

AGENDA
REGULAR MEETING OF THE CITY COUNCIL
CITY COUNCIL CHAMBERS
480 S. ALLISON PARKWAY
CITY OF LAKEWOOD, COLORADO
HYBRID MEETING
JULY 8, 2024
7:00 PM

To watch the Council meeting live, please use either one of the following links:

City of Lakewood Website: [Lakewood.org/CouncilVideos](https://lakewood.org/CouncilVideos)

Lakewood Speaks: Lakewoodspeaks.org

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In accordance with City Council Policy 5.1(A), all virtual meeting participants are advised that technological issues, whether caused by the City's equipment or the user's equipment, shall not be grounds for canceling a public meeting.

How to Connect to Provide Public Comment: Online participants may post written comments of any length to LakewoodSpeaks.org, an online forum for public comments.

ITEM 1 – CALL TO ORDER

ITEM 2 – ROLL CALL

ITEM 3 – PLEDGE OF ALLEGIANCE

ITEM 4 – STATEMENT OF CONFLICT OF INTEREST

**CONSENT AGENDA
ORDINANCES ON FIRST READING**

ITEM 5 – RESOLUTION 2024-32 – LAKEWOOD EMPLOYEE MONEY PURCHASE PENSION PLAN AMENDMENT

ITEM 6 – RESOLUTION 2024-33 – LAKEWOOD POLICE MONEY PURCHASE PENSION PLAN AMENDMENT

ITEM 7 – RESOLUTION 2024-34 – LAKEWOOD DEFERRED COMPENSATION PLAN AMENDMENT

END OF CONSENT AGENDA

PUBLIC COMMENT ON CONSENT AGENDA

ITEM 8 – GENERAL PUBLIC COMMENT

Anyone who would like to address the Council on any matter other than an agenda item will be given the opportunity. Speakers should limit their comments to three minutes.

ITEM 9 – GENERAL BUSINESS

- A. ONE-YEAR LOOKBACK AT SHORT-TERM RENTAL LICENSING
- B. CITY COUNCIL REQUEST

ITEM 10 – EXECUTIVE REPORT

- A. CITY MANAGER

ITEM 11 – MAYOR AND CITY COUNCIL REPORTS

- A. MAYOR
- B. COUNCIL MEMBERS BY WARD

ITEM 12 – ADJOURNMENT

STAFF MEMO

DATE OF MEETING: JULY 8, 2024 / AGENDA ITEM NO. 5

To: Mayor and City Council
From: Mary Newland, Director of Community Resources
Subject: **Lakewood Employee Money Purchase Pension Plan Amendment**

SUMMARY STATEMENT: This Amendment and Restatement of City of Lakewood Employees Money Purchase Pension Plan and Trust Agreement is to incorporate all prior approved amendments to the Amended and Restated Plan, making required CARES Act and required Selected Security Act 2.0 changes, and clarifying and conforming the Plan language.

BACKGROUND INFORMATION: The Lakewood Employees Money Purchase Pension Plan (the “Plan”) was last restated effective September 9, 2019. The Plan will be restated effective January 1, 2024 (or as specified below), to incorporate the following:

Description of Change

Clarifying and Conforming Changes

- Incorporate prior amendments.
- Update annual limits for 2024 and subsequent amounts.
- Clarify and conform existing language for consistency and incorporation of other changes.
- Allow voting through written or electronic means.

Discretionary Changes

- Add terminally ill in-service withdrawals for participants who have attained age 59 ½, effective October 1, 2024.
- Increase automatic rollover amount for which participant must provide distribution direction from \$5,000 to \$7,000, effective October 1, 2024.
- Add right for participants to receive a Plan termination bonus of 24% of the participant’s annual salary, effective October 1, 2024.

Legislative Changes

- Add 2020 required minimum distribution waiver in accordance with CARES Act.
- Update age at which required minimum distributions must begin in accordance with SECURE 2.0.
- Allow surviving spouse to elect to be treated as participant for calculation of annual required minimum distribution amount in accordance with SECURE 2.0, effective January 1, 2024.

BUDGETARY IMPACTS: None

STAFF RECOMMENDATIONS: Approval of Amendment and Restatement of Lakewood Employees Money Purchase Plan and Trust Agreement

ALTERNATIVES: None

PUBLIC OUTREACH: This item has been discussed and approved by the Lakewood Employee Pension Board.

NEXT STEPS: None

ATTACHMENTS:

1. Resolution 2024-32
2. 2024 Lakewood Employee Money Purchase Pension Plan Restatement Summary of Changes
3. Comprehensive Redline with Prior Amendments Highlighted - Employees Money Purchase Pension Plan and Trust Agreement (Effective 1-1-2024)
4. Employees Money Purchase Pension Plan and Trust Agreement - Amended and Restated (Effective 1-1-2024)

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

2024-32

A RESOLUTION

AUTHORIZING THE AMENDMENT AND RESTATEMENT OF THE CITY OF LAKEWOOD EMPLOYEES MONEY PURCHASE PENSION PLAN AND TRUST AGREEMENT

WHEREAS, the City of Lakewood adopted the last Amended and Restated Lakewood Employees Money Purchase Pension Plan and Trust Agreement ("Plan"), effective September 9, 2019; and

WHEREAS, the City of Lakewood adopted the First Amendment to the Plan dated effective September 28, 2020;

WHEREAS, the City of Lakewood adopted the Second Amendment to the Plan dated February 14, 2022;

WHEREAS, the City of Lakewood desires to again Amend and Restate the Plan effective January 1, 2024 by incorporating all prior approved Amendments to the Amended and Restated Plan, effective January 1, 2024, making required CARES Act and required Selected Secure Act 2.0 changes, and clarifying and conforming the Plan language; and

WHEREAS, the City Council hereby finds and determines that authorizing the foregoing Amended and Restated Plan effective January 1, 2024 is and shall be in the best interest of the residents of the City.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The Amended and Restated City of Lakewood Employees Money Purchase Pension Plan and Trust Agreement attached hereto is approved and shall be effective January 1, 2024.

SECTION 2. The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, the Amended and Restated effective January 1, 2024 City of Lakewood Employees Money Purchase Pension Plan and Trust Agreement on behalf of the City.

SECTION 3. This Resolution shall become effective immediately upon adoption.

INTRODUCED, READ, AND ADOPTED by a vote of ___ for and ___ against at a hybrid regular meeting of the Lakewood City Council on July 8, 2024, at 7 o'clock p.m., at the Lakewood Civic Center, 480 S. Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

Approved as to form:

Alison McKenney Brown, City Attorney

LAKEWOOD EMPLOYEES MONEY PURCHASE PENSION PLAN

SUMMARY OF 2024 CHANGES

The Lakewood Employees Money Purchase Pension Plan (the “Plan”) was last restated effective September 9, 2019. The Plan will be restated effective January 1, 2024 (or as specified below), to incorporate the following:

	Description of Change
Clarifying and Conforming Changes	Incorporate prior amendments. Update annual limits for 2024 and subsequent amounts. Clarify and conform existing language for consistency and incorporation of other changes. Allow voting through written or electronic means.
Discretionary Changes	Add terminally ill in-service withdrawals for participants who have attained age 59 ½, effective October 1, 2024. Increase automatic rollover amount for which participant must provide distribution direction from \$5,000 to \$7,000, effective October 1, 2024. Add right for participants to receive a Plan termination bonus of 24% of the participant’s annual salary, effective October 1, 2024.
Legislative Changes	Add 2020 required minimum distribution waiver in accordance with CARES Act. Update age at which required minimum distributions must begin in accordance with SECURE 2.0. Allow surviving spouse to elect to be treated as participant for calculation of annual required minimum distribution amount in accordance with SECURE 2.0, effective January 1, 2024.

**LAKESWOOD EMPLOYEES
MONEY PURCHASE PENSION PLAN**

AND

TRUST AGREEMENT

Amended and Restated Effective

~~**September 9, 2019**~~

January 1, 2024

**LAKEWOOD EMPLOYEES
MONEY PURCHASE PENSION PLAN
AND
TRUST AGREEMENT**

WHEREAS, the City of Lakewood adopted the ~~last~~ amended and restated Lakewood Employees Money Purchase Pension Plan [and Trust Agreement](#), effective January 1, 2014; and

WHEREAS, the City of Lakewood adopted the First Amendment to the Lakewood Employees Money Purchase Pension Plan [and Trust Agreement](#) in Resolution 2014-39, the effective date of which is January 1, 2015; and

WHEREAS, the City of Lakewood adopted the Second, Third, Fourth, Fifth, and Sixth Amendments to the Lakewood Employees Money Purchase Pension Plan [and Trust Agreement](#) in Resolution 2015-38, the effective date of which is March 13, 2015; and

WHEREAS, the Board of Trustees adopted a Seventh Amendment to the Lakewood Employees Money Purchase Pension Plan [and Trust Agreement](#), the effective date of which is July 24, 2015;

WHEREAS, the City of Lakewood adopted the Eighth Amendment to the Lakewood Employees Money Purchase Pension Plan [and Trust Agreement](#) in Resolution 2016-37, the effective date of which is August 22, 2016; and

WHEREAS, the City of Lakewood adopted the Ninth Amendment to the Lakewood Employees Money Purchase Pension Plan [and Trust Agreement](#), the effective date of which is October 30, 2017; and

WHEREAS, the City of Lakewood adopted the amended and restated Lakewood Employees Money Purchase Pension Plan and Trust Agreement, effective September 9, 2019; and

WHEREAS, the City of Lakewood adopted the First Amendment to the Lakewood Employees Money Purchase Pension Plan and Trust Agreement, the effective date of which is January 1, 2020; and

WHEREAS, the City of Lakewood adopted the Second Amendment to the Lakewood Employees Money Purchase Pension Plan and Trust Agreement in Resolution 2022-13, the effective date of which is April 1, 2022; and

WHEREAS, the City of Lakewood desires to amend and restate the Lakewood Employees Money Purchase Pension Plan and Trust Agreement.

NOW, THEREFORE, in consideration of the premises, the City of Lakewood hereby adopts this amended and restated ~~plan~~Plan as follows:

ARTICLE I. PURPOSE

Effective as of ~~September 9, 2019~~January 1, 2024, except as otherwise specified, the City of Lakewood, as the Employer, and the Board of Trustees as the Trustee, hereby adopt this amended and restated Lakewood Employees Money Purchase Pension Plan and Trust Agreement.

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

Employer and will be in addition to the benefits Employees are entitled to receive under any other programs of the Employer.

The provisions of this Plan and Trust [Agreement](#) shall apply to an Employee who becomes an Employee on or after the Restated Effective Date, and shall apply to an Employee who terminates employment on or after the Restated Effective Date. The rights and benefits, if any, of a former employee shall be determined in accordance with the provisions of any prior Plan and Trust [Agreement](#) in effect on the date his [or her](#) employment terminated.

The Plan is being established pursuant to C.R.S. [§Section](#) 24-54-101 and is a governmental retirement plan exempt from the provisions of the Employee Retirement Income Security Act ([“ERISA”](#)). The Plan and Trust are intended to meet the requirements of Sections 401(a) and 501(a) of the Internal Revenue Code of 1986 ([the “Code”](#)), as amended [and](#) to the extent applicable to governmental plans.

ARTICLE II. DEFINITIONS AND CONSTRUCTION

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

(a) **Authorized Leave of Absence.** Any absence authorized by the Employer under the Employer's standard personnel practices provided that all persons under similar circumstances must be treated alike in the granting of such Authorized ~~Leaves~~[Leave](#) of Absence and provided further that such leave shall end as of the date it was extended to. An absence due to service in the Armed Forces of the United States

shall be considered an Authorized Leave of Absence provided that the absence is caused by war or other emergency, or provided that the Employee is required to serve under the laws of conscription in time of peace, and further provided that the Employee returns to employment with the Employer within the period provided by law.

(b) ~~Aggregate Account~~. The value of all accounts maintained on behalf of a Participant, including all Employer or Employee contributions, and the income, expenses, gains and losses attributable to such contributions, unless otherwise indicated.

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

(d) Board of Trustees. Individuals selected and/or appointed whose selection and duties are provided for in Article VII and Article VIII.

(e) Break in Service. Any Year after the Effective Date during which a Regular Full-Time Employee completes less than 500 Hours of Service, or a Regular Part-Time Employee completes less than 250 Hours of Service.

(f) City. The City of Lakewood, Colorado.

(g) Compensation. A Participant's base salary paid by the Employer for personal services during the Plan Year, before reducing the amount of base salary by any pickup contributions, voluntary contributions or salary deferrals, excluding overtime, shift differential pay, and excluding any benefits paid under this Plan or any other retirement or life insurance program or under any other health or welfare plan. For purposes of allocating the Employer's contribution and tracking Forfeiture amounts for the Year in which a Participant begins or resumes Participation, Compensation shall be

determined as of the first day of the ~~year~~Year in which the Employee became a Participant and Compensation before his or her Participation began or resumed shall be disregarded. Effective January 1, 2009, Compensation shall include ~~"differential wage payments"~~ made to a Participant with respect to active military service, in accordance with Code Section 414(u)(12). ~~Effective January 1, 2002,~~ Compensation in excess of ~~\$200,000~~ (the limitation set forth in Code Section 401(a)(17) for defined contribution plans as annually adjusted by the Secretary of the Treasury for cost of living increases pursuant to Code Section 401(a)(17)) shall not be taken into account under the Plan. For Plan Years beginning after December 31, 1997, "Compensation" also includes elective deferrals under ~~§§~~Code Sections 125, 132(f)(4), 402(e), 402(h)(1)(B), 403(b), and 457(b) ~~of the Code~~ and employee contributions described in §Code Section 401(h) ~~of the Code~~ which are treated as Employer contributions, to the extent such amounts would have been received and includable in the Employee's gross income but for the enumerated Sections of the Code.

(h) Corporate Trustee. A bank or trust company located in the United States which has capital and surplus aggregating not less than \$5,000,000,000.00, as shown by its last published statement appointed by the Board of Trustees as a delegate of.

(i) Disability. A physical or mental condition which, pursuant to the City's disability insurance carrier, presumably permanently prevents an Employee from satisfactorily performing his or her usual duties for the Employer or the duties of such other position or job which the Employer makes available to him or her and for which such Employee is qualified by reason of his or her training, education or experience.

(j) Effective Date. Except as otherwise provided herein, the ~~effective date~~ "Restated Effective Date" of this Plan as amended and restated is ~~September 9~~ January 1, 2019 ~~2024~~. The effective date of the provisions of this Plan which incorporate the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001 is January 1, 2002, except as otherwise provided herein. The original effective date of the Plan is January 1, 1989.

(k) Eligible Retirement Plan. Any defined contribution plan, defined benefit plan, annuity contract described in Code §Section 403(b), individual retirement account (IRA) or annuity described in Code ~~§§~~ Sections 408(a) or (b), or Roth IRA described in Code §Section 408A, and any eligible plan under Code §Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this ~~plan~~ Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving Spouse or former Spouse who is the alternate payee under a domestic relations order, as defined in Code §Section 414(p) or ~~CRS-§~~ C.R.S. Section 14-10-113. In the case of a distribution to a non-Spouse Beneficiary, an Eligible Retirement Plan means an ~~"inherited individual retirement account or annuity"~~ "inherited individual retirement account or annuity" described in Code ~~§§~~ Sections 408(a) or (b).

(l) Employee. Any person who is a Regular Full-Time Employee, Provisional Full-Time Employee, Regular Part-Time Employee or Provisional Part-Time Employee, who is receiving remuneration for personal services rendered to the Employer (or who would be receiving such remuneration except for an Authorized Leave of Absence). ~~"Employee"~~ "Employee" shall not include sworn police officers or Variable Employees.

Effective as of December 14, 2008, "Employee" shall not include employees of the Lakewood Housing Authority. Effective September 6, 2009, the City Manager shall be an "Employee" hereunder.

(1) A Regular Full-Time Employee for purposes of this subsection 2.1(l) is one who works 37 hours or more per week and who has been assigned to a position in the City of Lakewood that has a total benefits package.

(2) A Regular Part-Time Employee for purposes of this subsection 2.1(l) is one who is paid on an hourly basis, whose average workweek is at least 30 hours per week and less than 37 hours per week on a continuous year-round basis, and who has been assigned to a position in the City of Lakewood that has a total benefits package.

(3) A Provisional Employee for purposes of this subsection 2.1(l) is one who is either part-time or full-time, as described above in paragraphs (1) and (2) of this subsection 2.1(l), and is hired for a period of time not to exceed two (2) years, and who receives benefits.

(4) A Variable Employee for purposes of this subsection 2.1(l) is an employee who has not been assigned to a regular or provisional position and whose work schedule is generally part-time and/or seasonal (usually less than a nine (9) month period). Variable Employees serve at will and are entitled to limited benefits and privileges.

(m) Employee Contribution Account. The account maintained for a Participant to record his or her mandatory and voluntary contributions and adjustments relating thereto.

(n) Employee Rollover Account. The account established to hold and account for the after-tax contributions rolled over from the PERA withdrawal, or any other qualified rollover.

(o) Employer. The City of Lakewood, Colorado.

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

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

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

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

(t) Hour of Service.

(1) Each hour for which an Employee is directly or indirectly paid, or entitled to payment, by the Employer for the performance of duties during the applicable computation period (such hours shall be credited to the Employee for the computation period or periods in which the duties are performed); and

(2) Each hour for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. Such hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made. The same Hours of Service shall not be credited under both this subsection and under the following subsection.

(3) In addition to the Hours of Service credited under the above subsections an Employee shall also receive credit for each hour for which an Employee is directly or indirectly paid, or entitled to such payment, by the Employer for reasons (such as vacation, sickness, military service, jury duty, authorized leaves of absence, or disability) other than for the performance of duties during the applicable computation period. Irrespective of whether such hours have accrued in other computation periods, these hours shall be counted in the computation period in which either payment is actually made or amounts payable to the Employee become due. No more than 1,000 Hours of Service shall be credited under this subsection on account of any single continuous period during which the Employee performs no duties. Hours of Service under this subsection shall be determined by dividing the payments received or due for reasons other than performance of duties by the lesser of (i) the Employee's most recent hourly rate of Compensation for the performance of duties; or (ii) the Employee's average hourly rate of Compensation for the performance of duties for the most recent computation period in which the Regular Full-Time Employee completed more than 500 Hours of Service, and a Regular Part-Time Employee completed more than 250 Hours of Service.

(4) For purposes of determining whether a Break in Service has occurred for participation in vesting, a Participant who is duly employed at the time maternity or paternity leave is taken will be deemed to have completed the Hours of Service which otherwise would normally have been credited to such individual but for such absence, not to exceed 501 Hours of Service for a Regular Full-Time Employee and 251 Hours of Service for a Regular Part-Time Employee for that ~~Plan~~ Year. If the Regular Full-Time Employee who is a Participant has previously incurred 501 Hours of Service, or the Regular Part-Time Employee who is a Participant has previously incurred 251 Hours of Service for that ~~Plan~~ Year, the credit will be given for the following ~~Plan~~ Year.

(5) To the extent required by applicable federal law and regulation, Employees shall also be credited with Hours of Service under circumstances not specifically described.

(6) The foregoing definition of ~~“Hours of Service”~~ is intended to coincide with the definition of that term under Regulations 2530.200b-2(b) and (c) of the Secretary of Labor pursuant to ERISA. It shall be deemed amended and modified as necessary to coincide with the prescribed definition in effect from time to time under such regulations.

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

(v) Maternity/Paternity Leave. An absence from work by reason of the pregnancy of the Participant, by reason of the birth of a child of the Participant, by reason of the placement of a child in connection with the adoption of the child by the Participant, or for purposes of caring for the child during the period immediately following the birth or placement for adoption, including time involved for a trial period prior to adoption.

(w) Normal Retirement Age. For purposes of eligibility to receive retirement benefits under this Plan, the date a Participant attains age 55.

If a Participant meets the definition of a Qualified Public Safety Officer as defined in Code Section 72(t)(10), the Participant is eligible to receive retirement benefits under this Plan upon the attainment of age 50.

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

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

(z) Plan. The Lakewood Employees Money Purchase Pension Plan and Trust, ~~the Plan set forth herein~~ Agreement, as amended from time to time.

(aa) Plan Year. The City's fiscal year, which, as presently established, commences on January 1st of each year, which shall also be the fiscal year of the Trust Fund established under this Plan.

(bb) ~~(aa)~~ Prior Plan. The Public Employees Retirement Association of Colorado (PERA), the City of Lakewood Executive Money Purchase Pension Plan

administered by the ICMA Retirement Corporation or the Lakewood Designated Officer Money Purchase Pension Plan.

~~(bb) Retirement Board. The Board appointed pursuant to Article IX of the January 1, 2014 restated Plan as amended, to act as the Retirement Board, trustee and fiduciary to the Plan.~~

(cc) Retirement Date. For purposes of this Plan, the Participant's ~~55th birthday~~ Normal Retirement Age. Provided, however, that if a Participant ~~shall be determined to be totally disabled~~ has a Disability, as ~~provided~~ defined in this ~~Section~~ subsection (i), and is permitted to retire at an earlier date, or if the Participant continues as an Employee of the Employer after he or she has attained ~~age 55~~ Normal Retirement Age, the "Retirement Date" shall refer to the date of actual retirement.

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

(ee) Spouse. Both a party who is married to a Participant pursuant to the provisions of the "Uniform Marriage Act", ~~Colorado Revised Statutes~~ C.R.S. Section 14-2-101, et. seq., as well as a party to a civil union pursuant to ~~Colorado Revised Statutes~~ C.R.S. Section 14-15-101, et. seq. However, in situations where the Code has a different definition of ~~spouse~~ Spouse in Sections pertaining to qualification or operation of governmental plans, the definition of ~~spouse~~ Spouse, as stated in the Code, shall control.

(ff) Trust (or Trust Fund). The Trust maintained in accordance with the terms of this Trust Agreement, as from time to time amended, which constitutes a part

of this Plan, and the funds now or hereafter placed with the Board of Trustees to be held, invested and paid out pursuant to the provisions of this Plan and Trust Agreement.

(gg) Valuation Date. The Valuation Date is the last day of each Plan Year.

(hh) Year. The ~~plan~~ year consisting of the 12-month period commencing on the date of hire and ending on the day prior to the twelve-month anniversary of the Employee's date of hire.

(ii) Year of Service. A 12-month period commencing on the Employee's date of hire or entry into the Plan and ending on the day prior to the anniversary of the Employee's date of hire or entry into the Plan during which an Employee completes 1,000 Hours of Service.

2.2 Construction. ~~The masculine gender, where appearing in this Plan and Trust, shall be deemed to include the feminine gender, unless the context clearly indicates to the contrary.~~ The words "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Plan and Trust and not to any particular provision or Section.

ARTICLE III. PARTICIPATION AND SERVICE

3.1 Participation. An Employee enrolled in a Prior Plan or ~~Eligible~~eligible to be enrolled in ~~a Prior~~this Plan on the day prior to the Restated Effective Date shall automatically become eligible to participate in this Plan and Trust. Any other Employee now or hereafter in the employ of the Employer, shall commence participation in the Plan on the first day of employment consistent with Section 2.1(y) and shall end

[participation](#) upon the occurrence of a Break in Service caused by a termination of employment.

3.2 **Service**. A Participant's eligibility for benefits under the Plan shall be based on his [or her](#) period of Service, determined in accordance with the following:

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

(b) Service for Employees Participating from and after the Restated Effective Date. Subject to ~~subparagraph~~[subsection](#) (a) and the reemployment provisions of Section 3.5, a Participant shall accrue a Year of Service for each Year in which he [or she](#) has 1,000 or more Hours or Service, except that for Employees who become Participants on or after the Restated Effective Date, Years of Service before attainment of age 18 shall be disregarded.

(c) Service for Employment with the Employer. In the event an individual who was employed by the Employer as a full-time employee transfers employment within the City or is rehired by the City in a different capacity, such an individual shall be credited with one Year of Service under this Plan for each year of service credited to such an individual under any retirement plan maintained by the

Employer, provided that such an individual has not incurred a Break in Service as set forth in Section 3.5(b).

(d) Service for Employment with the Foothills Park and Recreation District. In the event an individual who was employed by the Foothills Park and Recreation District becomes a Participant in this Plan pursuant to the Joint Exclusion Plan and Agreement for Disposition of Assets and Continuation of Services Between Foothills Park and Recreation District and City of Lakewood, executed June 10, 1997, such an individual shall be credited with one Year of Service under this Plan for each year of service credited to such individual under The Foothills Park and Recreation District Salary Deferral Plan, as of the date such individual becomes a Participant. If the Participant did not obtain a Year of Service under The Foothills Park and Recreation District Salary Deferral Plan for the ~~Plan-year~~Year in which the individual became a Participant, any Hours of Service, as defined in this Plan, with The Foothills Park and Recreation District during such ~~Plan-year~~Year shall be credited as Hours of Service under this Plan. The Participant may receive credit for a maximum of ~~One~~one Year of Service during the ~~year~~Year in which the individual became a Participant.

