of 6%.

The calculation of the base rate for the ensuing calendar year is based on the audited costs and production data for the calendar year two years prior to the effective year of such rate (i.e. the base rate for 1997 was based upon the actual costs and production data for 1995).

Respectfully submitted,

William M. Christopher
City Manager

Attachment: Resolution

RESOLUTION

RESOLUTION NO. INTRODUCED BY COUNCILLORS

SERIES OF 1996 _____

WHEREAS, the City of Westminster has provided outside City water service to the City of Federal Heights since 1968, pursuant to Distributor's Contract dated August 2, 1968; as amended.

WHEREAS, the rate per 1,000 gallons of water delivered to Federal Heights is to be recomputed every year under such contract; and

WHEREAS, the City of Westminster and the City of Federal Heights have agreed to a formula for the calculation of the rate of the quantity of water sold to Federal Heights below the Annual Delivery Amount (ADA) as provided in the contract; and

WHEREAS, the City of Federal Heights rate is presently eligible for recomputation:

NOW THEREFORE, the City Council determines that in compliance with Section 14.3 of the City Charter and the Distributor's Contract with the City of Federal Heights, the rate of \$2.303123 per thousand gallons is established as the rate for the quantity of water sold to Federal Heights below the Annual Delivery Amount under such Distributor's Contract for the period February 1, 1997, through December 31, 1997, or such later date as the rate may again be recomputed.

Passed and adopted this 28th day of October, 1996.

ATTEST:

Mayor

City Clerk

Date: October 28, 1996
Subject: Boards and Commissions Pool
Prepared by: Michele Kelley, City Clerk

Introduction

City Council action is requested to establish a deadline to solicit applications from Westminster residents for the next cycle of the Boards and Commissions "Pool".

Summary

City Council annually solicits Westminster citizens who are interested in serving on the various City Boards and Commissions when vacancies would occur during the year. This "Pool" of applicants is recruited on an annual basis. After the deadline to receive applications has passed, City Council would then need to interview each individual.

Staff would suggest that the deadline of December 9 be established, with interviews being scheduled for late December.

Staff Recommendation

Establish a deadline of December 9, 1996 to receive applications from citizens interested in the next cycle of the Boards and Commissions "Pool".

Background Information

Once a deadline has been established, a press release for the various newspapers will be prepared with a brief description of each of the Board's responsibilities. A copy of the press release will be sent to all the homeowner associations within the City and to Neighborhoodly News, which distributes information within 16 subdivisions within the City. This information and the application form will also be available on the Internet. This information will also appear in the November issue of "City Edition".

Respectfully submitted,

William M. Christopher
City Manager

Date: October 28, 1996

Subject: Intergovernmental Agreement re North Metro Youth Diversion Program

Prepared by: Bill Christopher, City Manager

Introduction

City Council is requested to approve an intergovernmental agreement with Adams County municipalities, school districts, and Adams County agencies to establish the North Metro Youth Diversion Program which shall provide education, intervention, and training to all first time juvenile offenders--either apprehended by law enforcement officers, processed through Municipal, or County Courts, or referred by schools, Social Service agencies, or by their families.

Summary

District Attorney Bob Grant and Adams County Sheriff Bill Shearer have spearheaded an effort with Adams County municipalities, school districts, and Adams County Social Services, and Adams County Mental Health to establish a North Metro Youth Diversion Program. The purpose of the program is to provide an area-wide youth diversion program and an oversight body to effectively deal in a coordinated manner with the growing problems of juvenile substance abuse and crime.

Westminster representatives, including the Municipal Court, Police Department, City Prosecutors, City Attorney's Office, and the City Manager's Office have reviewed the proposed agreement and its purpose and are in support of the program.

Staff Recommendation

Approve the intergovernmental agreement between Adams County municipalities, school districts, and other governmental entities for the establishment of the North Metro Youth Diversion Program and a governing North Metro Community Diversion Board of Directors, and authorize appropriate City Officials to execute said agreement.

Background Information

Earlier this summer, District Attorney Robert Grant and Adams County Sheriff Bill Shearer enlisted the participation of Adams County municipalities, school districts, and other agencies to help reduce alcohol abuse and address other problems among our youth. Under the proposal, first time juvenile alcohol position offenders, when apprehended by an Officer, are ticketed and given the option of attending a multi day alcohol education program with a parent at a cost paid by the offender. The offender's alternative is to appear in Municipal or State Court, where a fine, 90-day loss of driving privileges, and consequent major increase in automobile insurance premiums may result. Courts may also use the option of treating the diversion program as a sentencing alternative, and the program will also be available for referral use by schools and social service agencies as well as on a voluntary basis by families and individual residents.