3.3 **Inactive Status.** In the event any Participant shall fail, in any Year of his or her employment after the Restated Effective Date, to accumulate 1,000 Hours of Service, without incurring a Break in Service, his or her Employer Contribution Account shall be placed on inactive status. In such case, such Year shall not be considered as a period of Service for the purpose of determining the Participant's vested interest in accordance with Section 6.3 and he or she shall continue to receive Income allocations in accordance with Section 5.2(a). In the event such Participant accumulates 1,000 Hours

of Service in a subsequent Year, his [or her](#) Employer Contribution Account shall revert to active status with full rights and privileges under this Plan restored.

3.4 **Maternity/Paternity Benefits.** For purposes of determining whether a Break in Service has occurred for participation in vesting, a Participant who is duly employed at the time maternity or paternity leave is taken will be deemed to have completed the Hours of Service which otherwise would normally have been credited to such individual but for such absence, not to exceed 501 Hours of Service for a Regular Full-Time Employee and 251 Hours of Service for a Regular Part-Time Employee for that ~~Plan~~ Year.

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

Upon the reemployment of any person after the Restated Effective Date who had previously been employed by the Employer on or after the Restated Effective Date, the following rules shall apply in determining his [or her](#) Participation in the Plan and his [or her](#) Service under Section 3.2:

(a) **Participation.** The reemployed Employee shall be entitled to reparticipate in the Plan immediately upon his [or her](#) reemployment with the Employer. If such a terminated Participant is rehired before he [or she](#) has a Break in Service as defined below, he [or she](#) shall continue in the Plan, and be entitled to his [or her](#) Employer Contribution Account prior to any disposition of forfeitures as set forth in Section 4.4.

(b) Service. In the case of a Participant whose prior employment terminated with entitlement to a distribution from his or her Employer Contribution Account, any Service attributable to his or her prior period of employment shall be reinstated as of the date of his or her reparticipation, only if the Participant has not incurred a one year Break in Service.

In the case of a Participant whose prior employment terminated without entitlement to a distribution from his ~~account~~ or her Account, any vesting service attributable to his or her prior period of employment shall be restored only if the Participant has not incurred a one-year Break in Service.

In the case of a Participant who has incurred a one-year Break in Service, Years of Service completed after such Break are not required to be taken into account for purposes of determining the non-forfeitable percentage of the Participant's right to Employer-derived benefits which accrued before such Break.

ARTICLE IV. CONTRIBUTIONS AND FORFEITURES

4.1 **Employer Contributions**. On a monthly basis, the Employer shall pay into the Trust Fund an amount equal to ten percent (10%) of the Compensation of all Participants eligible to receive a contribution for such month; effective April 1, 2018, the Employer's contribution on behalf of each Participant shall be increased by six-tenths of one percent (.6%) for each of the next five (5) twelve-month fiscal years beginning April 1 until the Employer contribution equals thirteen percent (13%) and thereafter until modified thirteen percent (13%), as demonstrated below:

Prior to March 31, 2018	10%
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April 1, 2018 - March 31, 2019	10.60%
April 1, 2019 - March 31, 2020	11.20%
April 1, 2020 - March 31, 2021	11.80%
April 1, 2021 - March 31, 2022	12.40%
April 1, 2022 - March 31, 2023	13%

4.2 **Employer City Manager Contributions.** Notwithstanding the foregoing Section 4.1, effective September 6, 2009, the Employer shall pay into the Trust Fund an amount equal to eighteen percent (18%) of the City Manager's Compensation for the benefit of the City Manager. Effective April 1, 2018, the Employer's contribution on behalf of the City Manager shall be increased by one and two-tenths percent (1.2%) for each of the next five (5) twelve-month fiscal years beginning April 1 until the Employer contribution equals twenty-four percent (24%) and thereafter until modified twenty-four percent (24%), as demonstrated below:

Prior to March 31, 2018	18%
April 1, 2018 - March 31, 2019	19.20%
April 1, 2019 - March 31, 2020	20.40%
April 1, 2020 - March 31, 2021	21.60%
April 1, 2021 - March 31, 2022	22.80%
April 1, 2022 - March 31, 2023	24.00%

4.3 **Contributions by Participants.**

(a) Mandatory Contributions. In order to share in Employer Contributions, each Participant will be required to make a mandatory contribution of eight percent (8%) of the Compensation each ~~year~~Plan Year. Effective April 1, 2018, the eight percent (8%) shall be increased by six-tenths of one percent (.6%) for each of the next five (5) twelve-month fiscal years beginning April 1 until the Participant contribution equals eleven percent (11%) and thereafter until modified eleven percent (11%), as demonstrated below. Mandatory contributions shall be made by payroll deduction. Notwithstanding the foregoing provisions of this paragraph, effective September 6, 2009, the City Manager shall not be required to make any mandatory contributions hereunder.

Prior to March 7 , 31, 2018	8%
April 1, 2018 - March 31, 2019	8.60%
April 1, 2019 - March 31, 2020	9.20%
April 1, 2020 - March 31, 2021	9.80%
April 1, 2021 , <u>2021</u> - March 31, 2022	10.40%
April 1, 2022 - March 31, 2023	11.00%

The City shall pick up ~~Mandatory~~mandatory Employee ~~Contributions~~contributions required for all Compensation paid after the Restated Effective Date and the contributions so picked up shall be treated as Employer contributions pursuant to Code Section 414(h)(2) ~~of the Internal Revenue Code~~ in determining tax treatment under ~~such code~~the Code. The City shall pay these Employee contributions directly to the Trust Fund in lieu of paying such amounts to Employees, and such

contributions shall be paid from the same funds which are used in paying salaries to the Employees. Employee contributions so picked up shall be treated for all purposes of this Plan, other than federal tax, in the same manner as Employee contributions which are not picked up by the City.

(b) Voluntary Contributions. For the purposes of increasing retirement benefits, each Participant, may each ~~year~~Plan Year voluntarily contribute a percentage which is the difference of one hundred percent (100%) minus the Employer's contribution set forth in Section 4.1 and 4.2 and the Participant's mandatory contribution ~~(set forth in~~ Section 4.3(a)) of Compensation on an after-tax basis, subject to the ~~Forty Thousand Dollar (\$40,000)~~ limitation set forth in Section 5.3, provided contributions are made as a whole percentage of the Participant's Compensation. Such contributions must be made to the Board of Trustees in a manner designated by the Board of Trustees. The Participant's interest in such amount shall be non-forfeitable at all times. Any earnings, gains and voluntary contributions cannot be withdrawn or distributed until the Participant's termination, death, disability, or retirement.

4.4 Disposition of Forfeitures. Upon termination of employment, a Participant's Employer Contribution Account shall be maintained and the Account shall continue to receive Income allocations pursuant to Section 5.2(a) until ~~the~~all assets of the ~~account~~Account are distributed. At that time, the Former Participant shall receive his ~~or~~her "vested percentage" of the Employer Contribution Account according to Section 6.3, and if he or she is less than 100% vested, the Forfeiture shall be used to reduce the Employer's Contribution.

4.5 **Rollover Contributions**. Notwithstanding the limits imposed upon participant contributions, a Participant or Former Participant may contribute to the Plan a rollover distribution from an Eligible Retirement Plan described in Section 2.1(l), except that the Plan will not accept a rollover contribution from a Roth IRA described in Code ~~§~~Section 408A. Rollover contributions shall be made in accordance with the procedures of the Board of Trustees. The transfer of the distribution or in the case of a plan to ~~Plan~~plan rollover must be completed on or before the 60th day after the day on which the distribution is received or the ~~Employee~~Participant or Former Participant is entitled to receive such distribution, to the extent that the fair market value of the rollover amount exceeds the amounts considered contributed by the ~~Employee~~Participant or Former Participant, reduced by any amounts previously distributed to him or her which were not includible in gross income. Such rollover amount shall be non-forfeitable, shall be held in a separate ~~account~~Account and shall receive income allocations. The acceptance of the rollover amounts and the provisions established by the Board of Trustees shall be governed by the ~~regulations~~Treasury Regulations of the ~~Internal Revenue~~ Code then in effect as may be amended from time to time.

ARTICLE V. ALLOCATIONS TO PARTICIPANTS' ACCOUNTS

5.1 **Individual Accounts**. The Board of Trustees shall create and maintain adequate records to disclose the interest in the Trust of each Participant, Former Participant and Beneficiary. Such records shall be in the form of individual ~~accounts~~Accounts and credits and charges shall be made to such ~~accounts~~Accounts in the manner herein described. A Participant may have up to ~~five~~four separate

~~accounts~~Accounts: an Employer Contribution Account, a Mandatory Employee Contribution Account, a Voluntary Employee Contribution Account, and an Employee Rollover Account. The maintenance of individual ~~accounts~~Accounts is only for accounting purposes, and a segregation of the assets of the Trust Fund to each ~~account~~Account shall not be required. Distribution and withdrawals made from an ~~account~~Account shall be charged to the ~~accounts~~Account as of the date paid.

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

(a) Income. On each business day of the ~~year~~Plan Year, a daily determination of unrealized and realized gains and losses, interest, dividends and capital gain distributions will be calculated and allocated based on the actual activity in each Participant's ~~account~~Account. Activity includes, but is not limited to, allocation of contributions, forfeitures and distributions.

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

(b) Expenses. To the extent the Employer does not pay the administrative, legal, investment and consulting fees of the Trust in accordance with Section 8.8, such expenses shall be allocated to and deducted from the ~~accounts~~Accounts of Participants. Expenses which are directly incurred as a direct result of the investments held in the Trust shall be deducted from the interest, dividends and net

income of the appropriate investment prior to allocating Income to Participants. General administrative, legal and consulting fees and expenses shall be deducted from the ~~accounts~~Accounts of all Participants in the proportion that each Participant's ~~account~~Account balance bears to the total ~~account~~Account balances of all Participants in the Plan on the date such expenses are deducted.

5.3 **Maximum Additions**. Notwithstanding anything contained herein to the contrary, the total Additions made to both the Employer and Employee Contribution Accounts of a Participant for any Plan Year shall not exceed the lesser of ~~\$40,000~~the limitation amount set forth in Code Section 415(d) for defined contribution plans as annually adjusted ~~for increases in the cost of living under~~pursuant to Code Section 415(~~ed~~)(~~3~~)~~of the Code~~, or 100% of the Participant's Compensation for such Plan Year. For purposes of this Section:

(a) The term ~~"Additions"~~ means the total of the Employer contributions and forfeitures allocated to a Participant's Employer Contribution Account plus, the amount of any Employee ~~Contributions~~contributions to the Plan, both ~~Mandatory~~mandatory and ~~Voluntary~~voluntary. The term ~~"Additions"~~ shall not include (i) restorative payments made to restore losses to the Plan resulting from actions by a fiduciary for which there is a reasonable risk of liability for breach of fiduciary duty under applicable Colorado law, where ~~participants~~Participants who are similarly situated are treated similarly with respect to the payments; (ii) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (iii) rollover contributions as described in Code Sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16); or (iv) repayments of loans made to a ~~participant~~Participant from the Plan.

(b) As of January 1 of each calendar year, and applicable for that Plan Year, the dollar limit may be adjusted for increases in the cost of living in accordance with ~~regulations~~[Treasury Regulations](#) prescribed by the Secretary of the Treasury or his [or her](#) delegate.

(c) If, for limitation years before July 1, 2007, such ~~additions~~[Additions](#) exceed the limitation, the contributions made by the Participant for the [Plan](#) Year, which cause the excess, shall be returned to the Participant. If, after returning the Participant's contribution an excess still exists, such excess which is attributable to Forfeitures shall be held in a suspense account. Such account may be maintained if (1) no Employer contributions are made when their allocation could be precluded by [Code](#) Section 415~~-of the Internal Revenue Code~~, (2) no income is allocated to the account, and (3) amounts in the account are allocated as of each allocation date on which Forfeitures may be allocated until the account is exhausted. Upon termination of the Plan, the balance of such account may revert to the Employer.

(d) If, for a limitation year beginning on or after July 1, 2007, such ~~additions~~[Additions](#) exceed the limitation, the Board of Trustees will correct such excess addition in accordance with the Employer Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure ~~2006-27~~[2021-30](#) or any superseding guidance, including, but not limited to, the preamble of the final Treasury Regulations under Code ~~§~~[Section](#) 415.

(e) For purposes of this Section, the limitation year shall mean the Plan Year.

(f) The term "Compensation" means, for purposes of Sections 5.3 and 5.4 only, a Participant's earned income, wages, salaries, fees for professional services and other amounts received for personal services actually rendered in the course of employment with an employer maintaining the Plan including bonuses, cash awards and elective contributions. "Elective contributions" are amounts excludible from an Employee's gross income under Code Section 125, and amounts contributed by the Employer, at the Employee's election, to a Code Section 457 Plan arrangement or a cafeteria plan.

In addition, the following amounts shall be included for Plan Years beginning on or after January 1, 2008:

1. wages and other regular pay, including overtime or shift differentials, commissions, bonuses, or other similar payments, received by a Participant within the later of 2 ½ months after the Participant's severance from employment or the end of the limitation year in which the Participant's severance from employment occurs, but only to the extent such wages and other regular pay represents payment for services performed prior to severance from employment and would have been paid to the Participant if he or she continued employment with the City; and

2. vacation and sick leave payments received by a Participant within the later of 2 ½ months after the Participant's severance from employment or the end of the limitation year in which the Participant's severance from employment occurs, but only to the extent such vacation and sick leave payments are for unused bona fide sick, vacation or other leave and the Participant would have been able to use the leave if he or she continued employment with the City; and

3. amounts received pursuant to a nonqualified deferred compensation plan, but only if the payment would have been paid such amounts at the same time if the Participant had continued in employment with the City and only to the extent the payment is included in the Participant's gross income.

Further, for the purposes of applying the limitations of this Section, ~~""~~"Compensation" for Plan Years beginning on or after January 1, 2008 shall not include:

1. payments to a Participant who does not currently perform services for the City by reason of qualified military service;
2. amounts paid to a Participant who is permanently and totally disabled; or
3. any amounts earned by a Participant but not paid during the limitation year solely because of the timing of pay periods and pay dates.

5.4 **Qualified Military Service.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u)(4) ~~of the Internal Revenue Code.~~

ARTICLE VI. BENEFITS

6.1 **Retirement or Disability.** If a Participant's employment with the Employer is terminated at or after he or she attains his or her Retirement Date, or if his or her employment is terminated at an earlier age because of Disability, he or she shall be entitled to receive the entire amount then in each of his ~~accounts~~ or her Accounts in accordance with Section 6.4.

6.2 **Death.** In the event that the termination of employment of a Participant is caused by his or her death, the entire amount then in each of his ~~accounts~~or her Accounts shall be paid to his or her Beneficiary in accordance with Section 6.4 after receipt by the Board of Trustees of acceptable proof of death. In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code ~~§~~Section 414(u) and Section 5.4 herein), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Distributions to designated Beneficiaries must meet the minimum distribution requirements set forth in Section 6.5. A designated Beneficiary shall be able to elect a rollover of his or her interest in a deceased Participant's ~~Aggregate~~ Account to an ~~"inherited individual retirement account or annuity"~~ described in Code ~~§§~~Sections 408(a) or (b), subject to applicable Code requirements.

6.3 **Distribution Upon Other Termination of Employment, Upon Transfer to Other Employment Within the City, and In-Service Distribution of Rollover Contributions.**

(a) If a Participant's ~~Aggregate~~ Account ~~balance~~ becomes distributable upon his or her termination of employment for any reason other than retirement, disability or death, or, for rollover purposes, upon the Participant's transfer to other employment with the City or upon the Participant's participation in another money purchase pension plan sponsored by the Employer, the Board of Trustees shall distribute the ~~Aggregate~~ Account to the Participant in the optional form of benefit selected by the

Participant in accordance with Section 6.3(c). The Participant's ~~Aggregate~~ Account balance is the sum of the following:

- (i) the entire amounts credited to his or her Mandatory and Voluntary Employee Contribution Accounts, plus
- (ii) An amount equal to the ~~"vested percentage"~~ of his or her Employer Contribution Account balance. Such vested percentage shall be determined in accordance with the following schedule for terminations on or prior to January 31, 2022:

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 1 year	0%
1 but less than 2	0%
2 but less than 3	0%
3 but less than 4	60%
4 but less than 5	80%
5 years or more	100%

Effective for terminations on or after February 1, 2022:

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 1 year	0%
1 or more but less than 2	20%
2 or more but less than 3	40%
3 or more but less than 4	60%
4 or more but less than 5	80%
5 years or more	100%

If a Participant has received a distribution of his or her Employer Contribution Account ~~balance~~ in accordance with the above paragraph representing less than 100% of such ~~account~~ Account, and if he or she is subsequently

reemployed, he or she may repay the amount received from his or her Employer Contribution Account to the Board of Trustees. Such repayment must be made on or before the last day of the period beginning with the first day the Participant is subsequently reemployed, and ending 180 days thereafter. Such amount shall be restored to either; (1) his or her Employee Contribution Account, on or after the date the Employee incurs a tax on the amount previously distributed to him, or (2) his or her Employer Contribution Account, prior to the date the amount previously distributed to him or her incurs a tax. Upon such repayment, a Participant's Employer Contribution Account shall consist of the amount repaid plus the portion of such ~~account~~ Account which was not vested upon termination of employment. If a Participant eligible to make such repayment fails to do so, the amount previously forfeited shall not be restored to his ~~account~~ or her Account. Upon distribution to a Participant above, any part of the final balances in a Participant's ~~account~~ Account which is not part of his or her distribution is a Forfeiture.

If the Participant dies prior to the date his or her benefit payments commence, his or her vested Account shall be distributed to his or her Beneficiary under Section 6.2 in accordance with the optional form of benefit selected by the Beneficiary in accordance with Section 6.3(c).

(b) Deferral of Distribution. Notwithstanding the foregoing, a Participant with 3 Years of Service may elect to defer receipt of his or her vested Account. Such Participant shall receive income and expense allocations pursuant to Section 5.2(a) and (b) until the balance of the Participant's vested Account has been distributed. A Participant may make application for distribution of his or her vested Account in accordance with the procedures contained in this Section. In any event, distribution of a

Participant's Account shall be made no later than ~~the close~~ April 1st of the calendar year following the calendar year in which the Participant attains age ~~70½~~ 72 (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later), or retires, whichever is later.

(c) Optional Forms of Distribution for Rollover Transactions and Direct Transfers. Within sixty days after a Participant terminates participation in this Plan, and becomes a participant in another qualified IRC ~~§~~ Code Section 401(a) retirement plan sponsored by the Employer, a Participant may elect, by filing the appropriate form with the Board of Trustees, to have his or her vested ~~account balance~~ Account under this Plan ~~payable~~ paid and rolled over in one of the following optional forms:

- (1) lump sum distribution, or
- (2) a partial distribution of the Account, or
- (3) deferral of all or part of the Account in accordance with Section 6.3(b), or
- (4) a combination of the above.

An election of an optional form of distribution may be changed or revoked at any time before the distribution has been made.

(d) Distribution for Rollover Transactions and Direct Transfers. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a Participant's or a Former Participant's election under the Plan, a Participant or Former Participant may elect, at the time and in the manner prescribed by the Board of Trustees,

to have any portion of an eligible rollover distribution, as defined in Code Section 402(c)(4), paid directly to an eligible retirement plan specified by the Participant or Former Participant, as a direct rollover. The Participant or Former Participant shall make such rollover request in writing and shall provide such information to the Board of Trustees as the Board of Trustees requests, including the name of the plan to which his or her interest is to be transferred and the name and address of the sponsor and the trustee of the new plan, when applicable.

Notwithstanding the foregoing, transfer of a Participant's or Former Participant's vested Account upon the Participant's or the Former Participant's transfer to other employment with the City, or upon the Participant's or Former Participant's participation in another ~~Plan~~plan sponsored by the Employer, or a rollover distribution both distributed from, and paid directly to, retirement plans of the City, ~~such amounts~~ will be considered a direct transfer. That portion of the Participant's ~~accrued benefit~~or Former Participant's Account that is not vested at the time of transfer will remain in the Participant's or Former Participant's Employer Contribution Account, and shall receive income and expense allocations, until such time the Participant or Former Participant is fully vested in that ~~account~~Account.

For purposes of the direct rollover provisions in this Section 6.3(d) a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account (IRA) or annuity described in ~~§§~~Code Sections 408(a) or (b) ~~of the Code~~, to a Roth IRA described in Code ~~§~~Section 408A, or to a qualified defined contribution plan

described in ~~§§~~Code Sections 401(a) or 403(a) ~~of the Code~~ that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(e) In-Service Distribution of Rollover Contributions.

Notwithstanding any other provision of the Plan to the contrary, amounts attributable to rollover contributions to the Plan being held in the Employee Rollover Account may be distributed at any time pursuant to a Participant's request, completed in good order pursuant to the Plan's administrative procedures and provided to the Plan's third-party administrator.

(f) Terminal Illness Distributions. Effective October 1, 2024, a Participant who is a Terminally Ill Individual and who has attained age 59-1/2 is eligible to request a withdrawal of his or her vested Account without penalty under Code Section 72(t), subject to the Participant providing sufficient evidence to the Plan's third-party administrator of his or her eligibility to receive a withdrawal hereunder. For purposes of this Section 6.3(f), "Terminally Ill Individual" means an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification. Participants may contact the Plan's third-party administrator if repayment of this withdrawal is desired, provided, however, such repayment must be within three years of the date the withdrawal is made.

(g) ~~(f)~~—The City's Department of Employee Relations shall periodically notify the Board of Trustees in writing of the names of Participants who have

requested a distribution from the Plan. The Board of Trustees authorizes the Department of Employee Relations to determine the amount of a Participant's ~~Aggregate~~ Accounts and the vested percentage of the Participant's ~~Aggregate~~ Accounts as calculated above, and further directs that the Department ensure distribution of such vested percentage to the Participant as soon as it is administratively practicable after the Participant's termination of employment. In addition to the name of the Participant, the Department of Employee Relations or third-party administrator shall also provide the amount of the distribution to the Board of Trustees.

6.4 **Payment of Benefits.**

(a) Application for Distribution of Benefits. A Participant who is entitled to receive a distribution from the Plan under Article VI because of ~~Retirement~~retirement, Disability, ~~Death~~death, or ~~Termination~~termination of ~~Service~~service shall be provided with a benefit application form to complete and return to the Board of Trustees. The Participant shall complete the benefit application form and indicate his or her commencement date, his or her election of an optional form of benefit and his or her Beneficiary or contingent annuitant. The completed benefit application form shall be returned to the Board of Trustees through the Department of Employee Relations, which shall process the benefit application form as soon as administratively practicable.

If the Participant files another benefit application form after the first form and prior to his or her benefit commencement date, the earlier form shall be deemed annulled. The Board of Trustees shall follow a Participant's Beneficiary

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

(b) Method of Distribution. Upon becoming entitled to receive a distribution from the Plan under Article VI, a Participant may select one of the following methods of payment:

(1) ~~In~~ a lump sum.

(2) ~~By~~ the purchase of a single-premium nontransferable annuity contract from a legal reserve life insurance company, and except as provided below, such contract shall be for such term and in such form as the Participant, with the approval of the Board of Trustees, shall determine. If the contract provides for continuance of annuity payments after a Participant's death to a Beneficiary other than the Participant's Spouse, the value of such death benefit shall be less than the value of the Participant's annuity. A Beneficiary electing this optional form of benefit due to a Participant's death occurring after December 31, 2019, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

(3) In periodic or partial distributions.

The amount which a Participant, Former Participant or Beneficiary is entitled to receive at any time and from time to time may be paid in cash.

Notwithstanding the above, if a Participant terminates employment with a vested benefit of less than \$1,000, exclusive of rollover contributions, the Participant shall have 60 days from the date of the mailing of the tax notice explaining the Participant's options in which to direct the Board of Trustees as to the disposition of the vested benefit. If after 60 days the Participant has failed to direct the investment of the vested benefit, then the Board of Trustee shall distribute the Participant's vested benefit to the Participant; provided, however, if a Participant terminates employment with a vested benefit of less than ~~\$1,000~~5,000 (or \$7,000 on and after October 1, 2024), exclusive of rollover contributions, the Participant shall have 60 days from the date of the mailing of the tax notice explaining the Participant's options in which to direct the Board of Trustees as to the disposition of the vested benefit. If after 60 days the Participant has failed to direct the investment of the vested benefit and such vested benefit is less than \$1,000, then the Board of Trustee shall distribute the Participant's vested benefit to the Participant. Alternatively, if the Participant's vested benefit is more than \$1,000 and less than \$5,000 (or \$7,000 on and after October 1, 2024), then such vested benefit shall not be distributed until the Participant provides direction to the Board of Trustees as to the disposition of the vested benefit.

(c) Deferral of Distribution. Notwithstanding the foregoing, a Former Participant with ~~three~~3 Years of Service may elect to defer receipt of ~~the balance in~~ his or her Mandatory and Voluntary Employee Contribution Accounts, Employee Rollover Account and the vested percentage of his or her Employer Contribution Account ~~balance (a Participant's "Accrued Benefit")~~. Such Former Participant shall receive Income allocations pursuant to Section 5.2(a) and shall have ~~trust~~Trust expenses deducted

pursuant to Section 5.2(b) until the balance of the Former Participant's ~~Accrued Benefit~~Account has been distributed. A Former Participant may make application for distribution of his ~~Accrued Benefit~~or her Account in accordance with the procedures contained in this Section. In any event, distribution of a Former Participant's ~~Accrued Benefit~~Account shall be made no later than ~~the close~~April 1st of the ~~Year~~calendar year following the calendar year in which the Former Participant attains age ~~70-1/2~~72 (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later), or retires, whichever is later.

(d) Distribution Commencement Date. Notwithstanding any of the provisions of this Section, payment of a Participant's retirement benefits must commence within a reasonable time after the later of a Participant's termination of employment or attainment of his or her Retirement Date or after his or her death, if earlier. In any event, payment of a terminated Participant's benefits shall, unless the Participant otherwise elects a later date in writing, begin no later than the 60th day after the latest of the close of the Plan Year in which (1) the Participant attains age 65, (2) the occurrence of the 10th anniversary of the year in which the Participant commenced participation in the Plan, or (3) the Participant terminates his or her service with the Employer. Notwithstanding any provision above to the contrary, a Participant's benefits shall commence not later than the April 1st of the calendar year following the calendar year in which he or she attains age ~~70-1/2, or~~72 (if the year in which he actually retires, whichever is later. Alternatively distributions to a Participant must begin no later than such taxable

~~year and must be made over the life of the Participant (or lives of the Participant and~~ Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later), or he or she retires, whichever is later.

For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

6.5 **Required Minimum Distribution Rules.**

(a) General Rules.

(1) Effective Date. The provisions of this Section 6.5 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(2) Precedence. The requirements of this Section 6.5 will take precedence over any inconsistent provisions of the ~~plan~~Plan.

(3) Requirements of Treasury Regulations Incorporated. All distributions required under this Section 6.5 will be determined and made in accordance with the Treasury Regulations under Code ~~§~~Section 401(a)(9) and Section 401 of the Setting Every Community Up for Retirement Enhancement ("SECURE") Act (Division O of the Further Consolidated Appropriations Act, enacted December 20, 2019), and the

SECURE 2.0 Act of 2022 (Division T of the Consolidated Appropriations Act of 2023, enacted December 29, 2022), and the Treasury Regulations promulgated thereunder.

(4) TEFRA §Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section 6.5, distributions may be made under a designation made before January 1, 1984, in accordance with §Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the ~~plan~~Plan that relate to §Section 242(b)(2) of TEFRA.

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

(1) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, then distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age ~~70 1/2~~72 (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later), if later.

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

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

(4) If the Participant's surviving Spouse is the Participant's sole designated beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 6.5(b), other than Section 6.5(b)(1), will apply as if the surviving Spouse were the Participant.

(5) For purposes of this Section 6.5(b) and Section 6.5(d), unless Section 6.5(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 6.5(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 6.5(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 6.5(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

(6) For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

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

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

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

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

Required minimum distributions will be determined under this Section 6.5(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

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

(1) Death On or After Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution

calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's ~~account~~Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

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

(B) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year. Effective January 1, 2024, however, the surviving Spouse may elect to be treated as the Participant for purposes of calculating the minimum amount that will be distributed each year.

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

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

(iii) For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

(2) Death Before Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's ~~account~~Account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 6.5(d)(1).

(ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of

September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole designated beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 6.5(b)(1), this Section 6.5(d)(2) will apply as if the surviving Spouse were the Participant.

(iv) For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

(e) Definitions. The following definitions apply to this Section 6.5.

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

(2) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the

calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 6.5(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) Life Expectancy. Life expectancy as computed by use of the Single Life Table in [§Treasury Regulation Section 1.401\(a\)\(9\)-9](#) ~~of the Treasury Regulations~~.

(4) Participant's Account Balance. The balance of the Participant's ~~Accounts~~[Account](#) as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the ~~Accounts~~[Account](#) as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The ~~account balances~~[Account balance](#) for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) Required Beginning Date. The latest date for commencement of distributions for a Participant, as determined under Section ~~6-66.3~~[66.3](#) of the Plan.

(f) Special Rule for 20092020 RMDs. Notwithstanding the provisions of this Section 6.5, a Participant or Beneficiary who would have been required to receive required minimum distributions for 20092020 but for the enactment of Code Section 401(a)(9)(H) ~~of the Code ("20092020 RMDs")~~, and who would have satisfied that requirement by receiving distributions that are (1) equal to the 20092020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 20092020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years (~~"Extended 20092020 RMDs"~~), will receive those distributions for 20092020 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding the provisions of Section 6.3, and solely for purposes of applying the direct rollover provisions of the Plan, 20092020 RMDs and Extended 20092020 RMDs will be treated as eligible rollover distributions.

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

the Participant's lifetime. Each Beneficiary designation filed with the Board of Trustees will cancel all Beneficiary designations previously filed with the Board of Trustees.

If any Participant fails to designate a Beneficiary in the manner provided above, or if the Beneficiary designated by a deceased Participant dies before him or her or before complete distribution of the Participant's benefits, the Board of Trustees, in its discretion, may distribute such Participant's benefits (or the balance thereof) to either:

(a) Any one or more or all of the next of kin (including the surviving Spouse) of such Participant, and in such proportions as the Board of Trustees shall determine; or

(b) The estate of the last to die of such Participant and his or her Beneficiary or Beneficiaries.

ARTICLE VII. BOARD OF TRUSTEES

~~7.1 Existing Retirement Board. The existing Retirement Board shall continue to serve until the new Board of Trustees is empaneled pursuant to the following terms.~~

~~7.1~~ 7.2 **Establishment of Board of Trustees.** A Board of Trustees ~~will~~ be was established in 2019, upon election and appointment of Trustees as described below in ~~section 7.3~~ Section 7.2.

~~7.2~~ 7.3 **Composition of the Board of Trustees.** The Plan shall be administered by the Board of Trustees, once established, which shall consist of the City Mayor, one City Manager designee (sworn or non-sworn employee), four (4) sworn

employees, four (4) non-sworn employees, and two (2) retirees (one sworn and one non-sworn).

(a) The City Mayor shall be a non-voting member of the Board, except when votes of the ~~beard~~[Board](#) are equally divided, in which case the City Mayor can cast a tie-breaking vote.

(b) The City Manager designee is a voting member and will be a sworn or non-sworn employee selected by the City Manager.

(c) The four (4) sworn employees will be voting members elected to the Board by a majority vote of the voting plan participants of the City of Lakewood Police Money Purchase Pension Plan and Trust Agreement.

(d) The four (4) non-sworn employees will be voting members elected to the Board by a majority vote of the voting non-sworn Plan Participants.

(e) The one (1) sworn retiree will be a voting member elected by a majority vote of the voting sworn plan participants of the City of Lakewood Police Money Purchase Pension Plan and Trust Agreement.

(f) The one (1) non-sworn retiree will be a voting member elected by a majority vote of the voting non-sworn Plan Participants.

A Chairperson and a Vice-Chairperson/Secretary shall be selected by the Board of Trustees annually. Human Resources will maintain the role of Recording Secretary/Administrator.

~~7.37.4-~~ **Board Meetings.** Meetings will occur quarterly and members can attend via phone or video call/conference. To vote, there must be a quorum of 5

consisting of at least two (2) sworn employees and two (2) non-sworn employees. [Such vote may be taken by written or electronically communicated consent.](#)

~~7.4~~~~7.5-~~ **Terms.** Members of the Board of Trustees shall serve specified terms as follows:

(a) **Elected Members.** The initial members of the Board of Trustees elected in October of 2019, or such other agreed upon date and will serve the remaining portion of 2019 followed by one (1), two (2) or three (3) year terms, as determined by the Board after election, creating annually staggered terms. Thereafter, elected members shall serve three (3) year terms, staggered annually, with the ability to be elected in perpetuity.

(b) **Appointed Member.** The member appointed by the City Manager will serve a three (3) year term with the ability to be appointed in perpetuity. The City Manager will appoint for this position upon the end of each term or vacancy.

~~7.5~~~~7.6-~~ **Elections.** Elections with respect to Board seats will be held in January of the calendar year in which a seat is up for election. The City Clerk shall be responsible for developing the election procedures and elections shall be conducted by the City Clerk's office. An employee~~/or a~~ retiree shall become a candidate for the Board of Trustees by notifying the City Clerk in writing on or before the notification date set by the City Clerk of his~~/or~~ her intention to run for election to the Board of Trustees. If only one sworn or non-sworn employee~~/or a~~ retiree has indicated his~~/or~~ her intention to run for election for an open seat within his~~/or~~ her same category of employment by the designated notification deadline, the City Clerk shall declare the election for that specific

seat (sworn or non-sworn) cancelled and the sworn or non-sworn employee~~/ or~~ retiree shall be deemed to be elected to the Board of Trustees.

~~7.6~~~~7.7-~~ **Resignation of Board Member**. A member of the Board of Trustees may resign at any time by giving written notice to the Board of Trustees. Resignation will be effective at the time specified in the written notice or if no time is specified, will be effective immediately. Acceptance by the Board of Trustees is not required for the resignation to be effective. Upon leaving his~~/ or~~ her role as a member of the Board of Trustees, the member shall deliver any Trust property or records in his~~/ or~~ her possession.

~~7.7~~~~7.8-~~ **Vacancies**. A vacancy occurs upon the resignation, termination of employment, or death of a member of the Board of Trustees. Vacancies shall be filled within ~~30~~90 days, or at such later date as determined by the Board of Trustees, by election for an elected member or appointment for an appointed member. An elected or appointed member filling a vacancy mid-term shall serve for the unexpired term of the vacancy and shall thereafter be subject to election or appointment upon the expiration of said term. A vacancy for an elected member will be filled with the same category of employee~~/ or~~ retiree (sworn or non-sworn).

~~7.8~~~~7.9-~~ **Successor Board Members**. A successor Board of Trustees member, elected or appointed, shall have all of the rights, powers and discretions vested in him~~/ or~~ her as his~~/ or~~ her predecessor had vested. A successor Board of Trustees member shall have no duty to examine the accounts or doings of his~~/ or~~ her predecessors. A successor Board of Trustees member is responsible only for money and property

known to him~~/or~~ her to comprise the principal and income of the Fund and shall in no way be liable or responsible for anything done or omitted by his~~/or~~ her predecessors.

7.9 ~~7.10~~ **Use of Corporate Trustee**. At any time and from time to time the Board of Trustees may appoint, as a Corporate Trustee, ~~a bank or trust company located in the United States which has capital and surplus aggregating not less than \$5,000,000,000.00, as shown by its last published statement~~as defined in Section 2.1(h).

The Board of Trustees may delegate to the Corporate Trustee (i) the power to hold all or any part of the fund as sole trustee of a trust separate from the Trust created by this Agreement (and not as agent of the Board of Trustees or as Co-Trustee hereunder with the Board of Trustees), (ii) the power to invest and reinvest the Fund in the Corporate Trustee's sole discretion, and (iii) such other duties and powers as the Board of Trustees may deem advisable. The Board of Trustees may enter into and execute a trust agreement with the Corporate Trustee, which agreement shall contain such provisions as the Board of Trustees may deem advisable. The Corporate Trustee shall have no obligations under this Agreement or under the Plan and its powers and duties shall be limited to those set forth in the agreement between it and the Board of Trustees. Upon execution of an agreement with the Corporate Trustee, the Board of Trustees may transfer and convey to the Corporate Trustee any part or all of the assets of the Fund acceptable to the Corporate Trustee, and thereupon, the Board of Trustees shall be forever released and discharged from any responsibility or liability with respect to the assets so transferred as to any period subsequent to such transfer and with respect to the investment and reinvestment thereof by the Corporate Trustee during the time the Fund is in the hands of the Corporate Trustee. Notwithstanding such transfer, the Board

of Trustees shall continue to carry out its administrative functions under the Plan in accordance with the provisions of the Plan and Trust Agreement.

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

[7.10](#) ~~7.11~~ **Participant Direction of Investment**. The Board of Trustees may establish rules, regulations and policies to permit each Participant to direct the investment of funds allocated to the Participant's ~~Aggregate~~ Accounts. The Board of Trustees shall select and make available, several investment vehicles which participants may elect to invest the funds allocated to their ~~Aggregate~~ Accounts. The Board of Trustees shall adopt and establish rules, regulations and policies concerning Participant direction of investment options available, election forms, limitations on the type or mix of investment vehicles and procedures for Participants to change their investments.

[7.11](#) ~~7.12~~ **Claims Procedure**. The Board of Trustees shall make all determinations as to the right of any person to a benefit. Any denial by the Board of Trustees of the claim for benefits under the Plan by a Participant or Beneficiary shall be stated in writing by the Board of Trustees and delivered or mailed to the Participant or Beneficiary; and such notice shall set forth the specific reasons for the denial, reference pertinent Plan provisions, describe any additional information needed and the steps to be

taken to submit the claim for review, all written to the best of the Board of Trustees' ability in a manner that may be understood without legal or actuarial counsel. Should a Participant or Beneficiary receive no response to his or her claim for benefits within 90 days of making the claim, it shall be deemed to be denied and the Participant or Beneficiary may proceed to have the claim reviewed. The claimant may, within 60 days after receiving such denial notice, request a repeal of the denial in writing, submit issues and comments, and may review pertinent documents. The Board of Trustees shall reach a decision as to the claimant's appeal not later than 60 days after receiving the request for review.

7.12 ~~7.13~~ **Records and Reports**. The Board of Trustees shall exercise such authority and responsibility as it deems appropriate relating to records of Participant's Service, ~~account~~Account balances and the percentage of such ~~account~~Account balances which are non-forfeitable under the Plan; notifications to Participants; and annual registration with the Internal Revenue Service; ~~and annual reports to the Department of Labor.~~

7.13 ~~7.14~~ **Investment Manager**. The Board of Trustees may appoint one or more Investment Managers to exercise the power of the Board of Trustees to direct the investment and reinvestment of the Trust Fund. Such appointment shall be made in writing and accepted by the Investment Manager, a copy of which shall be delivered to the Board of Trustees and may be revoked by the Board of Trustees by written notice delivered to the Investment Manager. The Investment Manager shall receive such compensation and reimbursement for expenses as shall be agreed upon from time to time by the Board of Trustees and the Investment Manager which shall be paid, in whole

or in part by the Employer, and any amount thereof not paid by the Employer shall be paid by the Board of Trustees out of the principal or income of the Trust. The Investment Manager shall discharge his [or her](#) duties relating to the investment and reinvestment of the Trust Fund in conformity with Article VII of this Plan and shall be subject to the liabilities therein stated insofar as his [or her](#) duties are concerned. The Board of Trustees shall not be liable with respect to acts or omissions of the Investment Manager, or be under an obligation to invest or otherwise manage any assets of the Plan or Trust Fund which are subject to the management of the Investment Manager, except insofar as they shall be liable for the breach of co-fiduciaries pursuant to Article IX hereof.

[7.14](#) ~~7.15~~ **Other Administrative Powers and Duties.** The Board of Trustees shall also have such duties and powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following:

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

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

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

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

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

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

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

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

[7.15](#) ~~7.16~~ **Rules and Decisions**. The Board of Trustees may adopt such rules as it deems necessary, desirable, or appropriate. All rules and decisions of the Board of Trustees shall be uniformly and consistently applied to all Participants in similar circumstances. When making a determination or calculation, the Board of Trustees shall be entitled to rely upon information furnished by a Participant or Beneficiary, the Employer or the legal counsel of the Employer.

[7.16](#) ~~7.17~~ **Benefit Payments**. The Board of Trustees shall pay all benefits from the Trust Fund pursuant to the provisions of the Plan.

[7.17](#) ~~7.18~~ **Application and Forms for Benefits**. The Board of Trustees may require a Participant to complete and file with the Board of Trustees an application for a benefit and all other forms approved by the Board of Trustees and to furnish all

pertinent information requested by the Employer. The Board of Trustees may rely upon all such information so furnished it, including the Participant's current mailing address.

7.18 ~~7.19~~ **Participant Loan Policy**. The Board of Trustees may adopt a policy and procedure to allow Participants to obtain loans from the Plan. Such loan policy must be approved and adopted by the Board of Trustees and shall comply with the requirements of ~~Internal Revenue~~ Code ~~§~~Section 72(p), as it may be amended from time to time. The Board of Trustees shall adopt such forms and procedures necessary to implement such a Participant Loan Policy and shall make available to Participants the provisions of the Participant Loan Policy if adopted by the Board of Trustees.

7.19 ~~7.20~~ **Indemnification**. The Employer shall indemnify and hold harmless the Board of Trustees from any and all claims, losses, damages, expenses (including counsel fees approved by the Board of Trustees), and liabilities (including any amounts paid in settlement with the Board of Trustees' approval) arising from any act or omission of the Board of Trustees, except when the same is judicially determined to be due to the gross negligence or willful misconduct of such Board of Trustees.

ARTICLE VIII. POWERS AND DUTIES OF BOARD OF TRUSTEES

8.1 **Organization and Operation of Offices of Board of Trustees**. The Board of Trustees may adopt such procedures as it deems desirable for the conduct of its respective affairs and may appoint or employ a secretary or other agents, any of whom may be, but need not be, an officer or employee of the City. Any agent may be removed at any time by the Board of Trustees.

8.2 **Information to be Made Available to Board of Trustees.** To enable the Board of Trustees to perform all of its respective duties under the Plan, the City shall provide the Board of Trustees with access to the following information for each Employee: name and address, social security number, birthdate, dates of commencement and termination of employment, reason for termination of employment, annual compensation, and such other information as the Board of Trustees may require. To the extent the information is available in City records, the City shall provide the Board of Trustees with access to information relating to each Employee's Participant contributions, benefits received under the Plan and marital status. If such information is not available from the City's records, the Board of Trustees shall obtain such information from the Participants. The Board of Trustees and the City may rely on and shall not be liable for any information which an Employee provides, either directly or indirectly. As soon as possible following a Participant's termination of employment for any reason, the City shall certify in writing to the Board of Trustees such Participant's name, address, date and reason for his or her termination of employment.

8.3 **General Duties and Powers of Board of Trustees.** The Board of Trustees shall decide all questions arising in the administration, interpretation and application of the Plan and Trust, including all questions relating to eligibility, vesting, and distribution. The Board of Trustees may designate any person or entity to carry out any of the Board of Trustees' responsibilities under the Plan and may employ one or more persons to render advice with regard to any responsibility the Board of Trustees has under the Plan. The Board of Trustees from time to time shall direct the ~~Third-Party Administrator~~ third-party administrator concerning the payments to be made out of the

Trust ~~fund~~[Fund](#) pursuant to this Plan. All notices, directions, information, and other communications from the Board of Trustees shall be in writing.

8.4 **Recordkeeping Duties and Powers of Board of Trustees.** The Board of Trustees shall keep a record of all the Board of Trustees' proceedings and shall keep all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Plan and Trust, including records to reflect the affairs of this Plan, to determine the amount of vested and/or forfeitable benefits of the respective Participants, and to determine the amount of all benefits payable under this Plan. Subject to the requirements of law, any person dealing with the Board of Trustees may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the Board of Trustees as evidence of any action taken or resolution adopted by the Board of Trustees.

8.5 **Investment of Pension Trust Fund.**

Duties of Board of Trustees. The duty of the Board of Trustees is to hold in trust the funds it receives. Except to the extent Participants are allowed to self-direct investment of the funds allocated to their Account, the Board of Trustees shall have exclusive authority and discretion to manage and control the assets of the Pension Trust and to manage, invest and reinvest the Trust and the income from it under this Section, without distinction between principal and income. The Board of Trustees shall be responsible only for such sums that it actually receives.

Powers of Board of Trustees. The Board of Trustees 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~~[Fund](#), without previous application

to, or subsequent ratification of, any court, tribunal or commission, or any federal or state governmental agency. The Board of Trustees may invest in real property and all interests in real property, 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, in qualified pooled funds, or in pooled investment funds of an insurance company qualified to do business in the state, and in life insurance and annuity contracts (including group or individual annuities). All powers of the Board of Trustees shall be subject to the requirements of state law.

Participant Direction of Investments. Pursuant to rules, regulations, and policies adopted by the Board of Trustees, each Participant shall direct the investment of funds allocated to the Participant's Account. The Board of Trustees shall select and make available, several investment vehicles which Participants may elect to invest the funds allocated to their Account. The Board of Trustees shall adopt and establish rules, regulations, and policies concerning Participant direction of investment, including the options available, election forms, limitations on the type or mix of investment vehicles and procedures for Participants to change their investments.

8.6 **Administrative Powers of the Board of Trustees.** Subject to the requirements imposed by law, the Board of Trustees shall have all powers necessary or advisable to carry out the provisions of this Plan and the Trust [Agreement](#) and all inherent, implied and statutory powers now or subsequently provided by law, including specifically the power to do any of the following:

(a) To cause any securities or other property to be registered and held in its name as Board of Trustees, 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;

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

(c) To abandon, compromise, contest and arbitrate claims and demand; to institute, compromise and defend actions at law (but without obligation to do so); in connection with such powers, to employ counsel as the Board of Trustees shall deem advisable and to exercise such powers all at the risk and expense of the Trust ~~fund~~Fund;

(d) To borrow money for this Trust upon such terms and conditions as the Board of Trustees deem advisable, and to secure the repayment of such by the mortgage or pledge of any assets of the Trust ~~fund~~Fund;

(e) To vote in person or by proxy any shares of stock or rights held in the Trust ~~fund~~Fund; to participate in and to exchange securities or other property in

reorganization, liquidation or dissolution of any corporation, the securities of which are held in the Trust ~~fund~~Fund; and

(f) To pay any amount due on any loan or advance made to the Trust ~~fund~~Fund, to charge against and pay from the Trust ~~fund~~Fund all taxes of any nature levied, assessed or imposed upon the Trust ~~fund~~Fund, and to pay all reasonable expenses and attorney fees necessarily incurred by the Board of Trustees with respect to any of the foregoing matters.

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

(h) The Board of Trustees is authorized to apply for and procure from responsible insurance companies to be selected by the Board of Trustees, such endowment, annuity, or other insurance contracts as the Board of Trustees shall deem proper for the purposes of the Trust upon the lives of such persons as the Board of Trustees shall select, but in no event may the endowment, annuity, or other insurance contract have reserves that are less than the reserves provided for in ordinary life insurance contracts, to exercise at any time or from time to time whatever rights and privileges may be granted under such endowment, annuity, or insurance contracts; and

to collect and receive and settle for the proceeds of all such endowment, annuity, or other insurance contracts as and when entitled to do so under the provisions thereof. But, the aggregate life insurance premium for each Participant must be less than one-half of the aggregate of the contributions allocated to the credit of the Participant at any particular time, and the Board of Trustees must convert the entire value of the life insurance contract at or before retirement into cash, or to provide periodic income so that no portion of such value may be used to continue life insurance protection beyond retirement, or to distribute the contract to the Participant.

8.7 **Payment of Taxes.** If any tax shall be imposed upon the Board of Trustees, pursuant to the provisions of any law now or hereafter enacted or made applicable hereto, upon or with respect to the assets or income of the Trust Fund, then in every such instance the Board of Trustees is hereby empowered to pay such tax out of the assets of the Trust Fund. The Board of Trustees, however, shall not be obligated to pay any such tax so long as it shall contest the validity thereof in good faith. In determining to pay or contest the validity of any such tax, the Board of Trustees may obtain the advice or counsel for the Employer or the Board of Trustees, and for all and any acts done or omitted to be done pursuant to the advice of such counsel, the Board of Trustees shall be held completely harmless.

8.8 **Payment of Expenses and Fees.** The expenses of administration of the Trust incurred by the Board of Trustees, including legal counsel and consulting fees and other charges, shall be paid from the Trust Fund if and to the extent that the Employer does not pay such expenses, fees and charges.

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

8.10 **Advice of Counsel.** The Board of Trustees may consult with legal counsel, who may be counsel for the City, or the Board of Trustees' own counsel, with respect to the meaning or construction of the Plan and Trust [Agreement](#) or the Board of Trustees' obligations or duties. The Board of Trustees shall be protected from any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of such counsel, to the extent permitted by law.

8.11 **Records and Accounts of the Board of Trustees.** The Board of Trustees shall keep all such records and accounts which may be necessary in the administration and conduct of the Trust. The Board of Trustees' records and accounts shall be open to inspection by the City at all reasonable times during business hours. 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 Board of Trustees 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. After the close of each ~~year of the Trust~~Plan Year, the Board of Trustees shall render to the City a statement of assets and liabilities of the Trust ~~fund~~Fund for such year.