A North Metro Area Communitywide Diversion Board, intended to coordinate this and possibly other related juvenile programs, is proposed to be formed as part of the intergovernmental agreement.

A representative from each local governmental agency is to be appointed to serve on the Board of Directors.

The Community Diversion Board would take, as an initial step, a request for proposals to secure, provide, or to serve all the participating agencies in implementing the self funded alcohol education program. The diversion providers shall initially provide services addressing youth and family issues of alcohol youths and shall be prepared to expand these services to address other youth substance abuse and crime issues. Additional purposes of the intergovernmental agreement are to provide enhanced tools for enforcement of juvenile offenses, to reduce the numbers and proportions of first time juvenile offenders who appear in Municipal and State Courts and to provide a means for the coordination of uniform juvenile offender policies between the parties involved.

Each participating entity is to have a representative on the Board of Directors. The Board should ensure that Board members include representatives from police agencies, municipalities, judiciary, city councils, school districts, social services agencies, youth, and the community at large. The term of office of each Board member shall be determined by the governing body of each appointing member or the Board or the respect to members appointed to it. Total membership shall not exceed 20, however, participating member appointees must always be a majority of the total membership. City Council should determine who will represent the City of Westminster.

The organization may accept contributions from participating members or others and may apply for and receive grants to be used for administrative purposes or to provide funding for indigent or partially indigent program participants. No participating members shall be required to make a financial contribution to the organization or to bear any financial responsibility other than a proportionate share of administrative support services. Each participating member agrees to provide its proportionate share of administrative support services to the Board as required which may include, without limitations, staff consultation, mean facilities, office supplies, stationery, postage, and the use of existing phones, faxes, and computer equipment.

Given the continued trend of more youth being involved in alcohol consumption and alcohol related incidents/accidents, it is thought that participation in the proposed youth alcohol diversion program is much warranted. It is thought that through this cooperative endeavor that economies of scale can be realized and consistency can be applied throughout Adams County in addressing this growing problem.

Respectfully submitted,

William M. Christopher
City Manager

Attachment

Date: October 28, 1996
Subject: Financial Report for September 1996
Prepared by: Barb Dolan, Interim Finance Director

Introduction

City Council is requested to review the attached financial statements which reflect 1996 transactions through September, 1996.

Summary

There are three sections to the attached report:

1. Revenue Summary
2. Statement of Expenditures vs Appropriations
3. Sales Tax Detail

General Fund revenues represent 78% of the total budget estimate while General Fund expenditures and encumbrances represent 74% of the 1996 appropriation.

Without the one-time reimbursement from DOE in the amount of \$8,147,000 for the creation of the Standley Lake Authority, Utility Fund revenues represent 94% of the total budget estimate while expenditures and encumbrances in that fund represent 69% of the 1996 appropriation. The large amount encumbered is for payments to Thornton for treated water and to the Metro Wastewater Reclamation District for sewage treatment.

The Sales and Use Tax Fund revenues represent 83% of the total budget estimate, while expenditures and encumbrances in that fund represent 75% of the 1996 appropriation. Total Sales and Use Tax revenues for the 25 shopping centers reported increased 13% from the same period last year and increased 14% year-to-date.

The Open Space Fund revenues represent 86% of the total budget estimate while expenditures and encumbrances in that fund represent 52% of the 1996 appropriation.

The Golf Course Fund revenues represent 84% of the total budget estimate while expenditures and encumbrances in that fund represent 63% of the 1996 appropriation. Expenditures are fairly low because the annual principal and interest payments on the bonds which were used to build the course will not be paid until December. The encumbrances are for the golf cart lease and other foreseeable expenditures.

The General Reserve Fund revenues consist of interest earnings of \$93,264 while expenditures and encumbrances in that fund consist of \$256,708. These expenses are for architectural design relating to the Country Dale Golf Course. The appropriated balance of \$2,550,000 includes \$100,000 for Mall Revitalization and \$1,639,000 for Emergency Reserve as required by the Colorado Constitution.

Theoretically, 75% of revenues and expenditures should be realized after nine months in the budget year. However, it is recognized that both revenues and expenditures do not occur on an even 1/12 flow each month of the year.

Staff Recommendation

Accept the report as presented.

Background Information

Section 9.6 of the City Charter requires that the City Manager provide, at least quarterly, financial data showing the relationship between the estimated and actual revenue expenditures to date.

Respectfully submitted,

William M. Christopher
City Manager

Attachments

Date: October 28, 1996
Subject: Quarterly Insurance Report
Prepared By: Pierrette Ray, Risk Manager

Introduction

The following is a list of the third party claims filed with the City from July 1, 1996 through September 30, 1996. No Council action is requested at this time.

Summary

The information provided on each claim includes the claim number, date of loss, claimant's name and address, a brief summary of the claim and the claim's status. Since all claims represent a potential liability to the City, Risk Management Staff works closely with the City Attorney's Office to make sure that the interests of both the City and the citizen are addressed in each instance. All of the claims listed in this report are in compliance with City Ordinance No. 1411 of 1984.

Staff Recommendation

Staff is not recommending any action at this time.

Background Information

The following claims were received by the Risk Management Division during the third quarter of 1996:

1. WS10356037 Date of Loss: June 20, 1996. Don Kruckberg, 7521 King Street, Westminster, CO 80030. Mr. Kruckberg alleges that his vehicle was damaged when a Westminster police officer accidentally backed his patrol car into Mr. Kruckberg's vehicle. CIRSA settled the claim for \$368.63 in damages.
2. WS12506038 Date of Loss: June 25, 1996. Karen L. Price, 9256 Pierce Street, Westminster, CO 80021. Mrs. Price alleges that her son, Matthew, was injured while swimming at the City Park Recreation Center when another student let a kickboard lose, striking Matthew in the eye. CIRSA settled the claim for \$165.00 in medical expenses.
3. WS10346039 Date of Loss: July 7, 1996. Jody Witt, 5503 South York Court, Littleton, CO 80127. Claimant alleges that her vehicle was damaged when a Westminster police officer accidentally backed his City patrol car into her car. CIRSA has settled the claim for \$1,382.16.
4. WS11466040 Date of Loss: July 4, 1996. Chad Mena, 9712 Kipling Street, Westminster, CO 80021. Claimant alleges while driving north on Sheridan Blvd., he struck a water pipe stub that was projecting out of the road, damaging the underside of his car. CIRSA settled the claim for \$2,967.92.

5. WS11466041 Date of Loss: July 4, 1996. Jan Lorenzen, 8464 Oak Way, Arvada, CO 80005. Mrs. Lorenzen was driving north on Sheridan Blvd. when she struck a piece of water pipe that was projecting out of the road damaging the underside of her car. CIRSA settled the claim for \$1,373.38 in damages.
6. WS01096042 Date of Loss: August 1, 1995. Judy Scheck, 8065 Green Court, Westminster, CO 80030. Claimant alleges that her lawn mower was ruined after she ran over a water meter lid that had come loose. CIRSA denied the claim.
7. WS16686043 Date of Loss: July 17, 1996. John Taylor, 1490 West 116th Avenue, Unit 28, Westminster, CO 80234. Mr. Taylor alleges that his vehicle was damaged when it was hit by rocks during a water main break. CIRSA settled the claim for \$3,093.46 in damages.
8. WS16686043-B Date of Loss: July 17, 1996. James Forehand, 1490 West 116th Avenue, Westminster, CO 80234. Claimant alleges that his vehicle was damaged when it was hit by rocks during a water main break. CIRSA settled the claim for \$2,341.50 in damages.
9. WS16686043-C Date of Loss: July 17, 1996. Jane Leginski, 1470 West 116th Avenue, Unit 31, Westminster, CO 80234. Claimant alleges that her car was damaged by rocks during a water main break. CIRSA settled the claim for \$2,370.00 in damages.
10. WS12506044 Date of Loss: June 28, 1996. Beverly Hernandez, 10455 North Sheridan Blvd., Westminster, CO 80030. Claimant alleges that her daughter, Sarah, fell while playing on the City Park Recreation Center water slide. She is seeking payment for the ambulance bill. CIRSA is investigating the claim.
11. WS10346045 Date of Loss: April 19, 1996. Frank Bui, 9933 Travis Street, Thornton, CO 80229. Mr. Bui alleges that he was injured while he was a passenger in a vehicle that was struck by a vehicle driven by a Westminster police officer running a red light. Mr. Bui seeks reimbursement for his medical expenses and \$10,000 in general and specific damages. CIRSA is investigating the claim.
12. WS16686046 Date of Loss: July 16, 1996. Denise Schuster, 5225 West 115th Place, Broomfield, CO 80020. Claimant alleges that her vehicle was damaged when struck by a City vehicle driven by a City employee. CIRSA settled the claim for \$2,906.27.
13. WS10356047 Date of Loss: January 30, 1996. Larry Martinez, 4770-1/2 West 9th Avenue, Denver, CO 80204. Mr. Martinez alleges that he suffered injuries as a result of excessive force used by a Westminster police officer during an arrest. CIRSA is investigating the claim.
14. WS10346048 Date of Loss: August 3, 1996. Annette Cruz. Ms. Cruz alleges that she lost her diamond earrings and several other personal pieces of jewelry when she was arrested by Westminster police officers and is seeking reimbursement for these lost articles. CIRSA is investigating the claim.
15. WS16686049 Date of Loss: July 29, 1996. Peggy Thompson, 7595 Bradburn Blvd., Westminster, CO 80030. Claimant alleges that her carpet was soaked after a water break occurred on her street. CIRSA is investigating the claim.