8.12 **Compensation of Board of Trustees.** A Trustee who is not a full-time employee or elected official of the City shall be entitled to reasonable compensation for its services. Compensation shall be comparable to charges for similar services made from time to time by other trustees in the geographic area in which the Trustee has its principal place of business.

8.13 **Contributions to Trust.** All contributions under this Plan shall be paid to and deposited in the Trust Fund. All assets of the Trust Fund, including investment income, shall be retained for the exclusive benefit of Participants, Former Participants, and Beneficiaries and shall be used to pay benefits to such persons or to pay administrative expenses of the Plan and Trust Fund to the extent not paid by the Employer and shall not revert to or inure to the benefit of the Employer.

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

ARTICLE IX. FIDUCIARIES

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

The following will cause a person to be classified as a ~~“Fiduciary”~~ for purposes of this Plan and Trust: (1) exercise of any discretionary authority or discretionary control respecting the management or disposition of Plan or Trust assets,

(2) rendering any investment advice for a fee or other compensation, or (3) exercise of any discretionary authority or responsibility for Plan or Trust administration.

9.2 **General Fiduciary Duties.** All Fiduciaries must discharge their duties solely in the interest of the Employees eligible to participate and Beneficiaries of the Plan. In addition, Fiduciaries must act exclusively for the purpose of providing benefits to Employees eligible to participate and Beneficiaries and defraying reasonable expenses of the Plan. They must carry out their duties with the care, skill, prudence and diligence which a prudent man acting in a like capacity would use under conditions prevailing at the time. Investments of the Plan shall be diversified so that the risk of loss will be minimized unless this clearly is not prudent under the circumstances. However, investment in pooled funds will not violate the diversification rule if the [Trust](#) Fund itself is sufficiently diversified.

9.3 **Bonding and Insurance.** The Board of Trustees, any Investment Manager appointed pursuant to Section ~~7.14~~[7.13](#), and anyone acting as a Fiduciary as described in Article IX, may be bonded for the minimum amount required unless the Employer shall direct that a bond in a larger amount be maintained. The Board of Trustees may obtain Errors and Omissions Insurance for such amount as they deem advisable to protect the Trust Fund. Such insurance and bond premiums and fees may be paid as an expense of the Trust pursuant to Section 8.8.

ARTICLE X. MISCELLANEOUS

10.1 **Nonguarantee of Employment.** Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or

as a right of any Employee to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

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

10.3 **Nonalienation of Benefits.** Benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a Spouse or former Spouse, or for any other relative of the Employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan, except as may be provided by C.R.S. ~~§~~[Section](#) 24-54-111; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust Fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

Notwithstanding the above, effective January 1, 1997, the Board of Trustees will comply with a Qualified Domestic Relations Order (~~""~~[QDRO](#)~~""~~).

A QDRO is a judgment, decree or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law) that relates to the provision of child support, alimony payments or marital property rights to a Spouse, former Spouse, child or other dependent of a Participant (“Alternate Payee”) and which:

(a) creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable to a Participant under this Plan;

(b) specifies (i) the name and last known mailing address of the Participant and each Alternate Payee covered by the order; (ii) the amount or percentage of the Participant's Plan benefits to be paid to any Alternate Payee; or the manner in which such amount or percentage is to be determined; and (iii) the number of payments or the period to which the order applies and each plan to which the order relates; and

(c) does not require the Plan to:

(i) provide any type or form of benefit or any option not otherwise provided under the Plan;

(ii) pay any benefits to any Alternate Payee prior to the earlier of the affected Participant's termination of employment or the earlier of either (I) the earliest date benefits are payable under the Plan to a Participant; or (II) the later of the date the Participant attains age 50, or the earliest date on which the Participant could obtain a distribution from the Plan if the Participant separated from service;

(iii) provide increased benefit; or

(iv) pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under a prior QDRO.

For purposes of this Plan, an Alternate Payee who had been married to the Participant or who had been a partner of a civil union with the Participant for at least one year may be treated as an ~~Eligible~~eligible Spouse with respect to the portion of the Participant's benefit in which such Alternate Payee has an interest provided that the QDRO provides for such treatment. In addition, if the QDRO so provides, this Plan, shall have the right to make an immediate distribution of the Alternate Payee's benefit, notwithstanding the fact that the Participant may not be eligible for immediate payment.

However, under no circumstances, may the Spouse of an Alternate Payee (who is not a Participant hereunder) be treated as an ~~Eligible~~eligible Spouse under the terms of the Plan.

Upon receipt of any judgment, decree or order relating to the provision of payment by the Plan to an Alternate Payee pursuant to a state domestic relations law, the Board of Trustees shall promptly notify the affected Participant and any Alternate Payee of the receipt of such judgment, decree or order and shall notify the affected Participant and any Alternate Payee of the Board of Trustees' procedure for determining whether or not the judgment, decree or order is a QDRO. The Board of Trustees shall establish a procedure to determine the status of a judgment, decree or order as a QDRO and to administer Plan distributions in accordance with such procedure. Such procedure shall be in writing, shall include a provision specifying the notification requirements enumerated in the preceding paragraph, shall permit an

Alternate Payee to designate a representative for receipt of communications from the Board of Trustees and shall include such other provisions as the Board of Trustees shall determine, including provisions required under regulations promulgated by the General Assembly of the State of Colorado.

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

10.5 **Disposition of Unclaimed Payments.** If the Board of Trustees is unable to make any payment due under the Plan to any person because they cannot ascertain the identity or whereabouts of such person after making such written or telephonic inquiries as the Board of Trustees, in their sole discretion, deem reasonable, the Board of Trustees shall suspend all further payments to such person until he or she makes his or her identity or whereabouts known to the Board of Trustees within seven (7) years after such payment was due. The Board of Trustees shall declare such payment, and all remaining payments due such person, to be forfeited as of the expiration of such seven-year period. Forfeited payments shall be treated in the same manner as forfeitures

resulting from the termination of employment of a Participant prior to his or her having acquired a vested right to payments.

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

10.7 **Trust and Plan to be Tax Exempt**. The Trust and the Plan are intended to qualify under ~~Internal Revenue~~ Code Section 401(a) and to be tax exempt under Code Section 501(a), respectively, and is a ~~"Governmental Plan"~~ within the meaning of Code Section 414(d) ~~of the Internal Revenue Code of 1986~~, as amended from time to time and ERISA Section 3(32) ~~of the Employee Retirement Income Security Act of 1974~~. The Plan and Trust have been established with the expectation that the Trust will be irrevocable and in the belief that the Plan and Trust will be approved by the Internal Revenue Service, as meeting the requirements of the ~~Internal Revenue Code of 1986~~ and the Treasury Regulations issued thereunder with respect to qualified employee benefit plans, so as to permit the Employer to deduct their contributions to the Trust, for Federal income tax purposes.

ARTICLE XI. AMENDMENTS AND ACTION BY EMPLOYER

11.1 **Amendments**. The Employer reserves the right to make from time to time any amendment or amendments to this Plan and Trust which do not cause any part of the Trust Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Participants, Former Participants or their Beneficiaries, provided, however, that

the Employer may make any amendment it determines necessary or desirable, with or without retroactive effect, to comply with applicable laws or at the direction and requirement of the Internal Revenue Service or ~~State Government~~[state government](#).

11.2 **Action by Employer.** Any action by the Employer under this Plan shall be by resolution of the City Council, or by any such person or persons duly authorized by resolution of said Council to take such action. Notwithstanding the above, if the Internal Revenue Service or ~~State Government~~[state government](#) directs and requires amendment of the Plan, then the Plan may be amended by the Board of Trustees on behalf of the Employer.

ARTICLE XII. SUCCESSOR EMPLOYER AND MERGER OR CONSOLIDATION OF PLANS

12.1 **Successor Employer.** In the event of the dissolution, merger, consolidation or reorganization of the Employer, provision may be made by which the Plan and Trust will be continued by the successor; and, in that event, such successor shall be substituted for the Employer under the Plan. The substitution of the successor shall constitute an assumption of Plan liabilities by the successor and the successor shall have all of the powers, duties and responsibilities of the Employer under the Plan.

12.2 **Controlled Entity.** In the event that an entity controlled by the Employer, as determined under Code Section 414(c), sponsors its own separate qualified retirement plan, the Employer shall transfer the assets and liabilities of the Trust with respect to employees of the controlled entity to the trust of the controlled entity's plan. Any such transfer of assets and liabilities shall be made in accordance with Section 12.3.

12.3 **Plan Assets**. In the event of any merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Trust Fund to another trust fund held under, any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants of this Plan, the assets of the Trust Fund applicable to such Participants shall be transferred to the other trust fund only if:

(a) Each Participant would (if either this Plan or the other plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan had then terminated);

(b) Resolutions of the City Council under this Plan, or of any new or successor employer of the affected Participants, shall authorize such transfer of assets; and, in the case of the new or successor employer of the affected Participants, its resolutions shall include an assumption of liabilities with respect to such Participants' inclusion in the new employer's plan, and

(c) Such other plan and trust are qualified under ~~Section~~Code Sections 401(a) and 501(a) ~~of the Internal Revenue Code~~.

ARTICLE XIII. PLAN TERMINATION

13.1 **Right to Terminate**. In accordance with the procedures set forth in this Article, the Employer may terminate the Plan and Trust Agreement at any time. In the event of the dissolution, merger, consolidation or reorganization of the Employer, the

Plan shall terminate and the Trust Fund shall be liquidated unless the Plan is continued by a successor to the Employer in accordance with Section 12.1.

Effective October 1, 2024, if the Plan is terminated by action initiated by the City Council, each Participant shall receive a termination bonus in addition to receiving one hundred percent (100%) of his or her vested benefit under this Plan. Such termination bonus shall be equal to twenty-four percent (24%) of the Participant's annual salary on the date the Plan is terminated and shall be credited to the Participant's Account in one or more annual installments, subject to the limitations of Section 5.3 of this Plan and Code Section 415. A termination of this Plan shall not be deemed initiated by the City Council if the principal reason for such termination is any federal or state statute, regulation, judicial decision, other requirement or request of Plan Participants. The principal reason for termination shall be stated in the ordinance terminating the Plan and shall be controlling for all purposes of this Plan. Any termination bonus under this Plan shall be distributed under the terms of Article VI.

13.2 **Partial Termination.** Upon termination of the Plan with respect to a group of Participants which constitutes a partial termination of the Plan, the Board of Trustees shall allocate and segregate for the benefit of the Employees then or theretofore employed by the Employer with respect to which the Plan is being terminated the proportionate interest of such Participants in the Trust Fund. The funds so allocated and segregated shall be used by the Board of Trustees to pay benefits to or on behalf of Participants in accordance with Section 13.4.

13.3 **Liquidation of the Trust Fund.** Upon termination of the Plan, or partial termination, the ~~accounts~~Accounts of all Participants affected thereby shall

become fully vested, and the Board of Trustees shall distribute the assets remaining in the Trust Fund, after payment of any expenses properly chargeable thereto, to Participants, Former Participants and Beneficiaries in proportion to their respective ~~account~~[Account](#) balances.

13.4 **Manner of Distribution.** To the extent that no discrimination in value results, any distribution after termination of the Plan may be made, in whole or in part, in cash, in securities or other assets in kind, or in nontransferable annuity contracts, as the Board of Trustees, in its discretion, may determine. All non-cash distributions shall be valued at fair market value at date of distribution. Distributions under this Section shall be made in accordance with the provisions of Section 6.4.

ARTICLE XIV. GOVERNING LAW

The Trust [Agreement](#) contained herein shall be deemed executed and governed under the laws of the State of Colorado. Should any provision of the laws of the State of Colorado be in conflict with the express powers, duties and responsibilities of the Board of Trustees as set forth in this instrument, in such event the terms of this instrument shall control. For the convenience of the parties hereto, this Plan and Trust Agreement may be executed in multiple identical counterparts, each of which is complete in itself and may be introduced in evidence or used for any other purpose without the production of any other counterpart.

[Space intentionally left blank. Signature page follows.]

APPROVED this _____ day of _____, 20____ by the Board of Trustees of the Lakewood Employees Money Purchase Pension Plan and Trust [Agreement](#).

Brent Berninger, Chairperson

APPROVED by resolution the _____ day of _____, 20____ by the City Council of the City of Lakewood, Colorado.

Wendi Strom, Mayor

**LAKESWOOD EMPLOYEES
MONEY PURCHASE PENSION PLAN**

AND

TRUST AGREEMENT

**Amended and Restated Effective
January 1, 2024**

**LAKEWOOD EMPLOYEES
MONEY PURCHASE PENSION PLAN
AND
TRUST AGREEMENT**

WHEREAS, the City of Lakewood adopted the amended and restated Lakewood Employees Money Purchase Pension Plan and Trust Agreement, effective January 1, 2014; and

WHEREAS, the City of Lakewood adopted the First Amendment to the Lakewood Employees Money Purchase Pension Plan and Trust Agreement in Resolution 2014-39, the effective date of which is January 1, 2015; and

WHEREAS, the City of Lakewood adopted the Second, Third, Fourth, Fifth, and Sixth Amendments to the Lakewood Employees Money Purchase Pension Plan and Trust Agreement in Resolution 2015-38, the effective date of which is March 13, 2015; and

WHEREAS, the Board of Trustees adopted a Seventh Amendment to the Lakewood Employees Money Purchase Pension Plan and Trust Agreement, the effective date of which is July 24, 2015;

WHEREAS, the City of Lakewood adopted the Eighth Amendment to the Lakewood Employees Money Purchase Pension Plan and Trust Agreement in Resolution 2016-37, the effective date of which is August 22, 2016; and

WHEREAS, the City of Lakewood adopted the Ninth Amendment to the Lakewood Employees Money Purchase Pension Plan and Trust Agreement, the effective date of which is October 30, 2017; and

WHEREAS, the City of Lakewood adopted the amended and restated Lakewood Employees Money Purchase Pension Plan and Trust Agreement, effective September 9, 2019; and

WHEREAS, the City of Lakewood adopted the First Amendment to the Lakewood Employees Money Purchase Pension Plan and Trust Agreement, the effective date of which is January 1, 2020; and

WHEREAS, the City of Lakewood adopted the Second Amendment to the Lakewood Employees Money Purchase Pension Plan and Trust Agreement in Resolution 2022-13, the effective date of which is April 1, 2022; and

WHEREAS, the City of Lakewood desires to amend and restate the Lakewood Employees Money Purchase Pension Plan and Trust Agreement.

NOW, THEREFORE, in consideration of the premises, the City of Lakewood hereby adopts this amended and restated Plan as follows:

ARTICLE I. PURPOSE

Effective as of January 1, 2024, except as otherwise specified, the City of Lakewood, as the Employer, and the Board of Trustees as the Trustee, hereby adopt this amended and restated Lakewood Employees Money Purchase Pension Plan and Trust Agreement.

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

Employer and will be in addition to the benefits Employees are entitled to receive under any other programs of the Employer.

The provisions of this Plan and Trust Agreement shall apply to an Employee who becomes an Employee on or after the Restated Effective Date and shall apply to an Employee who terminates employment on or after the Restated Effective Date. The rights and benefits, if any, of a former employee shall be determined in accordance with the provisions of any prior Plan and Trust Agreement in effect on the date his or her employment terminated.

The Plan is being established pursuant to C.R.S. Section 24-54-101 and is a governmental retirement plan exempt from the provisions of the Employee Retirement Income Security Act ("ERISA"). The Plan and Trust are intended to meet the requirements of Sections 401(a) and 501(a) of the Internal Revenue Code of 1986 (the "Code"), as amended and to the extent applicable to governmental plans.

ARTICLE II. DEFINITIONS AND CONSTRUCTION

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

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

be considered an Authorized Leave of Absence provided that the absence is caused by war or other emergency, or provided that the Employee is required to serve under the laws of conscription in time of peace, and further provided that the Employee returns to employment with the Employer within the period provided by law.

(b) Account. The value of all accounts maintained on behalf of a Participant, including all Employer or Employee contributions, and the income, expenses, gains and losses attributable to such contributions, unless otherwise indicated.

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

(d) Board of Trustees. Individuals selected and/or appointed whose selection and duties are provided for in Article VII and Article VIII.

(e) Break in Service. Any Year after the Effective Date during which a Regular Full-Time Employee completes less than 500 Hours of Service, or a Regular Part-Time Employee completes less than 250 Hours of Service.

(f) City. The City of Lakewood, Colorado.

(g) Compensation. A Participant's base salary paid by the Employer for personal services during the Plan Year, before reducing the amount of base salary by any pickup contributions, voluntary contributions or salary deferrals, excluding overtime, shift differential pay, and excluding any benefits paid under this Plan or any other retirement or life insurance program or under any other health or welfare plan. For purposes of allocating the Employer's contribution and tracking Forfeiture amounts for the Year in which a Participant begins or resumes Participation, Compensation shall be

determined as of the first day of the Year in which the Employee became a Participant and Compensation before his or her Participation began or resumed shall be disregarded. Effective January 1, 2009, Compensation shall include “differential wage payments” made to a Participant with respect to active military service, in accordance with Code Section 414(u)(12). Compensation in excess of the limitation set forth in Code Section 401(a)(17) for defined contribution plans as annually adjusted pursuant to Code Section 401(a)(17) shall not be taken into account under the Plan. For Plan Years beginning after December 31, 1997, “Compensation” also includes elective deferrals under Code Sections 125, 132(f)(4), 402(e), 402(h)(1)(B), 403(b), and 457(b) and employee contributions described in Code Section 401(h) which are treated as Employer contributions, to the extent such amounts would have been received and includable in the Employee’s gross income but for the enumerated Sections of the Code.

(h) Corporate Trustee. A bank or trust company located in the United States which has capital and surplus aggregating not less than \$5,000,000,000.00, as shown by its last published statement appointed by the Board of Trustees as a delegate of.

(i) Disability. A physical or mental condition which, pursuant to the City’s disability insurance carrier, presumably permanently prevents an Employee from satisfactorily performing his or her usual duties for the Employer or the duties of such other position or job which the Employer makes available to him or her and for which such Employee is qualified by reason of his or her training, education or experience.

(j) Effective Date. Except as otherwise provided herein, the “Restated Effective Date” of this Plan as amended and restated is January 1, 2024. The

effective date of the provisions of this Plan which incorporate the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001 is January 1, 2002, except as otherwise provided herein. The original effective date of the Plan is January 1, 1989.

(k) Eligible Retirement Plan. Any defined contribution plan, defined benefit plan, annuity contract described in Code Section 403(b), individual retirement account (IRA) or annuity described in Code Sections 408(a) or (b), or Roth IRA described in Code Section 408A, and any eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving Spouse or former Spouse who is the alternate payee under a domestic relations order, as defined in Code Section 414(p) or C.R.S. Section 14-10-113. In the case of a distribution to a non-Spouse Beneficiary, an Eligible Retirement Plan means an “inherited individual retirement account or annuity” described in Code Sections 408(a) or (b).

(l) Employee. Any person who is a Regular Full-Time Employee, Provisional Full-Time Employee, Regular Part-Time Employee or Provisional Part-Time Employee, who is receiving remuneration for personal services rendered to the Employer (or who would be receiving such remuneration except for an Authorized Leave of Absence). “Employee” shall not include sworn police officers or Variable Employees. Effective as of December 14, 2008, “Employee” shall not include employees of the Lakewood Housing Authority. Effective September 6, 2009, the City Manager shall be an “Employee” hereunder.

(1) A Regular Full-Time Employee for purposes of this subsection 2.1(l) is one who works 37 hours or more per week and who has been assigned to a position in the City of Lakewood that has a total benefits package.

(2) A Regular Part-Time Employee for purposes of this subsection 2.1(l) is one who is paid on an hourly basis, whose average workweek is at least 30 hours per week and less than 37 hours per week on a continuous year-round basis, and who has been assigned to a position in the City of Lakewood that has a total benefits package.

(3) A Provisional Employee for purposes of this subsection 2.1(l) is one who is either part-time or full-time, as described above in paragraphs (1) and (2) of this subsection 2.1(l), and is hired for a period of time not to exceed two (2) years, and who receives benefits.

(4) A Variable Employee for purposes of this subsection 2.1(l) is an employee who has not been assigned to a regular or provisional position and whose work schedule is generally part-time and/or seasonal (usually less than a nine (9) month period). Variable Employees serve at will and are entitled to limited benefits and privileges.

(m) Employee Contribution Account. The account maintained for a Participant to record his or her mandatory and voluntary contributions and adjustments relating thereto.

(n) Employee Rollover Account. The account established to hold and account for the after-tax contributions rolled over from the PERA withdrawal, or any other qualified rollover.

(o) Employer. The City of Lakewood, Colorado.

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

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

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

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

(t) Hour of Service.

(1) Each hour for which an Employee is directly or indirectly paid, or entitled to payment, by the Employer for the performance of duties during the applicable computation period (such hours shall be credited to the Employee for the computation period or periods in which the duties are performed); and

(2) Each hour for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. Such hours shall be credited to the Employee for the computation period or periods to which the award or

agreement pertains rather than the computation period in which the award, agreement or payment is made. The same Hours of Service shall not be credited under both this subsection and under the following subsection.

(3) In addition to the Hours of Service credited under the above subsections an Employee shall also receive credit for each hour for which an Employee is directly or indirectly paid, or entitled to such payment, by the Employer for reasons (such as vacation, sickness, military service, jury duty, authorized leaves of absence, or disability) other than for the performance of duties during the applicable computation period. Irrespective of whether such hours have accrued in other computation periods, these hours shall be counted in the computation period in which either payment is actually made or amounts payable to the Employee become due. No more than 1,000 Hours of Service shall be credited under this subsection on account of any single continuous period during which the Employee performs no duties. Hours of Service under this subsection shall be determined by dividing the payments received or due for reasons other than performance of duties by the lesser of (i) the Employee's most recent hourly rate of Compensation for the performance of duties; or (ii) the Employee's average hourly rate of Compensation for the performance of duties for the most recent computation period in which the Regular Full-Time Employee completed more than 500 Hours of Service, and a Regular Part-Time Employee completed more than 250 Hours of Service.

(4) For purposes of determining whether a Break in Service has occurred for participation in vesting, a Participant who is duly employed at the time maternity or paternity leave is taken will be deemed to have completed the Hours of Service which otherwise would normally have been credited to such individual but for

such absence, not to exceed 501 Hours of Service for a Regular Full-Time Employee and 251 Hours of Service for a Regular Part-Time Employee for that Year. If the Regular Full-Time Employee who is a Participant has previously incurred 501 Hours of Service, or the Regular Part-Time Employee who is a Participant has previously incurred 251 Hours of Service for that Year, the credit will be given for the following Year.

(5) To the extent required by applicable federal law and regulation, Employees shall also be credited with Hours of Service under circumstances not specifically described.

(6) The foregoing definition of “Hours of Service” is intended to coincide with the definition of that term under Regulations 2530.200b-2(b) and (c) of the Secretary of Labor pursuant to ERISA. It shall be deemed amended and modified as necessary to coincide with the prescribed definition in effect from time to time under such regulations.

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

(v) Maternity/Paternity Leave. An absence from work by reason of the pregnancy of the Participant, by reason of the birth of a child of the Participant, by reason of the placement of a child in connection with the adoption of the child by the Participant, or for purposes of caring for the child during the period immediately following

the birth or placement for adoption, including time involved for a trial period prior to adoption.

(w) Normal Retirement Age. For purposes of eligibility to receive retirement benefits under this Plan, the date a Participant attains age 55.

If a Participant meets the definition of a Qualified Public Safety Officer as defined in Code Section 72(t)(10), the Participant is eligible to receive retirement benefits under this Plan upon the attainment of age 50.

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

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

(z) Plan. The Lakewood Employees Money Purchase Pension Plan and Trust Agreement, as amended from time to time.

(aa) Plan Year. The City's fiscal year, which, as presently established, commences on January 1st of each year, which shall also be the fiscal year of the Trust Fund established under this Plan.

(bb) Prior Plan. The Public Employees Retirement Association of Colorado (PERA), the City of Lakewood Executive Money Purchase Pension Plan administered by the ICMA Retirement Corporation or the Lakewood Designated Officer Money Purchase Pension Plan.

(cc) Retirement Date. For purposes of this Plan, the Participant's Normal Retirement Age. Provided, however, that if a Participant has a Disability, as

defined in subsection (i), and is permitted to retire at an earlier date, or if the Participant continues as an Employee of the Employer after he or she has attained Normal Retirement Age, the "Retirement Date" shall refer to the date of actual retirement.