16. WS11466050 Date of Loss: August 7, 1996. Kelly Stevens, 2634 South Bannock Street, Denver, CO 80223. Claimant alleges that her vehicle was damaged when she was involved in an accident with a City employee driving a City vehicle. CIRSA settled the claim for \$488.55.

17. WS03116051 Date of Loss: July 23, 1996. George Stroberg, 7700 West 101st Avenue, Westminster, CO. Mr. Stroberg alleges that the City of Westminster and Jefferson County, through the action of their joint comprehensive development plan, have denied him all economically beneficial uses of his land and is therefore an unconstitutional taking of his property without just compensation. CIRSA is investigating the claim.

18. WS11476052 Date of Loss: August 26, 1996. Kevin Anderson, 4971 West 80th Avenue, Unit B. Mr. Anderson alleges that a City-maintained drainage ditch (Little Dry Creek) flooded over its embankment and destroyed property at his business. CIRSA is investigating the claim.

19. WS16686053 Date of Loss: August 1, 1996. Leona Trujillo, 7780 Lowell Blvd., Westminster, CO 80030. Mrs. Trujillo alleges that machinery used in a water line replacement project damaged her home by literally shaking her house until it cracked. CIRSA is investigating the claim.

20. WS12546054 Date of Loss: July 7, 1996. Velma Johnson, 10743 Santa Fe Street, Northglenn, CO 80234. Mrs. Johnson alleges that she tripped over a floor mat in front of the clubhouse at Legacy Ridge breaking her hip. CIRSA is investigating the claim.

21. WS14626055 Date of Loss: September 5, 1996. Anthony Koch, 8290 North Federal Blvd., Unit 8-61, Westminster, CO 80030. Mr. Koch claims that his vehicle was damaged when a chunk of asphalt fell out of a City truck and hit the left fender of his vehicle. He is seeking \$1,166.99 in vehicle repairs and \$1,000 in personal grief expenses. CIRSA is investigating the claim.

22. WS16696056 Date of Loss: August, 1996. J&B Realty, 8933 East Union Blvd., #216, Englewood, CO 80111. Owners of the Lake Plaza Shopping Center allege that the City is responsible for replacing a temporary asphalt patch that was made to their parking lot after a water main break. Claimant seeks \$16,000 in repair expenses. CIRSA is investigating the claim.

23. WS01086057 Date of Loss: August 26, 1996. Glenn Morris, 5202 East 123rd Court, Thornton, CO 80241. Mr. Morris' vehicle was allegedly damaged when a City employee was backing a City vehicle out of the loading dock area at City Hall and struck his vehicle. Claimant seeks \$549.81 in damages. CIRSA is investigating the claim.

24. WS11466058 Date of Loss: September 22, 1996. Phyllis Pascarella, 6810 South 84th Circle, Space #51, Arvada, CO 80003. Claimant alleges she was walking on the sidewalk when she tripped and fell due to a broken, sunken piece of concrete.

She seeks \$150,000 in damages. CIRSA is investigating the claim.

25. WS12506059 Date of Loss: September 21, 1996. Theresa Hickey, 11700 East South Boulder Road, Unit 428, Lafayette, CO 80026. Mrs. Hickey alleges that a loose brick at the City Park Recreation Center fell on her daughter's toe and cut it. CIRSA has settled the claim for \$293.16 in medical expenses.

26. WS16686060 Date of Loss: September 17, 1996. Shelly Prazak, 10442 Hoyt Street, Westminster, CO 80021. Claimant alleges while driving down Independence Drive, she struck a loose water line cover that was projecting up in the middle of the road. She is seeking reimbursement for \$405.44 in damages.

CIRSA is investigating the claim.

Respectfully submitted,

William M. Christopher
City Manager