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

(ee) Spouse. Both a party who is married to a Participant pursuant to the provisions of the "Uniform Marriage Act", C.R.S. Section 14-2-101, et. seq., as well as a party to a civil union pursuant to C.R.S. Section 14-15-101, et. seq. However, in situations where the Code has a different definition of Spouse in Sections pertaining to qualification or operation of governmental plans, the definition of Spouse, as stated in the Code, shall control.

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

(gg) Valuation Date. The Valuation Date is the last day of each Plan Year.

(hh) Year. The year consisting of the 12-month period commencing on the date of hire and ending on the day prior to the twelve-month anniversary of the Employee's date of hire.

(ii) Year of Service. A 12-month period commencing on the Employee's date of hire or entry into the Plan and ending on the day prior to the

anniversary of the Employee's date of hire or entry into the Plan during which an Employee completes 1,000 Hours of Service.

2.2 **Construction.** The words "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Plan and Trust and not to any particular provision or Section.

ARTICLE III. PARTICIPATION AND SERVICE

3.1 **Participation.** An Employee enrolled in a Prior Plan or eligible to be enrolled in this Plan on the day prior to the Restated Effective Date shall automatically become eligible to participate in this Plan and Trust. Any other Employee now or hereafter in the employ of the Employer, shall commence participation in the Plan on the first day of employment consistent with Section 2.1(y) and shall end participation upon the occurrence of a Break in Service caused by a termination of employment.

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

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

(b) Service for Employees Participating from and after the Restated Effective Date. Subject to subsection (a) and the reemployment provisions of Section 3.5, a Participant shall accrue a Year of Service for each Year in which he or she has 1,000 or more Hours or Service, except that for Employees who become Participants on or after the Restated Effective Date, Years of Service before attainment of age 18 shall be disregarded.

(c) Service for Employment with the Employer. In the event an individual who was employed by the Employer as a full-time employee transfers employment within the City or is rehired by the City in a different capacity, such an individual shall be credited with one Year of Service under this Plan for each year of service credited to such an individual under any retirement plan maintained by the Employer, provided that such an individual has not incurred a Break in Service as set forth in Section 3.5(b).

(d) Service for Employment with the Foothills Park and Recreation District. In the event an individual who was employed by the Foothills Park and Recreation District becomes a Participant in this Plan pursuant to the Joint Exclusion Plan and Agreement for Disposition of Assets and Continuation of Services Between Foothills Park and Recreation District and City of Lakewood, executed June 10, 1997, such an individual shall be credited with one Year of Service under this Plan for each year of service credited to such individual under The Foothills Park and Recreation District Salary Deferral Plan, as of the date such individual becomes a Participant. If the Participant did not obtain a Year of Service under The Foothills Park and Recreation District Salary Deferral Plan for the Year in which the individual became a Participant, any Hours of

Service, as defined in this Plan, with The Foothills Park and Recreation District during such Year shall be credited as Hours of Service under this Plan. The Participant may receive credit for a maximum of one Year of Service during the Year in which the individual became a Participant.

3.3 **Inactive Status.** In the event any Participant shall fail, in any Year of his or her employment after the Restated Effective Date, to accumulate 1,000 Hours of Service, without incurring a Break in Service, his or her Employer Contribution Account shall be placed on inactive status. In such case, such Year shall not be considered as a period of Service for the purpose of determining the Participant's vested interest in accordance with Section 6.3 and he or she shall continue to receive Income allocations in accordance with Section 5.2(a). In the event such Participant accumulates 1,000 Hours of Service in a subsequent Year, his or her Employer Contribution Account shall revert to active status with full rights and privileges under this Plan restored.

3.4 **Maternity/Paternity Benefits.** For purposes of determining whether a Break in Service has occurred for participation in vesting, a Participant who is duly employed at the time maternity or paternity leave is taken will be deemed to have completed the Hours of Service which otherwise would normally have been credited to such individual but for such absence, not to exceed 501 Hours of Service for a Regular Full-Time Employee and 251 Hours of Service for a Regular Part-Time Employee for that Year.

3.5 **Participation and Service Upon Reemployment.** Participation in the Plan shall cease upon the occurrence of a Break in Service caused by death, voluntary or involuntary termination of employment, unauthorized absence, or by failure

to return to active employment with the Employer by the date on which an Authorized Leave of Absence expired.

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

(a) Participation. The reemployed Employee shall be entitled to reparticipate in the Plan immediately upon his or her reemployment with the Employer. If such a terminated Participant is rehired before he or she has a Break in Service as defined below, he or she shall continue in the Plan, and be entitled to his or her Employer Contribution Account prior to any disposition of forfeitures as set forth in Section 4.4.

(b) Service. In the case of a Participant whose prior employment terminated with entitlement to a distribution from his or her Employer Contribution Account, any Service attributable to his or her prior period of employment shall be reinstated as of the date of his or her reparticipation, only if the Participant has not incurred a one-year Break in Service.

In the case of a Participant whose prior employment terminated without entitlement to a distribution from his or her Account, any vesting service attributable to his or her prior period of employment shall be restored only if the Participant has not incurred a one-year Break in Service.

In the case of a Participant who has incurred a one-year Break in Service, Years of Service completed after such Break are not required to be taken into

account for purposes of determining the non-forfeitable percentage of the Participant's right to Employer-derived benefits which accrued before such Break.

ARTICLE IV. CONTRIBUTIONS AND FORFEITURES

4.1 **Employer Contributions.** On a monthly basis, the Employer shall pay into the Trust Fund an amount equal to ten percent (10%) of the Compensation of all Participants eligible to receive a contribution for such month; effective April 1, 2018, the Employer's contribution on behalf of each Participant shall be increased by six-tenths of one percent (.6%) for each of the next five (5) twelve-month fiscal years beginning April 1 until the Employer contribution equals thirteen percent (13%) and thereafter until modified thirteen percent (13%), as demonstrated below:

Prior to March 31, 2018	10%
April 1, 2018 - March 31, 2019	10.60%
April 1, 2019 - March 31, 2020	11.20%
April 1, 2020 - March 31, 2021	11.80%
April 1, 2021 - March 31, 2022	12.40%
April 1, 2022 - March 31, 2023	13%

4.2 **Employer City Manager Contributions.** Notwithstanding the foregoing Section 4.1, effective September 6, 2009, the Employer shall pay into the Trust Fund an amount equal to eighteen percent (18%) of the City Manager's Compensation for the benefit of the City Manager. Effective April 1, 2018, the Employer's contribution on behalf of the City Manager shall be increased by one and two-tenths percent (1.2%)

for each of the next five (5) twelve-month fiscal years beginning April 1 until the Employer contribution equals twenty-four percent (24%) and thereafter until modified twenty-four percent (24%), as demonstrated below:

Prior to March 31, 2018	18%
April 1, 2018 - March 31, 2019	19.20%
April 1, 2019 - March 31, 2020	20.40%
April 1, 2020 - March 31, 2021	21.60%
April 1, 2021 - March 31, 2022	22.80%
April 1, 2022 - March 31, 2023	24.00%

4.3 **Contributions by Participants.**

(a) Mandatory Contributions. In order to share in Employer Contributions, each Participant will be required to make a mandatory contribution of eight percent (8%) of the Compensation each Plan Year. Effective April 1, 2018, the eight percent (8%) shall be increased by six-tenths of one percent (.6%) for each of the next five (5) twelve-month fiscal years beginning April 1 until the Participant contribution equals eleven percent (11%) and thereafter until modified eleven percent (11%), as demonstrated below. Mandatory contributions shall be made by payroll deduction. Notwithstanding the foregoing provisions of this paragraph, effective September 6, 2009, the City Manager shall not be required to make any mandatory contributions hereunder.

Prior to March 31, 2018	8%
April 1, 2018 - March 31, 2019	8.60%

April 1, 2019 - March 31, 2020	9.20%
April 1, 2020 - March 31, 2021	9.80%
April 1, 2021 - March 31, 2022	10.40%
April 1, 2022 - March 31, 2023	11.00%

The City shall pick up mandatory Employee contributions required for all Compensation paid after the Restated Effective Date and the contributions so picked up shall be treated as Employer contributions pursuant to Code Section 414(h)(2) in determining tax treatment under the Code. The City shall pay these Employee contributions directly to the Trust Fund in lieu of paying such amounts to Employees, and such contributions shall be paid from the same funds which are used in paying salaries to the Employees. Employee contributions so picked up shall be treated for all purposes of this Plan, other than federal tax, in the same manner as Employee contributions which are not picked up by the City.

(b) Voluntary Contributions. For the purposes of increasing retirement benefits, each Participant, may each Plan Year voluntarily contribute a percentage which is the difference of one hundred percent (100%) minus the Employer's contribution set forth in Section 4.1 and 4.2 and the Participant's mandatory contribution set forth in Section 4.3(a) of Compensation on an after-tax basis, subject to the limitation set forth in Section 5.3, provided contributions are made as a whole percentage of the Participant's Compensation. Such contributions must be made to the Board of Trustees in a manner designated by the Board of Trustees. The Participant's interest in such amount shall be non-forfeitable at all times. Any earnings, gains and voluntary

contributions cannot be withdrawn or distributed until the Participant's termination, death, disability, or retirement.

4.4 **Disposition of Forfeitures.** Upon termination of employment, a Participant's Employer Contribution Account shall be maintained and the Account shall continue to receive Income allocations pursuant to Section 5.2(a) until all assets of the Account are distributed. At that time, the Former Participant shall receive his or her "vested percentage" of the Employer Contribution Account according to Section 6.3, and if he or she is less than 100% vested, the Forfeiture shall be used to reduce the Employer's Contribution.

4.5 **Rollover Contributions.** Notwithstanding the limits imposed upon participant contributions, a Participant or Former Participant may contribute to the Plan a rollover distribution from an Eligible Retirement Plan described in Section 2.1(l), except that the Plan will not accept a rollover contribution from a Roth IRA described in Code Section 408A. Rollover contributions shall be made in accordance with the procedures of the Board of Trustees. The transfer of the distribution or in the case of a plan to plan rollover must be completed on or before the 60th day after the day on which the distribution is received or the Participant or Former Participant is entitled to receive such distribution, to the extent that the fair market value of the rollover amount exceeds the amounts considered contributed by the Participant or Former Participant, reduced by any amounts previously distributed to him or her which were not includible in gross income. Such rollover amount shall be non-forfeitable, shall be held in a separate Account and shall receive income allocations. The acceptance of the rollover amounts

and the provisions established by the Board of Trustees shall be governed by the Treasury Regulations of the Code then in effect as may be amended from time to time.

ARTICLE V. ALLOCATIONS TO PARTICIPANTS' ACCOUNTS

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

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

(a) **Income.** On each business day of the Plan Year, a daily determination of unrealized and realized gains and losses, interest, dividends and capital gain distributions will be calculated and allocated based on the actual activity in each Participant's Account. Activity includes, but is not limited to, allocation of contributions, forfeitures and distributions.

Participants' transfers from other qualified plans and voluntary contributions deposited in the general Trust Fund shall share any earnings and losses

(net appreciation or net depreciation) of the Trust Fund in the same manner provided above. Each segregated Account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

(b) Expenses. To the extent the Employer does not pay the administrative, legal, investment and consulting fees of the Trust in accordance with Section 8.8, such expenses shall be allocated to and deducted from the Accounts of Participants. Expenses which are directly incurred as a direct result of the investments held in the Trust shall be deducted from the interest, dividends and net income of the appropriate investment prior to allocating Income to Participants. General administrative, legal and consulting fees and expenses shall be deducted from the Accounts of all Participants in the proportion that each Participant's Account balance bears to the total Account balances of all Participants in the Plan on the date such expenses are deducted.

5.3 **Maximum Additions**. Notwithstanding anything contained herein to the contrary, the total Additions made to both the Employer and Employee Contribution Accounts of a Participant for any Plan Year shall not exceed the lesser of the limitation amount set forth in Code Section 415(d) for defined contribution plans as annually adjusted pursuant to Code Section 415(d), or 100% of the Participant's Compensation for such Plan Year. For purposes of this Section:

(a) The term "Additions" means the total of the Employer contributions and forfeitures allocated to a Participant's Employer Contribution Account plus, the amount of any Employee contributions to the Plan, both mandatory and voluntary. The term "Additions" shall not include (i) restorative payments made to restore losses to the Plan resulting from actions by a fiduciary for which there is a reasonable risk

of liability for breach of fiduciary duty under applicable Colorado law, where Participants who are similarly situated are treated similarly with respect to the payments; (ii) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (iii) rollover contributions as described in Code Sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16); or (iv) repayments of loans made to a Participant from the Plan.

(b) As of January 1 of each calendar year, and applicable for that Plan Year, the dollar limit may be adjusted for increases in the cost of living in accordance with Treasury Regulations prescribed by the Secretary of the Treasury or his or her delegate.

(c) If, for limitation years before July 1, 2007, such Additions exceed the limitation, the contributions made by the Participant for the Plan Year, which cause the excess, shall be returned to the Participant. If, after returning the Participant's contribution an excess still exists, such excess which is attributable to Forfeitures shall be held in a suspense account. Such account may be maintained if (1) no Employer contributions are made when their allocation could be precluded by Code Section 415, (2) no income is allocated to the account, and (3) amounts in the account are allocated as of each allocation date on which Forfeitures may be allocated until the account is exhausted. Upon termination of the Plan, the balance of such account may revert to the Employer.

(d) If, for a limitation year beginning on or after July 1, 2007, such Additions exceed the limitation, the Board of Trustees will correct such excess addition in accordance with the Employer Plans Compliance Resolution System (EPCRS) as set

forth in Revenue Procedure 2021-30 or any superseding guidance, including, but not limited to, the preamble of the final Treasury Regulations under Code Section 415.

(e) For purposes of this Section, the limitation year shall mean the Plan Year.

(f) The term “Compensation” means, for purposes of Sections 5.3 and 5.4 only, a Participant’s earned income, wages, salaries, fees for professional services and other amounts received for personal services actually rendered in the course of employment with an employer maintaining the Plan including bonuses, cash awards and elective contributions. “Elective contributions” are amounts excludible from an Employee’s gross income under Code Section 125, and amounts contributed by the Employer, at the Employee’s election, to a Code Section 457 Plan arrangement or a cafeteria plan.

In addition, the following amounts shall be included for Plan Years beginning on or after January 1, 2008:

1. wages and other regular pay, including overtime or shift differentials, commissions, bonuses, or other similar payments, received by a Participant within the later of 2 ½ months after the Participant’s severance from employment or the end of the limitation year in which the Participant’s severance from employment occurs, but only to the extent such wages and other regular pay represents payment for services performed prior to severance from employment and would have been paid to the Participant if he or she continued employment with the City; and

2. vacation and sick leave payments received by a Participant within the later of 2 ½ months after the Participant’s severance from employment or the end of

the limitation year in which the Participant's severance from employment occurs, but only to the extent such vacation and sick leave payments are for unused bona fide sick, vacation or other leave and the Participant would have been able to use the leave if he or she continued employment with the City; and

3. amounts received pursuant to a nonqualified deferred compensation plan, but only if the payment would have been paid such amounts at the same time if the Participant had continued in employment with the City and only to the extent the payment is included in the Participant's gross income.

Further, for the purposes of applying the limitations of this Section, "Compensation" for Plan Years beginning on or after January 1, 2008 shall not include:

1. payments to a Participant who does not currently perform services for the City by reason of qualified military service;

2. amounts paid to a Participant who is permanently and totally disabled; or

3. any amounts earned by a Participant but not paid during the limitation year solely because of the timing of pay periods and pay dates.

5.4 **Qualified Military Service.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u)(4).

ARTICLE VI. BENEFITS

6.1 **Retirement or Disability.** If a Participant's employment with the Employer is terminated at or after he or she attains his or her Retirement Date, or if his

or her employment is terminated at an earlier age because of Disability, he or she shall be entitled to receive the entire amount then in each of his or her Accounts in accordance with Section 6.4.

6.2 **Death.** In the event that the termination of employment of a Participant is caused by his or her death, the entire amount then in each of his or her Accounts shall be paid to his or her Beneficiary in accordance with Section 6.4 after receipt by the Board of Trustees of acceptable proof of death. In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u) and Section 5.4 herein), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Distributions to designated Beneficiaries must meet the minimum distribution requirements set forth in Section 6.5. A designated Beneficiary shall be able to elect a rollover of his or her interest in a deceased Participant's Account to an "inherited individual retirement account or annuity" described in Code Sections 408(a) or (b), subject to applicable Code requirements.

6.3 **Distribution Upon Other Termination of Employment, Upon Transfer to Other Employment Within the City, and In-Service Distribution of Rollover Contributions.**

(a) If a Participant's Account becomes distributable upon his or her termination of employment for any reason other than retirement, disability or death, or, for rollover purposes, upon the Participant's transfer to other employment with the City or

upon the Participant's participation in another money purchase pension plan sponsored by the Employer, the Board of Trustees shall distribute the Account to the Participant in the optional form of benefit selected by the Participant in accordance with Section 6.3(c).

The Participant's Account balance is the sum of the following:

(i) the entire amounts credited to his or her Mandatory and Voluntary Employee Contribution Accounts, plus

(ii) An amount equal to the "vested percentage" of his or her Employer Contribution Account balance. Such vested percentage shall be determined in accordance with the following schedule for terminations on or prior to January 31, 2022:

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 1 year	0%
1 but less than 2	0%
2 but less than 3	0%
3 but less than 4	60%
4 but less than 5	80%
5 years or more	100%

Effective for terminations on or after February 1, 2022:

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 1 year	0%
1 or more but less than 2	20%
2 or more but less than 3	40%
3 or more but less than 4	60%
4 or more but less than 5	80%
5 years or more	100%

If a Participant has received a distribution of his or her Employer Contribution Account in accordance with the above paragraph representing less than 100% of such Account, and if he or she is subsequently reemployed, he or she may repay the amount received from his or her Employer Contribution Account to the Board of Trustees. Such repayment must be made on or before the last day of the period beginning with the first day the Participant is subsequently reemployed and ending 180 days thereafter. Such amount shall be restored to either; (1) his or her Employee Contribution Account, on or after the date the Employee incurs a tax on the amount previously distributed to him, or (2) his or her Employer Contribution Account, prior to the date the amount previously distributed to him or her incurs a tax. Upon such repayment, a Participant's Employer Contribution Account shall consist of the amount repaid plus the portion of such Account which was not vested upon termination of employment. If a Participant eligible to make such repayment fails to do so, the amount previously forfeited shall not be restored to his or her Account. Upon distribution to a Participant above, any part of the final balances in a Participant's Account which is not part of his or her distribution is a Forfeiture.

If the Participant dies prior to the date his or her benefit payments commence, his or her vested Account shall be distributed to his or her Beneficiary under Section 6.2 in accordance with the optional form of benefit selected by the Beneficiary in accordance with Section 6.3(c).

(b) Deferral of Distribution. Notwithstanding the foregoing, a Participant with 3 Years of Service may elect to defer receipt of his or her vested Account. Such Participant shall receive income and expense allocations pursuant to Section 5.2(a)

and (b) until the balance of the Participant's vested Account has been distributed. A Participant may make application for distribution of his or her vested Account in accordance with the procedures contained in this Section. In any event, distribution of a Participant's Account shall be made no later than April 1st of the calendar year following the calendar year in which the Participant attains age 72 (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later), or retires, whichever is later.

(c) Optional Forms of Distribution for Rollover Transactions and Direct Transfers. Within sixty days after a Participant terminates participation in this Plan, and becomes a participant in another qualified IRC Code Section 401(a) retirement plan sponsored by the Employer, a Participant may elect, by filing the appropriate form with the Board of Trustees, to have his or her vested Account under this Plan paid and rolled over in one of the following optional forms:

- (1) lump sum distribution, or
- (2) a partial distribution of the Account, or
- (3) deferral of all or part of the Account in accordance with Section 6.3(b), or
- (4) a combination of the above.

An election of an optional form of distribution may be changed or revoked at any time before the distribution has been made.

(d) Distribution for Rollover Transactions and Direct Transfers. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit

a Participant's or a Former Participant's election under the Plan, a Participant or Former Participant may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution, as defined in Code Section 402(c)(4), paid directly to an eligible retirement plan specified by the Participant or Former Participant, as a direct rollover. The Participant or Former Participant shall make such rollover request in writing and shall provide such information to the Board of Trustees as the Board of Trustees requests, including the name of the plan to which his or her interest is to be transferred and the name and address of the sponsor and the trustee of the new plan, when applicable.

Notwithstanding the foregoing, transfer of a Participant's or Former Participant's vested Account upon the Participant's or the Former Participant's transfer to other employment with the City, or upon the Participant's or Former Participant's participation in another plan sponsored by the Employer, or a rollover distribution both distributed from, and paid directly to, retirement plans of the City, will be considered a direct transfer. That portion of the Participant's or Former Participant's Account that is not vested at the time of transfer will remain in the Participant's or Former Participant's Employer Contribution Account, and shall receive income and expense allocations, until such time the Participant or Former Participant is fully vested in that Account.

For purposes of the direct rollover provisions in this Section 6.3(d) a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account (IRA) or annuity described in Code Sections 408(a) or (b), to a Roth IRA

described in Code Section 408A, or to a qualified defined contribution plan described in Code Sections 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(e) In-Service Distribution of Rollover Contributions.

Notwithstanding any other provision of the Plan to the contrary, amounts attributable to rollover contributions to the Plan being held in the Employee Rollover Account may be distributed at any time pursuant to a Participant's request, completed in good order pursuant to the Plan's administrative procedures and provided to the Plan's third-party administrator.

(f) Terminal Illness Distributions. Effective October 1, 2024, a Participant who is a Terminally Ill Individual and who has attained age 59-1/2 is eligible to request a withdrawal of his or her vested Account without penalty under Code Section 72(t), subject to the Participant providing sufficient evidence to the Plan's third-party administrator of his or her eligibility to receive a withdrawal hereunder. For purposes of this Section 6.3(f), "Terminally Ill Individual" means an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification. Participants may contact the Plan's third-party administrator if repayment of this withdrawal is desired, provided, however, such repayment must be within three years of the date the withdrawal is made.

(g) The City's Department of Employee Relations shall periodically notify the Board of Trustees in writing of the names of Participants who have requested

a distribution from the Plan. The Board of Trustees authorizes the Department of Employee Relations to determine the amount of a Participant's Accounts and the vested percentage of the Participant's Accounts as calculated above, and further directs that the Department ensure distribution of such vested percentage to the Participant as soon as it is administratively practicable after the Participant's termination of employment. In addition to the name of the Participant, the Department of Employee Relations or third-party administrator shall also provide the amount of the distribution to the Board of Trustees.

6.4 **Payment of Benefits.**

(a) Application for Distribution of Benefits. A Participant who is entitled to receive a distribution from the Plan under Article VI because of retirement, Disability, death, or termination of service shall be provided with a benefit application form to complete and return to the Board of Trustees. The Participant shall complete the benefit application form and indicate his or her commencement date, his or her election of an optional form of benefit and his or her Beneficiary or contingent annuitant. The completed benefit application form shall be returned to the Board of Trustees through the Department of Employee Relations, which shall process the benefit application form as soon as administratively practicable.

If the Participant files another benefit application form after the first form and prior to his or her benefit commencement date, the earlier form shall be deemed annulled. The Board of Trustees shall follow a Participant's Beneficiary designation and may follow the method of payment, if any, selected by the Participant in the case of a distribution on account of the Participant's death.

(b) Method of Distribution. Upon becoming entitled to receive a distribution from the Plan under Article VI, a Participant may select one of the following methods of payment:

(1) a lump sum.

(2) the purchase of a single-premium nontransferable annuity contract from a legal reserve life insurance company, and except as provided below, such contract shall be for such term and in such form as the Participant, with the approval of the Board of Trustees, shall determine. If the contract provides for continuance of annuity payments after a Participant's death to a Beneficiary other than the Participant's Spouse, the value of such death benefit shall be less than the value of the Participant's annuity. A Beneficiary electing this optional form of benefit due to a Participant's death occurring after December 31, 2019, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

(3) In periodic or partial distributions.

The amount which a Participant, Former Participant or Beneficiary is entitled to receive at any time and from time to time may be paid in cash.

Notwithstanding the above, if a Participant terminates employment with a vested benefit of less than \$1,000, exclusive of rollover contributions, the Participant shall have 60 days from the date of the mailing of the tax notice explaining the Participant's options in which to direct the Board of Trustees as to the disposition of the vested benefit. If after

60 days the Participant has failed to direct the investment of the vested benefit, then the Board of Trustee shall distribute the Participant's vested benefit to the Participant; provided, however, if a Participant terminates employment with a vested benefit of less than \$5,000 (or \$7,000 on and after October 1, 2024), exclusive of rollover contributions, the Participant shall have 60 days from the date of the mailing of the tax notice explaining the Participant's options in which to direct the Board of Trustees as to the disposition of the vested benefit. If after 60 days the Participant has failed to direct the investment of the vested benefit and such vested benefit is less than \$1,000, then the Board of Trustee shall distribute the Participant's vested benefit to the Participant. Alternatively, if the Participant's vested benefit is more than \$1,000 and less than \$5,000 (or \$7,000 on and after October 1, 2024), then such vested benefit shall not be distributed until the Participant provides direction to the Board of Trustees as to the disposition of the vested benefit.

(c) Deferral of Distribution. Notwithstanding the foregoing, a Former Participant with 3 Years of Service may elect to defer receipt of his or her Mandatory and Voluntary Employee Contribution Accounts, Employee Rollover Account and the vested percentage of his or her Employer Contribution Account. Such Former Participant shall receive Income allocations pursuant to Section 5.2(a) and shall have Trust expenses deducted pursuant to Section 5.2(b) until the balance of the Former Participant's Account has been distributed. A Former Participant may make application for distribution of his or her Account in accordance with the procedures contained in this Section. In any event, distribution of a Former Participant's Account shall be made no later than April 1st of the calendar year following the calendar year in which the Former Participant attains age 72

(if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later), or retires, whichever is later.

Distribution Commencement Date. Notwithstanding any of the provisions of this Section, payment of a Participant's retirement benefits must commence within a reasonable time after the later of a Participant's termination of employment or attainment of his or her Retirement Date or after his or her death, if earlier. In any event, payment of a terminated Participant's benefits shall, unless the Participant otherwise elects a later date in writing, begin no later than the 60th day after the latest of the close of the Plan Year in which (1) the Participant attains age 65, (2) the occurrence of the 10th anniversary of the year in which the Participant commenced participation in the Plan, or (3) the Participant terminates his or her service with the Employer. Notwithstanding any provision above to the contrary, a Participant's benefits shall commence not later than the April 1st of the calendar year following the calendar year in which he or she attains age 72 (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later), or he or she retires, whichever is later.

For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all

distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

6.5 Required Minimum Distribution Rules.

(a) General Rules.

(1) Effective Date. The provisions of this Section 6.5 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(2) Precedence. The requirements of this Section 6.5 will take precedence over any inconsistent provisions of the Plan.

(3) Requirements of Treasury Regulations Incorporated. All distributions required under this Section 6.5 will be determined and made in accordance with the Treasury Regulations under Code Section 401(a)(9) and Section 401 of the Setting Every Community Up for Retirement Enhancement ("SECURE") Act (Division O of the Further Consolidated Appropriations Act, enacted December 20, 2019), and the SECURE 2.0 Act of 2022 (Division T of the Consolidated Appropriations Act of 2023, enacted December 29, 2022), and the Treasury Regulations promulgated thereunder.

(4) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section 6.5, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

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

(1) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, then distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72 (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later), if later.

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

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

(4) If the Participant's surviving Spouse is the Participant's sole designated beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 6.5(b), other than Section 6.5(b)(1), will apply as if the surviving Spouse were the Participant.

(5) For purposes of this Section 6.5(b) and Section 6.5(d), unless Section 6.5(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 6.5(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 6.5(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 6.5(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

(6) For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

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

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

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

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

Required minimum distributions will be determined under this Section 6.5(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

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

(1) Death On or After Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

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

(B) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving

Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year. Effective January 1, 2024, however, the surviving Spouse may elect to be treated as the Participant for purposes of calculating the minimum amount that will be distributed each year.

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

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

(iii) For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years

younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

(2) Death Before Date Distributions Begin.

(i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 6.5(d)(1).

For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

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

(iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date

distributions begin, the Participant's surviving Spouse is the Participant's sole designated beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 6.5(b)(1), this Section 6.5(d)(2) will apply as if the surviving Spouse were the Participant.

(iv) For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

(e) Definitions. The following definitions apply to this Section 6.5.

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

(2) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 6.5(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the

distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

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

(4) Participant's Account Balance. The balance of the Participant's Account as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) Required Beginning Date. The latest date for commencement of distributions for a Participant, as determined under Section 6.3 of the Plan.

(f) Special Rule for 2020 RMDs. Notwithstanding the provisions of this Section 6.5, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 but for the enactment of Code Section 401(a)(9)(I) ("2020 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or

joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs"), will receive those distributions for 2020 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding the provisions of Section 6.3, and solely for purposes of applying the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs will be treated as eligible rollover distributions.

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

If any Participant fails to designate a Beneficiary in the manner provided above, or if the Beneficiary designated by a deceased Participant dies before him or her or before complete distribution of the Participant's benefits, the Board of Trustees, in its discretion, may distribute such Participant's benefits (or the balance thereof) to either:

(a) Any one or more or all of the next of kin (including the surviving Spouse) of such Participant, and in such proportions as the Board of Trustees shall determine; or

(b) The estate of the last to die of such Participant and his or her Beneficiary or Beneficiaries.

ARTICLE VII. BOARD OF TRUSTEES

7.1 **Establishment of Board of Trustees.** A Board of Trustees was established in 2019, upon election and appointment of Trustees as described below in Section 7.2.

7.2 **Composition of the Board of Trustees.** The Plan shall be administered by the Board of Trustees, once established, which shall consist of the City Mayor, one City Manager designee (sworn or non-sworn employee), four (4) sworn employees, four (4) non-sworn employees, and two (2) retirees (one sworn and one non-sworn).

(a) The City Mayor shall be a non-voting member of the Board, except when votes of the Board are equally divided, in which case the City Mayor can cast a tie-breaking vote.

(b) The City Manager designee is a voting member and will be a sworn or non-sworn employee selected by the City Manager.

(c) The four (4) sworn employees will be voting members elected to the Board by a majority vote of the voting plan participants of the City of Lakewood Police Money Purchase Pension Plan and Trust Agreement.

(d) The four (4) non-sworn employees will be voting members elected to the Board by a majority vote of the voting non-sworn Plan Participants.

(e) The one (1) sworn retiree will be a voting member elected by a majority vote of the voting sworn plan participants of the City of Lakewood Police Money Purchase Pension Plan and Trust Agreement.

(f) The one (1) non-sworn retiree will be a voting member elected by a majority vote of the voting non-sworn Plan Participants.

A Chairperson and a Vice-Chairperson/Secretary shall be selected by the Board of Trustees annually. Human Resources will maintain the role of Recording Secretary/Administrator.

7.3 **Board Meetings**. Meetings will occur quarterly and members can attend via phone or video call/conference. To vote, there must be a quorum of 5 consisting of at least two (2) sworn employees and two (2) non-sworn employees. Such vote may be taken by written or electronically communicated consent.

7.4 **Terms**. Members of the Board of Trustees shall serve specified terms as follows:

(a) **Elected Members**. The initial members of the Board of Trustees elected in October of 2019, or such other agreed upon date and will serve the remaining portion of 2019 followed by one (1), two (2) or three (3) year terms, as determined by the Board after election, creating annually staggered terms. Thereafter, elected members shall serve three (3) year terms, staggered annually, with the ability to be elected in perpetuity.

(b) Appointed Member. The member appointed by the City Manager will serve a three (3) year term with the ability to be appointed in perpetuity. The City Manager will appoint for this position upon the end of each term or vacancy.

7.5 Elections. Elections with respect to Board seats will be held in January of the calendar year in which a seat is up for election. The City Clerk shall be responsible for developing the election procedures and elections shall be conducted by the City Clerk's office. An employee or a retiree shall become a candidate for the Board of Trustees by notifying the City Clerk in writing on or before the notification date set by the City Clerk of his or her intention to run for election to the Board of Trustees. If only one sworn or non-sworn employee or a retiree has indicated his or her intention to run for election for an open seat within his or her same category of employment by the designated notification deadline, the City Clerk shall declare the election for that specific seat (sworn or non-sworn) cancelled and the sworn or non-sworn employee or retiree shall be deemed to be elected to the Board of Trustees.

7.6 Resignation of Board Member. A member of the Board of Trustees may resign at any time by giving written notice to the Board of Trustees. Resignation will be effective at the time specified in the written notice or if no time is specified, will be effective immediately. Acceptance by the Board of Trustees is not required for the resignation to be effective. Upon leaving his or her role as a member of the Board of Trustees, the member shall deliver any Trust property or records in his or her possession.

7.7 Vacancies. A vacancy occurs upon the resignation, termination of employment, or death of a member of the Board of Trustees. Vacancies shall be filled within 90 days, or at such later date as determined by the Board of Trustees, by election

for an elected member or appointment for an appointed member. An elected or appointed member filling a vacancy mid-term shall serve for the unexpired term of the vacancy and shall thereafter be subject to election or appointment upon the expiration of said term. A vacancy for an elected member will be filled with the same category of employee or retiree (sworn or non-sworn).

7.8 **Successor Board Members.** A successor Board of Trustees member, elected or appointed, shall have all of the rights, powers and discretions vested in him or her as his or her predecessor had vested. A successor Board of Trustees member shall have no duty to examine the accounts or doings of his or her predecessors. A successor Board of Trustees member is responsible only for money and property known to him or her to comprise the principal and income of the Fund and shall in no way be liable or responsible for anything done or omitted by his or her predecessors.

7.9 **Use of Corporate Trustee.** At any time and from time to time the Board of Trustees may appoint, a Corporate Trustee, as defined in Section 2.1(h). The Board of Trustees may delegate to the Corporate Trustee (i) the power to hold all or any part of the fund as sole trustee of a trust separate from the Trust created by this Agreement (and not as agent of the Board of Trustees or as Co-Trustee hereunder with the Board of Trustees), (ii) the power to invest and reinvest the Fund in the Corporate Trustee's sole discretion, and (iii) such other duties and powers as the Board of Trustees may deem advisable. The Board of Trustees may enter into and execute a trust agreement with the Corporate Trustee, which agreement shall contain such provisions as the Board of Trustees may deem advisable. The Corporate Trustee shall have no obligations under this Agreement or under the Plan and its powers and duties shall be

limited to those set forth in the agreement between it and the Board of Trustees. Upon execution of an agreement with the Corporate Trustee, the Board of Trustees may transfer and convey to the Corporate Trustee any part or all of the assets of the Fund acceptable to the Corporate Trustee, and thereupon, the Board of Trustees shall be forever released and discharged from any responsibility or liability with respect to the assets so transferred as to any period subsequent to such transfer and with respect to the investment and reinvestment thereof by the Corporate Trustee during the time the Fund is in the hands of the Corporate Trustee. Notwithstanding such transfer, the Board of Trustees shall continue to carry out its administrative functions under the Plan in accordance with the provisions of the Plan and Trust Agreement.

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

7.10 **Participant Direction of Investment.** The Board of Trustees may establish rules, regulations and policies to permit each Participant to direct the investment of funds allocated to the Participant's Accounts. The Board of Trustees shall select and make available, several investment vehicles which participants may elect to invest the funds allocated to their Accounts. The Board of Trustees shall adopt and establish rules, regulations and policies concerning Participant direction of investment options available,

election forms, limitations on the type or mix of investment vehicles and procedures for Participants to change their investments.

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

7.12 **Records and Reports.** The Board of Trustees shall exercise such authority and responsibility as it deems appropriate relating to records of Participant's Service, Account balances and the percentage of such Account balances which are non-forfeitable under the Plan; notifications to Participants; and annual registration with the Internal Revenue Service.

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

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

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

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

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

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

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

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

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

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

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

be entitled to rely upon information furnished by a Participant or Beneficiary, the Employer or the legal counsel of the Employer.

7.16 **Benefit Payments.** The Board of Trustees shall pay all benefits from the Trust Fund pursuant to the provisions of the Plan.

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

7.18 **Participant Loan Policy.** The Board of Trustees may adopt a policy and procedure to allow Participants to obtain loans from the Plan. Such loan policy must be approved and adopted by the Board of Trustees and shall comply with the requirements of Code Section 72(p), as it may be amended from time to time. The Board of Trustees shall adopt such forms and procedures necessary to implement such a Participant Loan Policy and shall make available to Participants the provisions of the Participant Loan Policy if adopted by the Board of Trustees.

7.19 **Indemnification.** The Employer shall indemnify and hold harmless the Board of Trustees from any and all claims, losses, damages, expenses (including counsel fees approved by the Board of Trustees), and liabilities (including any amounts paid in settlement with the Board of Trustees' approval) arising from any act or omission of the Board of Trustees, except when the same is judicially determined to be due to the gross negligence or willful misconduct of such Board of Trustees.

ARTICLE VIII. POWERS AND DUTIES OF BOARD OF TRUSTEES

8.1 **Organization and Operation of Offices of Board of Trustees.** The Board of Trustees may adopt such procedures as it deems desirable for the conduct of its respective affairs and may appoint or employ a secretary or other agents, any of whom may be, but need not be, an officer or employee of the City. Any agent may be removed at any time by the Board of Trustees.

8.2 **Information to be Made Available to Board of Trustees.** To enable the Board of Trustees to perform all of its respective duties under the Plan, the City shall provide the Board of Trustees with access to the following information for each Employee: name and address, social security number, birthdate, dates of commencement and termination of employment, reason for termination of employment, annual compensation, and such other information as the Board of Trustees may require. To the extent the information is available in City records, the City shall provide the Board of Trustees with access to information relating to each Employee's Participant contributions, benefits received under the Plan and marital status. If such information is not available from the City's records, the Board of Trustees shall obtain such information from the Participants. The Board of Trustees and the City may rely on and shall not be liable for any information which an Employee provides, either directly or indirectly. As soon as possible following a Participant's termination of employment for any reason, the City shall certify in writing to the Board of Trustees such Participant's name, address, date and reason for his or her termination of employment.

8.3 **General Duties and Powers of Board of Trustees.** The Board of Trustees shall decide all questions arising in the administration, interpretation and

application of the Plan and Trust, including all questions relating to eligibility, vesting, and distribution. The Board of Trustees may designate any person or entity to carry out any of the Board of Trustees' responsibilities under the Plan and may employ one or more persons to render advice with regard to any responsibility the Board of Trustees has under the Plan. The Board of Trustees from time to time shall direct the third-party administrator concerning the payments to be made out of the Trust Fund pursuant to this Plan. All notices, directions, information, and other communications from the Board of Trustees shall be in writing.

8.4 **Recordkeeping Duties and Powers of Board of Trustees.** The Board of Trustees shall keep a record of all the Board of Trustees' proceedings and shall keep all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Plan and Trust, including records to reflect the affairs of this Plan, to determine the amount of vested and/or forfeitable benefits of the respective Participants, and to determine the amount of all benefits payable under this Plan. Subject to the requirements of law, any person dealing with the Board of Trustees may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the Board of Trustees as evidence of any action taken or resolution adopted by the Board of Trustees.

8.5 **Investment of Pension Trust Fund.**
Duties of Board of Trustees. The duty of the Board of Trustees is to hold in trust the funds it receives. Except to the extent Participants are allowed to self-direct investment of the funds allocated to their Account, the Board of Trustees shall have exclusive authority and discretion to manage and control the assets of the Pension Trust

and to manage, invest and reinvest the Trust and the income from it under this Section, without distinction between principal and income. The Board of Trustees shall be responsible only for such sums that it actually receives.

Powers of Board of Trustees. The Board of Trustees shall have the power to invest and/or reinvest any and all money or property of any description at any time held by it and constituting a part of the Trust Fund, without previous application to, or subsequent ratification of, any court, tribunal or commission, or any federal or state governmental agency. The Board of Trustees may invest in real property and all interests in real property, 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, in qualified pooled funds, or in pooled investment funds of an insurance company qualified to do business in the state, and in life insurance and annuity contracts (including group or individual annuities). All powers of the Board of Trustees shall be subject to the requirements of state law.

Participant Direction of Investments. Pursuant to rules, regulations, and policies adopted by the Board of Trustees, each Participant shall direct the investment of funds allocated to the Participant's Account. The Board of Trustees shall select and make available, several investment vehicles which Participants may elect to invest the funds allocated to their Account. The Board of Trustees shall adopt and establish rules, regulations, and policies concerning Participant direction of investment,

including the options available, election forms, limitations on the type or mix of investment vehicles and procedures for Participants to change their investments.

8.6 **Administrative Powers of the Board of Trustees**. Subject to the requirements imposed by law, the Board of Trustees shall have all powers necessary or advisable to carry out the provisions of this Plan and the Trust Agreement and all inherent, implied and statutory powers now or subsequently provided by law, including specifically the power to do any of the following:

(a) To cause any securities or other property to be registered and held in its name as Board of Trustees, 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;

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

(c) To abandon, compromise, contest and arbitrate claims and demand; to institute, compromise and defend actions at law (but without obligation to do so); in connection with such powers, to employ counsel as the Board of Trustees shall

deem advisable and to exercise such powers all at the risk and expense of the Trust Fund;

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

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

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

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

(h) The Board of Trustees is authorized to apply for and procure from responsible insurance companies to be selected by the Board of Trustees, such endowment, annuity, or other insurance contracts as the Board of Trustees shall deem proper for the purposes of the Trust upon the lives of such persons as the Board of Trustees shall select, but in no event may the endowment, annuity, or other insurance contract have reserves that are less than the reserves provided for in ordinary life insurance contracts, to exercise at any time or from time to time whatever rights and privileges may be granted under such endowment, annuity, or insurance contracts; and to collect and receive and settle for the proceeds of all such endowment, annuity, or other insurance contracts as and when entitled to do so under the provisions thereof. But, the aggregate life insurance premium for each Participant must be less than one-half of the aggregate of the contributions allocated to the credit of the Participant at any particular time, and the Board of Trustees must convert the entire value of the life insurance contract at or before retirement into cash, or to provide periodic income so that no portion of such value may be used to continue life insurance protection beyond retirement, or to distribute the contract to the Participant.

8.7 **Payment of Taxes.** If any tax shall be imposed upon the Board of Trustees, pursuant to the provisions of any law now or hereafter enacted or made applicable hereto, upon or with respect to the assets or income of the Trust Fund, then in every such instance the Board of Trustees is hereby empowered to pay such tax out of the assets of the Trust Fund. The Board of Trustees, however, shall not be obligated to pay any such tax so long as it shall contest the validity thereof in good faith. In determining to pay or contest the validity of any such tax, the Board of Trustees may obtain the advice

or counsel for the Employer or the Board of Trustees, and for all and any acts done or omitted to be done pursuant to the advice of such counsel, the Board of Trustees shall be held completely harmless.

8.8 **Payment of Expenses and Fees.** The expenses of administration of the Trust incurred by the Board of Trustees, including legal counsel and consulting fees and other charges, shall be paid from the Trust Fund if and to the extent that the Employer does not pay such expenses, fees and charges.

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

8.10 **Advice of Counsel.** The Board of Trustees may consult with legal counsel, who may be counsel for the City, or the Board of Trustee's own counsel, with respect to the meaning or construction of the Plan and Trust Agreement or the Board

of Trustees' obligations or duties. The Board of Trustees shall be protected from any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of such counsel, to the extent permitted by law.

8.11 **Records and Accounts of the Board of Trustees.** The Board of Trustees shall keep all such records and accounts which may be necessary in the administration and conduct of the Trust. The Board of Trustees' records and accounts shall be open to inspection by the City at all reasonable times during business hours. 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 Board of Trustees 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. After the close of each Plan Year, the Board of Trustees shall render to the City a statement of assets and liabilities of the Trust Fund for such year.

8.12 **Compensation of Board of Trustees.** A Trustee who is not a full-time employee or elected official of the City shall be entitled to reasonable compensation for its services. Compensation shall be comparable to charges for similar services made from time to time by other trustees in the geographic area in which the Trustee has its principal place of business.

8.13 **Contributions to Trust.** All contributions under this Plan shall be paid to and deposited in the Trust Fund. All assets of the Trust Fund, including investment income, shall be retained for the exclusive benefit of Participants, Former Participants,

and Beneficiaries and shall be used to pay benefits to such persons or to pay administrative expenses of the Plan and Trust Fund to the extent not paid by the Employer and shall not revert to or inure to the benefit of the Employer.

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

ARTICLE IX. FIDUCIARIES

9.1 **Fiduciaries**. The Fiduciaries shall have only those specific powers, duties, responsibilities and obligations as are specifically given them under this Plan or the Trust Agreement. In general, the Employer shall have the sole responsibility for making the contributions provided for under Section 4.1 and to amend or terminate, in whole or in part, this Plan or the Trust. The Board of Trustees shall have the sole responsibility for the administration of this Plan, which responsibility is specifically described in this Plan and Trust Agreement. The Board of Trustees shall have the sole responsibility for the administration of the Trust and the management of the assets held under the Trust. Each Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan and Trust authorizing or providing for such direction, information or action. Furthermore, each Fiduciary may rely upon any such direction, information or action of another Fiduciary as being proper under this Plan and Trust and is not required under this Plan and Trust to inquire into the propriety of any such direction, information or action. It is intended under this Plan and Trust that each Fiduciary shall be responsible for the proper exercise of its

own powers, duties, responsibilities and obligations under this Plan and Trust and shall not be responsible for any act or failure to act of another Fiduciary. No Fiduciary guarantees the Trust Fund in any manner against investment loss or depreciation in asset value.

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

9.2 **General Fiduciary Duties.** All Fiduciaries must discharge their duties solely in the interest of the Employees eligible to participate and Beneficiaries of the Plan. In addition, Fiduciaries must act exclusively for the purpose of providing benefits to Employees eligible to participate and Beneficiaries and defraying reasonable expenses of the Plan. They must carry out their duties with the care, skill, prudence and diligence which a prudent man acting in a like capacity would use under conditions prevailing at the time. Investments of the Plan shall be diversified so that the risk of loss will be minimized unless this clearly is not prudent under the circumstances. However, investment in pooled funds will not violate the diversification rule if the Trust Fund itself is sufficiently diversified.

9.3 **Bonding and Insurance.** The Board of Trustees, any Investment Manager appointed pursuant to Section 7.13, and anyone acting as a Fiduciary as described in Article IX, may be bonded for the minimum amount required unless the Employer shall direct that a bond in a larger amount be maintained. The Board of

Trustees may obtain Errors and Omissions Insurance for such amount as they deem advisable to protect the Trust Fund. Such insurance and bond premiums and fees may be paid as an expense of the Trust pursuant to Section 8.8.

ARTICLE X. MISCELLANEOUS

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

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

10.3 **Nonalienation of Benefits.** Benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a Spouse or former Spouse, or for any other relative of the Employee, prior to actually being received by the person entitled to the benefit under the terms of the

Plan, except as may be provided by C.R.S. Section 24-54-111; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust Fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

Notwithstanding the above, effective January 1, 1997, the Board of Trustees will comply with a Qualified Domestic Relations Order ("QDRO").

A QDRO is a judgment, decree or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law) that relates to the provision of child support, alimony payments or marital property rights to a Spouse, former Spouse, child or other dependent of a Participant ("Alternate Payee") and which:

- (a) creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable to a Participant under this Plan;

- (b) specifies (i) the name and last known mailing address of the Participant and each Alternate Payee covered by the order; (ii) the amount or percentage of the Participant's Plan benefits to be paid to any Alternate Payee; or the manner in which such amount or percentage is to be determined; and (iii) the number of payments or the period to which the order applies and each plan to which the order relates; and

- (c) does not require the Plan to:

- (i) provide any type or form of benefit or any option not otherwise provided under the Plan;

(ii) pay any benefits to any Alternate Payee prior to the earlier of the affected Participant's termination of employment or the earlier of either (I) the earliest date benefits are payable under the Plan to a Participant; or (II) the later of the date the Participant attains age 50, or the earliest date on which the Participant could obtain a distribution from the Plan if the Participant separated from service;

(iii) provide increased benefit; or

(iv) pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under a prior QDRO.

For purposes of this Plan, an Alternate Payee who had been married to the Participant or who had been a partner of a civil union with the Participant for at least one year may be treated as an eligible Spouse with respect to the portion of the Participant's benefit in which such Alternate Payee has an interest provided that the QDRO provides for such treatment. In addition, if the QDRO so provides, this Plan, shall have the right to make an immediate distribution of the Alternate Payee's benefit, notwithstanding the fact that the Participant may not be eligible for immediate payment.

However, under no circumstances, may the Spouse of an Alternate Payee (who is not a Participant hereunder) be treated as an eligible Spouse under the terms of the Plan.

Upon receipt of any judgment, decree or order relating to the provision of payment by the Plan to an Alternate Payee pursuant to a state domestic relations law, the Board of Trustees shall promptly notify the affected Participant and any Alternate Payee of the receipt of such judgment, decree or order and shall notify the affected Participant and any Alternate Payee of the Board of Trustees' procedure for

determining whether or not the judgment, decree or order is a QDRO. The Board of Trustees shall establish a procedure to determine the status of a judgment, decree or order as a QDRO and to administer Plan distributions in accordance with such procedure. Such procedure shall be in writing, shall include a provision specifying the notification requirements enumerated in the preceding paragraph, shall permit an Alternate Payee to designate a representative for receipt of communications from the Board of Trustees and shall include such other provisions as the Board of Trustees shall determine, including provisions required under regulations promulgated by the General Assembly of the State of Colorado.

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

10.5 **Disposition of Unclaimed Payments.** If the Board of Trustees is unable to make any payment due under the Plan to any person because they cannot ascertain the identity or whereabouts of such person after making such written or telephonic inquiries as the Board of Trustees, in their sole discretion, deem reasonable, the Board of Trustees shall suspend all further payments to such person until he or she

makes his or her identity or whereabouts known to the Board of Trustees within seven (7) years after such payment was due. The Board of Trustees shall declare such payment, and all remaining payments due such person, to be forfeited as of the expiration of such seven-year period. Forfeited payments shall be treated in the same manner as forfeitures resulting from the termination of employment of a Participant prior to his or her having acquired a vested right to payments.

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

10.7 **Trust and Plan to be Tax Exempt.** The Trust and the Plan are intended to qualify under Code Section 401(a) and to be tax exempt under Code Section 501(a), respectively, and is a "Governmental Plan" within the meaning of Code Section 414(d), as amended from time to time and ERISA Section 3(32). The Plan and Trust have been established with the expectation that the Trust will be irrevocable and in the belief that the Plan and Trust will be approved by the Internal Revenue Service, as meeting the requirements of the Code and the Treasury Regulations issued thereunder with respect to qualified employee benefit plans, so as to permit the Employer to deduct their contributions to the Trust, for Federal income tax purposes.

ARTICLE XI. AMENDMENTS AND ACTION BY EMPLOYER

11.1 **Amendments.** The Employer reserves the right to make from time to time any amendment or amendments to this Plan and Trust which do not cause any

part of the Trust Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Participants, Former Participants or their Beneficiaries, provided, however, that the Employer may make any amendment it determines necessary or desirable, with or without retroactive effect, to comply with applicable laws or at the direction and requirement of the Internal Revenue Service or state government.

11.2 **Action by Employer.** Any action by the Employer under this Plan shall be by resolution of the City Council, or by any such person or persons duly authorized by resolution of said Council to take such action. Notwithstanding the above, if the Internal Revenue Service or state government directs and requires amendment of the Plan, then the Plan may be amended by the Board of Trustees on behalf of the Employer.

ARTICLE XII. SUCCESSOR EMPLOYER AND MERGER OR CONSOLIDATION OF PLANS

12.1 **Successor Employer.** In the event of the dissolution, merger, consolidation or reorganization of the Employer, provision may be made by which the Plan and Trust will be continued by the successor; and, in that event, such successor shall be substituted for the Employer under the Plan. The substitution of the successor shall constitute an assumption of Plan liabilities by the successor and the successor shall have all of the powers, duties and responsibilities of the Employer under the Plan.

12.2 **Controlled Entity.** In the event that an entity controlled by the Employer, as determined under Code Section 414(c), sponsors its own separate qualified retirement plan, the Employer shall transfer the assets and liabilities of the Trust with

respect to employees of the controlled entity to the trust of the controlled entity's plan. Any such transfer of assets and liabilities shall be made in accordance with Section 12.3.

12.3 **Plan Assets**. In the event of any merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Trust Fund to another trust fund held under, any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants of this Plan, the assets of the Trust Fund applicable to such Participants shall be transferred to the other trust fund only if:

(a) Each Participant would (if either this Plan or the other plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan had then terminated);

(b) Resolutions of the City Council under this Plan, or of any new or successor employer of the affected Participants, shall authorize such transfer of assets; and, in the case of the new or successor employer of the affected Participants, its resolutions shall include an assumption of liabilities with respect to such Participants' inclusion in the new employer's plan, and

(c) Such other plan and trust are qualified under Code Sections 401(a) and 501(a).

ARTICLE XIII. PLAN TERMINATION

13.1 **Right to Terminate**. In accordance with the procedures set forth in this Article, the Employer may terminate the Plan and Trust Agreement at any time. In

the event of the dissolution, merger, consolidation or reorganization of the Employer, the Plan shall terminate and the Trust Fund shall be liquidated unless the Plan is continued by a successor to the Employer in accordance with Section 12.1.

Effective October 1, 2024, if the Plan is terminated by action initiated by the City Council, each Participant shall receive a termination bonus in addition to receiving one hundred percent (100%) of his or her vested benefit under this Plan. Such termination bonus shall be equal to twenty-four percent (24%) of the Participant's annual salary on the date the Plan is terminated and shall be credited to the Participant's Account in one or more annual installments, subject to the limitations of Section 5.3 of this Plan and Code Section 415. A termination of this Plan shall not be deemed initiated by the City Council if the principal reason for such termination is any federal or state statute, regulation, judicial decision, other requirement or request of Plan Participants. The principal reason for termination shall be stated in the ordinance terminating the Plan and shall be controlling for all purposes of this Plan. Any termination bonus under this Plan shall be distributed under the terms of Article VI.

13.2 Partial Termination. Upon termination of the Plan with respect to a group of Participants which constitutes a partial termination of the Plan, the Board of Trustees shall allocate and segregate for the benefit of the Employees then or theretofore employed by the Employer with respect to which the Plan is being terminated the proportionate interest of such Participants in the Trust Fund. The funds so allocated and segregated shall be used by the Board of Trustees to pay benefits to or on behalf of Participants in accordance with Section 13.4.

13.3 **Liquidation of the Trust Fund.** Upon termination of the Plan, or partial termination, the Accounts of all Participants affected thereby shall become fully vested, and the Board of Trustees shall distribute the assets remaining in the Trust Fund, after payment of any expenses properly chargeable thereto, to Participants, Former Participants and Beneficiaries in proportion to their respective Account balances.

13.4 **Manner of Distribution.** To the extent that no discrimination in value results, any distribution after termination of the Plan may be made, in whole or in part, in cash, in securities or other assets in kind, or in nontransferable annuity contracts, as the Board of Trustees, in its discretion, may determine. All non-cash distributions shall be valued at fair market value at date of distribution. Distributions under this Section shall be made in accordance with the provisions of Section 6.4.

ARTICLE XIV. GOVERNING LAW

The Trust Agreement contained herein shall be deemed executed and governed under the laws of the State of Colorado. Should any provision of the laws of the State of Colorado be in conflict with the express powers, duties and responsibilities of the Board of Trustees as set forth in this instrument, in such event the terms of this instrument shall control. For the convenience of the parties hereto, this Plan and Trust Agreement may be executed in multiple identical counterparts, each of which is complete in itself and may be introduced in evidence or used for any other purpose without the production of any other counterpart.

[Space intentionally left blank. Signature page follows.]

APPROVED this _____ day of _____, 20____ by the Board of Trustees of the Lakewood Employees Money Purchase Pension Plan and Trust Agreement.

Brent Berninger, Chairperson

APPROVED by resolution the _____ day of _____, 20____ by the City Council of the City of Lakewood, Colorado.

Wendi Strom, Mayor

STAFF MEMO

DATE OF MEETING: JULY 8, 2024 / AGENDA ITEM NO. 6

To: Mayor and City Council
From: Mary Newland, Director of Community Resources
Subject: **Lakewood Police Money Purchase Pension Plan**

SUMMARY STATEMENT: This Amendment and Restatement of Lakewood Police Money Purchase Pension Plan and Trust Agreement is to incorporate all prior approved amendments to the Amended and Restated Plan, making required CARES Act and required Selected Security Act 2.0 changes, and clarifying and conforming the Plan language.

BACKGROUND INFORMATION: The Lakewood Police Money Purchase Pension Plan (the "Plan") was last restated effective September 9, 2019. The Plan will be restated effective January 1, 2024 (or as specified below), to incorporate the following:

Description of Change

Clarifying and Conforming Changes

- Incorporate prior amendments.
- Update annual limits for 2024 and subsequent amounts.
- Clarify and conform existing language for consistency and incorporation of other changes.
- Allow voting through written or electronic means.

Discretionary Changes

- Increase death distribution cash-out amount from \$5,000 to \$7,000, effective October 1, 2024.
- Increase automatic rollover amount for which participant must provide distribution direction from \$5,000 to \$7,000, effective October 1, 2024.
- Allow distributions for long-term care insurance to be paid to insurance provider or participant, effective October 1, 2024.
- Add terminally ill in-service withdrawals for participants who have attained age 59 ½, effective October 1, 2024.
- Increase Plan termination bonus that participants receive from 18% to 24% of the participant's annual salary, effective October 1, 2024.

Legislative Changes

- Add 2020 required minimum distribution waiver in accordance with CARES Act.
- Update age at which required minimum distributions must begin in accordance with SECURE 2.0.
- Allow surviving spouse to elect to be treated as participant for calculation of annual required minimum distribution amount in accordance with SECURE 2.0, effective January 1, 2024.

BUDGETARY IMPACTS: None

STAFF RECOMMENDATIONS: Approval of Amendment and Restatement of Lakewood Police Money Purchase Plan and Trust Agreement.

ALTERNATIVES: None

PUBLIC OUTREACH: This item has been discussed and approved by the Lakewood Employee Pension Board.

NEXT STEPS: None

ATTACHMENTS:

1. Resolution 2024-33
2. 2024 Lakewood Police Money Purchase Pension Plan Restatement Summary of Changes
3. Amended and Restated City of Lakewood Police Pension Plan (January 1, 2024)
4. Comprehensive Redline with Prior Amendments Highlighted - Amended and Restated City of Lakewood Police Pension Plan (January 1, 2024)

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

2024-33

A RESOLUTION

AUTHORIZING THE AMENDMENT AND RESTATEMENT OF LAKEWOOD POLICE MONEY PURCHASE PENSION PLAN AND TRUST AGREEMENT

WHEREAS, the City of Lakewood originally adopted the Police Money Purchase Pension Plan and Trust Agreement ("Plan"), effective March 28,, 1978; and

WHEREAS, the City of Lakewood most recently amended and restated the Plan, effective September 9, 2019; and

WHEREAS, the City of Lakewood adopted the First Amendment to the Plan effective January 1, 2020;

WHEREAS, the City of Lakewood adopted the Second Amendment to the Plan effective February 14, 2022;

WHEREAS, the City of Lakewood desires to again Amend and Restate the Plan effective January 1, 2024 by incorporating all prior approved Amendments to the Amended and Restated Plan, effective January 1, 2024, making required CARES Act and required Selected Secure Act 2.0 changes, and clarifying and conforming the Plan language; and

WHEREAS, the City Council hereby finds and determines that authorizing the foregoing Amended and Restated Plan effective January 1, 2024 is and shall be in the best interest of the residents of the City.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The Amended and Restated City of Lakewood Police Money Purchase Pension Plan and Trust Agreement attached hereto, is approved and shall be effective January 1, 2024.

SECTION 2. The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, the Amended and Restated effective January 1, 2024 City of Lakewood Police Money Purchase Pension Plan and Trust Agreement on behalf of the City.

SECTION 3. This Resolution shall become effective immediately upon adoption.

INTRODUCED, READ, AND ADOPTED by a vote of ___ for and ___ against at a hybrid regular meeting of the Lakewood City Council on July 8, 2024, at 7 o'clock p.m., at the Lakewood Civic Center, 480 S. Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

Approved as to form:

Alison McKenney Brown, City Attorney

LAKEWOOD POLICE MONEY PURCHASE PENSION PLAN

SUMMARY OF 2024 CHANGES

The Lakewood Police Money Purchase Pension Plan (the “Plan”) was last restated effective September 9, 2019. The Plan will be restated effective January 1, 2024 (or as specified below), to incorporate the following:

	Description of Change
Clarifying and Conforming Changes	Incorporate prior amendments. Update annual limits for 2024 and subsequent amounts. Clarify and conform existing language for consistency and incorporation of other changes. Allow voting through written or electronic means.
Discretionary Changes	Increase death distribution cash-out amount from \$5,000 to \$7,000, effective October 1, 2024. Increase automatic rollover amount for which participant must provide distribution direction from \$5,000 to \$7,000, effective October 1, 2024. Allow distributions for long-term care insurance to be paid to insurance provider or participant, effective October 1, 2024. Add terminally ill in-service withdrawals for participants who have attained age 59 ½, effective October 1, 2024. Increase Plan termination bonus that participants receive from 18% to 24% of the participant’s annual salary, effective October 1, 2024.
Legislative Changes	Add 2020 required minimum distribution waiver in accordance with CARES Act. Update age at which required minimum distributions must begin in accordance with SECURE 2.0. Allow surviving spouse to elect to be treated as participant for calculation of annual required minimum distribution amount in accordance with SECURE 2.0, effective January 1, 2024.

CITY OF LAKEWOOD
POLICE MONEY PURCHASE PENSION PLAN
AND TRUST AGREEMENT

Amended and Restated Effective
January 1, 2024

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**CITY OF LAKEWOOD
POLICE MONEY PURCHASE PENSION PLAN
AND TRUST AGREEMENT**

Article I. PREAMBLE

Section 1.01 Name and Purpose of Plan and Trust Agreement. Effective March 28, 1978

by virtue of Ordinance 0-78-24, the City of Lakewood, Colorado, established the City of Lakewood Police Money Purchase Pension Plan to provide retirement benefits to police officers employed by the City, and in conjunction therewith, the City established the City of Lakewood Police Duty Death and Disability Trust to provide benefits to the survivors and dependents of police officers killed or incurring a Total Disability in the line of duty. Effective December 31, 1992, the Plan document was removed from the City of Lakewood Municipal Code, by virtue of Ordinance O-93-9. The Plan, as in effect under the Municipal Code on December 31, 1992, is hereby amended and restated in its entirety. The provisions of the City of Lakewood Police Money Purchase Pension Plan, as amended and restated effective September 9, 2019, shall supersede any and all provisions of the Plan in effect prior to September 9, 2019. The Plan was again amended and restated as of January 1, 2024. This restatement of the Plan shall be effective January 1, 2024, unless otherwise specified. Participants who terminate employment prior to January 1, 2024, shall have their benefit under the Plan determined in accordance with the provisions of the Plan in effect on the date of termination of employment. Any Participant who was a Participant in the Plan on January 1, 2024, shall continue as a Participant in the Plan under this amended and restated Plan. The Plan and Pension Trust is created for the exclusive benefit

of employee-participants and their beneficiaries. The Plan is intended to qualify under Section 401(a) of the Code, and the trust created under the Plan is intended to be exempt under Section 501 of the Code. The Plan is a governmental plan under Code Section 414(d) and Section 3(32) of ERISA and is therefore exempt from complying with the requirements of ERISA.

In order to clarify the administration and operation of the Duty Death and Disability Trust, the provisions relating to the Duty Death and Disability Trust and the disability benefits provided to Participants thereunder are hereby governed by a separate Plan and Trust Agreement to be known as the City of Lakewood Police Duty Death and Disability Plan and Trust Agreement. Participants who suffer Total Disability or who are killed in the line of duty on or after January 1, 1994, shall have their disability and death benefits determined in accordance with the provisions of the City of Lakewood Police Duty Death and Disability Plan and Trust Agreement, as Amended and Restated January 1, 1994, and the provisions of such Plan and Trust Agreement shall supersede any and all prior versions of the Plan and Trust in effect prior to January 1, 1994.

Article II. DEFINITIONS

When used in this Plan, the following words shall have the following meanings, unless the context clearly indicates otherwise:

Section 2.01 “Account” unless otherwise indicated, means a Participant’s entire interest in the Pension Trust created by the City’s contributions, the Participant’s own contributions, and the income, expenses, gains and losses attributable to such contributions.

Section 2.02 “Beneficiary” means the person who, under the Plan, becomes entitled to receive a Participant’s Account upon the Participant’s death.

Section 2.03 “Board of Trustees” or “Board” means the individuals selected and/or appointed whose selection and duties are provided for in Article VIII.

Section 2.04 “City” means the City of Lakewood, Colorado.

Section 2.05 “Code” means the Internal Revenue Code of 1986, as it may be amended, or any successor statute of similar purpose.

Section 2.06 “Compensation” means the total amount paid by the City to a Participant as basic salary (including performance incentive awards) during the Plan Year, excluding overtime pay, pension and retirement benefits, living expenses, other allowances, and all contributions by the City to this Plan, or any other tax qualified plan, or any health, accident or welfare fund or plan, or similar benefit. Effective January 1, 2009, Compensation shall include “differential wage payments” made to a Participant with respect to active military service, in accordance with Code Section 414(u)(12). Compensation shall be determined before taking into account any salary deferrals to a plan of deferred compensation under Code Section 457 or a cafeteria plan under Code Section 125. For Plan Years beginning after December 31, 1997, “Compensation” also includes elective deferrals under Code Sections 125, 132(f)(4), 402(e), 402(h)(1)(B), 403(b), and 457(b) and employee contributions described in Code Section 401(h) which are treated as employer contributions, to the extent such amounts would have been received and includable in the Employee’s gross income but for the enumerated Sections of the Code.

For Plan Years beginning after December 31, 2001, the amount of Compensation used to determine the retirement benefit of a Participant must not exceed the limitation amount set forth in Code Section 401(a)(17) for defined contribution plans as annually adjusted pursuant to Code Section 401(a)(17). The Compensation limitation in effect for any Plan Year (or for any twelve-month Compensation period) is the limitation in effect at the beginning of that Plan Year (or other twelve-month period). For a Plan Year (or other compensation measuring period) or less than twelve months, the Compensation limitation is a prorated dollar amount, determined by multiplying the Compensation limitation by a fraction, the numerator of which is the number of months in the short period and the denominator of which is twelve.

Section 2.07 “Effective Date” of this Plan means March 26, 1978. Unless otherwise specified, the Effective Date of this restatement shall be January 1, 2024.

Section 2.08 “Eligible Retirement Plan” means for the purposes of the direct rollover provisions of Code Section 4.06(c) any defined contribution plan, defined benefit plan, annuity contract described in Code Section 403(b), individual retirement account (IRA) or annuity described in Code Sections 408(a) or (b), Roth IRA described in Code Section 408A, and any eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving Spouse, or to a spouse or former spouse who is the alternate payee

under a qualified domestic relations order, as defined in Code Section 414(p) or C.R.S. Section 14-10-113.

Section 2.09 “Employee” means any sworn police officer or agent of the Lakewood Police Department f/k/a the Department of Public Safety and recruits of the City.

Section 2.10 “Normal Retirement Age” means effective January 1, 2020, for purposes of eligibility to receive benefits under this Plan, the date a Participant attains age fifty or completes a minimum of twenty years of continuous service with the City.

Effective January 1, 1989, for purposes of eligibility to receive other benefits provided by the City to Employees upon retirement, the required retirement age shall be:

(a) For persons who are Employees, as of January 1, 1989, the date an Employee attains age fifty-five, provided the Employee has completed at least ten years of continuous service with the City, or at any age upon completion of twenty years of continuous service with the City.

(b) For persons who become Employees on or after January 1, 1989, the date an Employee attains age fifty-five, provided the Employee has completed at least twenty years of continuous service with the City, or at any age upon completion of twenty-five years of continuous service with the City.

Section 2.11 “Participant” means any Employee who has become a Participant under this Plan. Participation shall cease upon distribution of a Participant’s entire vested interest and forfeiture of a Participant’s entire non-vested interest after (or if a Participant has no vested or non-vested interest then upon) termination of employment.

Section 2.12 “Pension Trust” means the pension trust established under Article IX, as it may be amended from time to time from which retirement benefits shall be paid under this Plan.

Section 2.13 “Plan” means the City of Lakewood Police Money Purchase Pension Plan and Trust Agreement set forth herein, and all subsequent amendments to it.

Section 2.14 “Plan Year” means the City’s fiscal year, which, as presently established, commences on January 1st of each year, which shall also be the fiscal year of the trust established under this Plan.

Section 2.15 “Spouse” means, as of May 1, 2013, both a party who is married to a Participant pursuant to the provisions of the “Uniform Marriage Act”, Colorado Revised Statutes Section 14-2-101, et. seq., as well as a party to a civil union pursuant to Colorado Revised Statutes Section 14-15-101, et. seq. However, in situations where the Code has a different definition of spouse in Sections pertaining to qualification or operation of governmental plans, the definition of spouse, as stated in the Code, shall control.

Section 2.16 “Total Disability” means a disability which is incurred by reason of service as a police officer and which renders a Participant unable to perform satisfactorily the duties of his or her employment with the City as a sworn police officer or agent of the Lakewood Police Department as determined by a physician selected by the Board of Trustees, and which results in his or her termination of employment with the City.

Section 2.17 “Trustee” means a member of the Board of Trustees appointed or elected pursuant to Article VIII.

Article III. PARTICIPATION

Section 3.01 Who May Become a Participant. Any Employee as of March 26, 1978, shall become a Participant on March 26, 1978. Any other individual shall become a Participant on the date he or she becomes an Employee, as defined in Article II.

Article IV. CONTRIBUTIONS

Section 4.01 Determination of Contribution by City. Except as provided in this Section, the City shall contribute and pay into the Pension Trust annually (or more frequently, as the City may determine) on behalf of each Participant an amount equal to ten percent (10%) of such Participant's Compensation; effective April 1, 2018, the City's contribution on behalf of each Participant shall be increased by six-tenths of one percent (.6%) for each of the next five (5) twelve-month fiscal years beginning April 1 until the City contribution equals thirteen percent (13%) (as demonstrated below) and thereafter until modified thirteen percent (13%), as reduced by any amounts forfeited under Section 7.03, and by any amounts that the City may be required to contribute by any state or federal law providing retirement, disability or death benefits for Participants under this Plan.

Prior to March 31, 2018	10%
April 1, 2018-March 31, 2019	10.60%
April 1, 2019-March 31, 2020	11.20%
April 1, 2020-March 31, 2021	11.80%
April 1, 2021-March 31, 2022	12.40%
April 1, 2022-March 31, 2023	13%

A Participant who retires, dies, incurs Total Disability or terminates employment for any other reason shall share in the contribution of the City based on his or her Compensation for the period when he or she was a Participant.

Section 4.02 Limitation on Annual Additions.

(a) Annual Additions Limitation. The “Annual Additions” to the Account of any Participant for a limitation year shall not exceed the lesser of the limitation amount set forth in Code Section 415(d) for defined contribution plans as annually adjusted pursuant to Code Section 415(d) or one-hundred percent (100%) of such Participant’s Compensation. The Annual Additions limitation shall apply to limit the total Annual Additions to all of the defined contribution plan accounts of a Participant. The Annual Additions limitation year shall be the Plan Year.

(b) Annual Addition. For the purpose of applying the limitations of this Section, “Annual Additions” include City contributions, forfeitures, contributions by the state, and Participant contributions. “Annual Additions” shall not include (i) restorative payments made to restore losses to the Plan resulting from actions by a fiduciary for which there is a reasonable risk of liability for breach of fiduciary duty under applicable Colorado law, where participants who are similarly situated are treated similarly with respect to the payments; (ii) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (iii) rollover contributions as described in Code Sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16); or (iv) repayments of loans made to a Participant from the Plan.

(c) Compensation. For purposes of applying the limitations of this Section, the term “Compensation” shall be determined in accordance with Code Section 415(c)(3)(D) and Treasury Regulations Section 1.415(c)-2(d), and shall mean Compensation as defined in Section 2.06. In addition, the following amounts shall be included for Plan Years beginning on or after January 1, 2008:

1. wages and other regular pay, including overtime or shift differentials, commissions, bonuses, or other similar payments, received by a Participant within the later of 2 ½ months after the Participant’s severance from employment or the end of the limitation year in which the Participant’s severance from employment occurs, but only to the extent such wages and other regular pay represents payment for services performed prior to severance from employment and would have been paid to the Participant if he or she continued employment with the City; and
2. vacation and sick leave payments received by a Participant within the later of 2 ½ months after the Participant’s severance from employment or the end of the limitation year in which the Participant’s severance from employment occurs, but only to the extent such vacation and sick leave payments are for unused bona fide sick, vacation or other leave and the Participant would have been able to use the leave if he or she continued employment with the City; and
3. amounts received pursuant to a nonqualified deferred compensation plan, but only if the payment would have been paid such amounts at the same time if the Participant had continued in employment with the City and only to the extent the payment is included in the Participant’s gross income.

Further, for the purposes of applying the limitations of this Section, “Compensation” for Plan Years beginning on or after January 1, 2008 shall not include:

1. payments to a Participant who does not currently perform services for the City by reason of qualified military service;
2. amounts paid to a Participant who is permanently and totally disabled; or
3. any amounts earned by a Participant but not paid during the limitation year solely because of the timing of pay periods and pay dates.

Section 4.03 Time and Method of Payment of Contribution by the City. The City shall make payment of its contribution for any Plan Year in cash in one or more installments. The City’s contributions for any Plan Year shall be paid to the Trustee and shall become a part of the Pension Trust.

Section 4.04 Return of City Contributions. A contribution by the City to the Plan shall be returned to the City, at the City’s discretion, under any of the following circumstances:

- (a) If a contribution is made by the City by a mistake of fact, including a mistaken excess contribution, within one year of its payment to the Plan; or
- (b) If qualification of the Plan is denied, within one year after the date of denial of qualification of the Plan.

The City shall state by written request to the Trustee the amount of the contribution to be returned and the reason for such return. Such amount shall not include any earnings attributable to the contribution and shall be reduced by any losses attributable to the contribution. Upon sending such request to the Trustee,

the City simultaneously shall send to the Board of Trustees a copy of the request. The Trustee shall return such contribution to the City immediately upon receipt of the written request by the City.

Section 4.05 City's Obligations. The adoption and continuance of the Plan shall not be deemed to constitute a contract between the City and any Employee or Participant, nor to be a consideration for, or an inducement or condition of, the employment of any person. Nothing in this Plan shall be deemed to give any Employee or Participant the right to be retained in the City's employ, nor shall it interfere with the right of any Employee or Participant to terminate his or her employment at any time.

Section 4.06 Contributions by Participants.

(a) **Mandatory Contributions.** To participate in this Plan, each Participant must contribute to the Pension Trust the specified percentage of his or her Compensation each month. The specified percentage for the Plan Year beginning March 26, 1978, shall be six percent (6%); for the Plan Years beginning January 1, 1979, and January 1, 1980, seven percent (7%); and for the Plan Year beginning January 1, 1981, and thereafter, until modified, eight percent (8%); effective April 1, 2018, the eight percent (8%) shall be increased by six-tenths of one percent (.6%) for each of the next five (5) twelve-month fiscal years beginning April 1 until the Participant contribution equals eleven percent (11%) (as demonstrated below) and thereafter until modified eleven percent (11%). The City shall pick up the mandatory contributions required hereunder for all Compensation paid after January 1, 1986, and the contributions so picked up shall

be treated as employer contributions pursuant to Code Section 414(h)(2) in determining tax treatment under the Code. The City shall pay these mandatory contributions directly to the Pension Trust, in lieu of paying such amounts to Employees, and such contributions shall be paid from the same funds which are used in paying salaries to the Employees. Mandatory contributions so picked up shall be treated for all purposes of this Plan other than federal tax, in the same manner as Employee contributions made prior to the date picked up.

January 1, 1981-March 31, 2018	8%
April 1, 2018-March 31, 2019	8.60%
April 1, 2019-March 31, 2020	9.20%
April 1, 2020-March 31, 2021	9.80%
April 1, 2021-March 31, 2022	10.40%
April 1, 2022-March 31, 2023	11%

(b) Voluntary Contributions. In order to encourage savings and investments by Participants, each Participant voluntarily may contribute to the Pension Trust an amount equal to a percentage which is the difference of one hundred percent (100%) minus the City's contribution set forth in Section 4.01 and the Participant's mandatory contribution set forth in Section 4.06(a) of Compensation on an after-tax basis subject to the contribution limitation set forth in Section 4.02(a), in addition to the contributions under subparagraph (a) of this subsection. All voluntary contributions shall be made by payroll deduction. The percentage, if any, which a Participant contributes under this Section may be changed by

filing a written notice with the Board of Trustees prior to the effective date of such change. All voluntary contributions shall be paid to the Board of Trustees by the City at least monthly. No Participant shall have any obligation to make any voluntary contribution. All voluntary contributions and any earnings or gains on those voluntary are nonforfeitable and eligible for withdrawal by the Participant at any time pursuant to the Participant's request completed in good order pursuant to the Plan's administrative procedures and provided to the Plan's third party administrator.

(c) Rollover Contributions. Notwithstanding the limits imposed upon Participant contributions, a Participant may contribute any amount of funds to the Plan in any year if such contribution comes from an Eligible Retirement Plan, as defined in Section 2.08, except that the Plan will not accept a rollover contribution from a Roth IRA described in Code Section 408A. Rollover contributions shall be added to a segregated Account attributable to such Participant's voluntary contributions, if any, and shall be nonforfeitable.

Article V. DETERMINATION AND VESTING OF PARTICIPANTS' ACCOUNTS

Section 5.01 Accounting and Allocation.

(a) Allocation of City Contributions. As of the last day of each calendar month of the Plan Year, the Board of Trustees shall allocate to the Account of each Participant any amounts contributed by the City to the Pension Trust pursuant to Section 4.01 for the year then ended. Forfeitures used to reduce City contributions shall be allocated as of the last day of each Plan Year.

(b) Allocation of Earnings, Losses and Changes in Fair Market Value of the Net Assets of the Pension Trust. Earnings and losses for each investment held by the Pension Trust and changes in the fair market value of the net assets of the Pension Trust shall be computed and allocated to each Participant who has their Account invested in such investment, in the ratio in which the total dollar value of each particular investment for each Participant (whether or not vested) in the Pension Trust bears to the aggregate dollar value of the particular investment held by all Participants, calculated on the last previous valuation date.

(c) Participants' Accounts. The Board of Trustees shall maintain an Account for each Participant showing the dollar value of his or her current Account in the Pension Trust as of the last previous valuation date. This Account shall be comprised of separate accounts for City contributions and Participant contributions of each Participant and the earnings, losses and changes in fair market value thereof. The Board of Trustees shall distribute, or cause to be distributed to each Participant at least annually, a written statement setting forth the current value of each Participant's Account, and setting forth such other information as the Board of Trustees determines.

(d) Valuation Dates. The valuation date of the Pension Trust shall be periodically as determined by the Board of Trustees, but at least once each calendar quarter, at which time the Board of Trustees shall determine the value of the net assets of the Pension Trust (i.e., the value of all assets of the Pension Trust at its then-current fair market value, less all liabilities) and the value of contributions by the City and all Participants.

(e) Computation Dates. The Board of Trustees shall compute the value of each Participant's Account in the Pension Trust periodically as determined by the Board of Trustees, but at least once each calendar quarter, and shall base such computations on the valuation of the assets in the Pension Trust. Upon distribution under Section 7.02, the Board of Trustees shall adjust the dollar value of such Participant's Account to reflect the values determined on the most recent valuation date prior to distribution. The Participant's and the City's contributions shall be allocated to the Participant's Account prior to distribution. The dollar value of the Account, as of the most recent valuation date shall be the amount which the Board of Trustees shall distribute to the Participant pursuant to Section 7.02.

(f) Expenses. General expenses of the Plan which are not attributable to any specific investment or Participant, such as insurance premiums, consulting, actuarial, legal, banking and accounting fees shall be allocated to and deducted from the Accounts of all Participants at the end of each calendar quarter in the ratio in which the value of each Participant's Account bears to the aggregate value of the Accounts of all Participants. Expenses which are incurred on behalf of a specific Participant, including but not limited to expenses incurred as a result of a Participant exercising his or her investment or distribution options under the Plan, shall be allocated to and deducted from the Account of the individual Participant.

Section 5.02 Vesting of Participants' Accounts.

(a) General Rules. If any Participant reaches his or her Normal Retirement Age, dies or suffers Total Disability while a Participant, his or her entire Account

shall become fully vested without regard to the number of years of Continuous Service, as defined in Section 5.04, under the Plan. Any Account, whether vested or forfeitable, shall become payable to a Participant or his or her Beneficiaries only to the extent provided in this Plan. A Participant who has designated a Beneficiary and who dies shall cease to have any interest in this Plan or in his or her Account, and his or her Beneficiary shall become entitled to distribution of the Participant's Account under this Plan and not as a result of any transfer of the interest or Account. A Participant's Account attributable to his or her mandatory and voluntary contributions shall be fully vested at all times.

(b) Vesting Schedule. A Participant shall have a vested interest in the portion of his or her Account attributable to City contributions in accordance with the following schedule:

Years of Continuous Service	Percentage of Account Which is Vested
Less than 1	0%
1 or more but fewer than 2	20%
2 or more but fewer than 3	40%
3 or more but fewer than 4	60%
4 or more but fewer than 5	80%
5 or more	100%

Section 5.03 Full Vesting Upon Termination or Partial Termination of Plan. Upon the termination or partial termination of this Plan, the Accounts and other interests of all Participants affected, as of the date such termination or partial termination occurred, shall be fully vested.

Section 5.04 Service Included in Determination of Vested Accounts. All years of Continuous Service under the Plan shall be included for the purpose of

determining a Participant's vested Account under Section 5.02. Continuous Service shall be the period of time an Employee, as defined in Article II, is employed by the City without interruption. Continuous Service shall be determined in accordance with the following rules:

(a) A leave of absence, not in excess of one year, granted by the City for purposes other than military service, including, but not limited to, sickness, accident or other casualty, shall not be considered as a break in Continuous Service or a termination of employment, but such leave of absence shall not be counted as additional Continuous Service. The City, from time to time, may extend such leave of absence for additional periods of not in excess of one year and in accordance with a uniform, nondiscriminatory policy applicable to all Participants.

(b) Any Participant who has entered or enters the Armed Forces of the United States, in a period of national emergency declared by the President or Congress 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 Continuous Service or a termination of employment, and such leave of absence shall be counted as additional Continuous Service, provided the Participant returns to the employ of the City within ninety days of the date on which he or she has the right to release from military service, or from the hospital in the event of service-caused disability, without intervening employment elsewhere. Notwithstanding any provision of this Plan to the contrary,

contributions, benefits and service credits with respect to qualified military service will be provided in accordance with Code Section 414(u).

(c) Dismissal or voluntary termination of employment shall be considered as a break in Continuous Service and a termination of employment, in which event subsequent reemployment shall be deemed to be new employment.

(d) A layoff by the City shall not be considered as a termination of employment or a break in Continuous Service if the Employee returns to work within thirty days after notification by the City to do so, and if said layoff is not in excess of six consecutive months plus any unexpired period of such thirty-day notice. If the layoff is in excess of said period, a termination of employment and a break in Continuous Service shall be deemed to have occurred as of the end of such six-month period or the end of the period of such notice, whichever is later. If the Employee fails to return to work prior to the end of the period of such notice, such failure to report for work shall be deemed a termination of employment and a break in Continuous Service as of the end of the period of such notice.

(e) Service for Employment with the City. In the event an individual who was employed by the City as a full-time common law employee transfers employment within the City to the Lakewood Police Department as a sworn officer, agent or recruit, such an individual shall be credited with one Year of Continuous Service under this Plan for each year of service credited to such an individual under any retirement plan maintained by the City, provided that such an individual has not incurred a break in service as set forth in Section 5.04(c).

(f) The provisions of this Section shall be applied to all Participants in a like manner.

Article VI. RETIREMENT DATE – DESIGNATION OF BENEFICIARY

Section 6.01 Retirement Date. A Participant may retire on the last day of the month in which a Participant attains his or her Normal Retirement Age. Until actual retirement a Participant shall continue to participate in the Plan.

Section 6.02 Designation of Beneficiary. Each Participant shall designate a Beneficiary to receive his or her Account in the Pension Trust upon his or her death on the form prescribed by and delivered to the Board of Trustees. The Participant shall have the right to change or revoke a designation at any time by filing a new designation or notice of revocation with the Board of Trustees. No notice to any Beneficiary nor consent by any Beneficiary shall be required to effect any change of designation or revocation. If a Participant fails to designate a Beneficiary before his or her death, or if no designated Beneficiary survives the Participant, the Board of Trustees shall pay his or her Account in the Pension Trust first to his or her surviving Spouse, if any, next to his or her descendants by right of representation, if any, or, if none, then to his or her personal representative. If no personal representative has been appointed, if actual notice of such is given to the Board of Trustees within sixty days after the Participant's death, and if his or her Account does not exceed \$5,000 (or \$7,000 on and after October 1, 2024), the Board of Trustees may pay his or her Account to such person as may be entitled to it under the laws of the state where such Participant resided at the date of his or

her death. In such case, the Board of Trustees may require such proof of right or identity from such person as the Board of Trustees may deem necessary.

Section 6.03 Participant or Beneficiary Whose Whereabouts Are Unknown. In the case of any Participant or Beneficiary whose whereabouts are unknown, the Board of Trustees shall notify such Participant or Beneficiary at his or her last known address by certified mail with return receipt requested advising him or her of his or her right to a pending distribution. If the Participant or Beneficiary cannot be located in this manner, the Board of Trustees shall establish a custodial account for such Participant or Beneficiary in any federally insured bank for the purpose of holding the Participant's Account until it is claimed by the Participant or Beneficiary or until proof of death satisfactory to the Board of Trustees is received. If proof of the death is received, the Board of Trustees shall distribute the Participant's Account in accordance with the provisions of Section 6.02.

Article VII. DISTRIBUTION FROM TRUST FUND

Section 7.01 When Benefits Become Distributable and Effect of Distribution. When a Participant dies, suffers Total Disability, retires, terminates his or her employment for any other reason or transfers to employment elsewhere within the City, the portion of his or her vested Account attributable to City and Participant contributions shall be distributable under Section 7.02. Notwithstanding the above, if a Participant terminates employment with a vested benefit of less than \$5,000 (or \$7,000 on and after October 1, 2024), the Participant shall have 60 days from the date of the mailing of the tax notice explaining the Participant's options in which to direct the Board of Trustees as to the disposition of the vested

benefit. If after 60 days the Participant has failed to direct the investment of the vested benefit and such vested benefit is less than \$1,000, then the Board of Trustees shall distribute the Participant's vested benefit to the Participant. Alternatively, if the Participant's vested benefit is more than \$1,000 and less than \$5,000 (or \$7,000 on and after October 1, 2024), then such vested benefit shall not be distributed until the Participant provides direction to the Board of Trustees as to the disposition of the vested benefit. When benefits are distributed under this Plan, a Participant shall cease to have any further interest or participation in the Pension Trust or any subsequent accruals or contributions to the Pension Trust, except that a Participant shall retain the right to receive distribution of the value of his or her Account as determined at the last prior valuation date.

Section 7.02 Distribution of Benefits.

(a) Distribution of Participant Account. As soon as possible after being notified by the City that a Participant's vested Account is distributable, the Board of Trustees shall convert the vested Account into cash and shall distribute the vested Account to the Participant in the optional form of benefit selected by the Participant in accordance with Section 7.02(g).

(b) Distribution Upon Retirement. If a Participant's Account becomes distributable upon his or her termination of employment with the City because such Participant has attained Normal Retirement Age, the Board of Trustees shall distribute the vested Account to the Participant in the optional form of benefit selected by the Participant in accordance with Section 7.02(g). If a Participant terminates employment because of a service or non-service-incurred disability,

the Board of Trustees shall distribute the vested Account to the Participant in the optional form of benefit selected by the Participant in accordance with Section 7.02(g).

(c) Distribution Upon Disability. If the Participant terminates employment because of Total Disability and dies before the payment of his or her benefits has commenced, his or her vested Account shall be distributed to the Beneficiary designated under Section 6.02 in accordance with the optional form of benefit selected by the Beneficiary in accordance with Section 7.02(g).

(d) Distribution Upon Death. Upon a Participant's death for any reason, the Board of Trustees shall distribute the vested Account to the Beneficiary designated under Section 6.02, with benefits commencing as soon as practical following the Participant's death, in accordance with the optional form of benefit selected by the Beneficiary in accordance with Section 7.02(g). A Beneficiary shall be able to elect a rollover of his or her interest in a deceased Participant's vested Account to an individual retirement account (IRA) or annuity described in Code Sections 408(a) or (b), or to a Roth IRA described in Code Section 408A, subject to applicable Code requirements. If the Participant has not designated a Beneficiary, or if he or she has designated a Beneficiary who dies and the Participant has not designated a contingent Beneficiary, the Participant's vested Account shall be paid under Section 6.02. In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the

period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death.

(e) Distribution Upon Other Termination of Employment or Upon Transfer to Other Employment Within the City. If a Participant's Account becomes distributable upon his or her termination of employment for any reason other than retirement, disability or death, or upon the Participant's transfer to other employment with the City, the Board of Trustees shall distribute the vested Account to the Participant in the optional form of benefit selected by the Participant in accordance with Section 7.02(g). If the Participant dies prior to the date his or her benefit payments commence, his or her vested Account shall be distributed to his or her Beneficiary under Section 6.02 in accordance with the optional form of benefit selected by the Beneficiary in accordance with Section 7.02(g).

(f) Deferral of Distribution. Notwithstanding the foregoing, a Participant may elect to defer receipt of his or her vested Account. Such Participant shall receive income and expense allocations pursuant to Sections 5.01(b) and (f) until the balance of the Participant's vested Account has been distributed. A Participant may make application for distribution of his or her vested Account in accordance with the procedures contained in this Section. In any event, distribution of a Participant's vested Account shall be made no later than April 1st of the calendar year following the calendar year in which the Participant attains age 72 (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and

including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later) or retires, whichever occurs later.

(g) Optional Forms of Benefit. Within sixty days after termination of employment for any reason, a Participant may elect by filing the appropriate form with the Board of Trustees, to have his or her vested Account paid in one of the following optional forms:

1. lump sum distribution, or
2. periodic payments , or
3. a fully paid annuity in a form selected by the Participant and approved by the Board of Trustees, or
4. a partial distribution of the Account, or
5. deferral of all or part of the Account in accordance with Section 7.02(f), or
6. a combination of the above.

An election of optional benefit may be changed or revoked at any time before the distribution commences.

If a Beneficiary is electing, pursuant to Sections 7.02(c) and (d), an optional form of benefit under this Section due to the Participant's death, occurring after December 31, 2019, the Beneficiary must receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death if the Beneficiary is not:

1. The surviving Spouse of the Participant; or
2. Disabled or chronically ill; or

3. An individual who is not more than 10 years younger than the Participant; or

4. A child of the Participant who has not reached age of majority.

(h) Distribution for Rollover Transactions and Direct Transfers.

Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a Participant's election under the Plan, a Participant may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution, as defined in Code Section 402(c)(4), paid directly to an Eligible Retirement Plan as defined in Section 2.08, specified by the Participant as a direct rollover. The Participant shall make such rollover request in writing and shall provide such information to the Board of Trustees as requested, including the name of the plan to which his or her interest is to be transferred and the name and address of the sponsor and the trustee of the new plan, when applicable.

For purposes of the direct rollover provisions of this Section 7.02(h), a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account (IRA) or annuity described in Code Sections 408(a) or (b), to a Roth IRA described in Code Section 408A, or to a qualified defined contribution plan described in Code Sections 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for

the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(i) Distributions for Health and Long-Term Care Insurance. Retired Participants may direct the Plan's third party administrator to remit up to \$3,000 each year from their vested Account to pay the cost of qualified health insurance and/or long-term care insurance, subject to applicable limitations imposed under Code Section 402 and the Treasury Regulations thereunder. In order to be eligible for health and long-term care insurance distributions, a Participant must be separated from service with the City by reason of Total Disability or attainment of Normal Retirement Age under the Plan. The Plan's third party administrator must remit such insurance payments directly to the insurance provider. The \$3,000 annual limitation limits the total distributions from all retirement plans in which a Participant has an account. Notwithstanding the foregoing, distributions hereunder made on or after October 1, 2024, may be remitted to the insurance provider or the Participant.

Section 7.03 Disposition of Forfeitable Account on Termination of Employment. If a Participant's employment is terminated for any reason other than retirement, death or Total Disability, while any part of his or her Account is forfeitable, then that portion of his or her Account which is forfeitable shall be forfeited by him or her on the last day of the calendar month of the Plan Year in which the Participant terminates employment, shall remain in the Pension Trust, and shall reduce the City contribution for the Plan Year in which it is forfeited as provided under Section 4.01.

Section 7.04 Assignment of Benefits. All amounts payable by the Board of Trustees shall be paid only to the person entitled to them, and all such payments shall be paid directly to such person and not to any other person or corporation. Such payments shall not be subject to the claim of any creditor of a Participant, nor shall such payments be taken in execution by attachment or garnishment or by any other legal or equitable proceedings. No person shall have any right to alienate, anticipate, commute, pledge, encumber or assign any payments or benefits which he or she may expect to receive, contingently or otherwise, under this Plan, except the right to designate a Beneficiary or Beneficiaries; provided that this Section shall not affect, restrict or abridge any right of setoff or lien which the Pension Trust may have by law.

Notwithstanding the above, the Board of Trustees will comply with a domestic relations order (“DRO”). A DRO is a judgment, decree or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law) that relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent (“Alternate Payee”) of a Participant and which:

- (a) creates or recognizes the existence of an Alternate Payee’s right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable to a Participant under this Plan;
- (b) specifies:

1. the name and last known mailing address of the Participant and each Alternate Payee covered by the order;
2. the amount or percentage of the Participant's Plan benefits to be paid to any Alternate Payee; or the manner in which such amount or percentage is to be determined; and
3. the number of payments or the period to which the order applies and each plan to which the order relates; and
4. payment(s) must commence no sooner than thirty (30) days nor later than one hundred twenty (120) days, from the issuance of the qualified DRO.

(c) does not require the Plan to:

1. provide any type or form of benefit or any option not otherwise provided under the Plan;
2. provide increased benefit; or
3. pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under a prior DRO.

For purposes of this Plan, an Alternate Payee who had been married to the Participant or a partner to a civil union with the Participant for at least one year may be treated as an eligible Spouse with respect to the portion of the Participant's benefit in which such Alternate Payee has an interest provided that the DRO provides for such treatment. In addition, if the DRO so provides, this Plan shall have the right to make an immediate distribution of the Alternate

Payee's benefit, notwithstanding the fact that the Participant may not be eligible for immediate payment.

However, under no circumstances, may the spouse of an Alternate Payee (who is not a Participant hereunder) be treated as an eligible Spouse under the terms of the Plan.

Upon receipt of any judgment, decree or order relating to the provision of payment by the Plan to an Alternate Payee pursuant to a state domestic relations law, the Board of Trustees shall promptly notify the affected Participant and any Alternate Payee of the receipt of such judgment, decree or order and shall notify the affected Participant and any Alternate Payee of the Board of Trustee's procedure for determining whether or not the judgment, decree or order is a DRO. The Board of Trustee's shall establish a procedure to determine the status of a judgment, decree or order as a DRO and to administer Plan distributions in accordance with such procedure. Such procedure shall be in writing, shall include a provision specifying the notification requirements enumerated in the proceeding paragraph, shall permit an Alternate Payee to designate a representative for receipt of communications from the Board of Trustees and shall include such other provisions as the Board of Trustees shall determine, including provisions required under regulations promulgated by the General Assembly of the State of Colorado.

Section 7.05 Withdrawals. Effective October 1, 2024, a Participant who is a Terminally Ill Individual and who has attained age 59-1/2 is eligible to request a withdrawal of his or her vested Account attributable to City or Participant contributions or to the

earnings, losses and changes in the fair market value of such contributions without penalty under Code Section 72(t), subject to the Participant providing sufficient evidence to the Board of Trustees of his or her eligibility to receive a withdrawal hereunder. For purposes of this Section, “Terminally Ill Individual” means an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification. Participants may contact the Board of Trustees if repayment of this withdrawal is desired, provided, however, such repayment must be within three years of the date the withdrawal is made.

Section 7.06 Required Minimum Distribution Rules.General Rules.

1. Effective Date. The provisions of this Section 7.06 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
2. Precedence. The requirements of this Section 7.06 will take precedence over any inconsistent provisions of the Plan.
3. Requirements of Treasury Regulations Incorporated. All distributions required under this Section 7.06 will be determined and made in accordance with the Treasury Regulations under Code Section 401(a)(9), and Section 401 of the Setting Every Community Up for Retirement Enhancement (“SECURE”) Act (Division O of the Further Consolidated Appropriations Act, enacted December 20, 2019), and the SECURE 2.0 Act of 2022 (Division T of the Consolidated Appropriations

Act of 2023, enacted December 29, 2022), and the Treasury Regulations promulgated thereunder.

4. TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section 7.06, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

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

1. If the Participant's surviving Spouse is the Participant's sole designated beneficiary, then distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72 (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later), if later.

2. If the Participant's surviving Spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary

will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

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

4. If the Participant's surviving Spouse is the Participant's sole designated beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 7.06(b), other than Section 7.06(b)(1), will apply as if the surviving Spouse were the Participant.

5. For purposes of this Section 7.06(b) and Section 7.06(d), unless Section 7.06(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 7.06(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 7.06(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 7.06(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

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

1. Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount

that will be distributed for each distribution calendar year is the lesser of:

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

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

Required minimum distributions will be determined under this Section 7.06(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

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

1. Death On or After Date Distributions Begin.

a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

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

ii. If the Participant's surviving Spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year. Effective January 1, 2024, however, the surviving Spouse may

elect to be treated as the Participant for purposes of calculating the minimum amount that will be distributed each year.

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

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

c) Beneficiary Distribution Limitation. If the Participant dies after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, must receive all distributions under

the Participant's vested Account by the end of the tenth calendar year following the year of the Participant's death.

2. Death Before Date Distributions Begin.

a) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 7.06(d)(1).

For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the

Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole designated beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 7.06(b)(1), this Section 7.06(d)(2) will apply as if the surviving Spouse were the Participant.

(e) Definitions. The following definitions apply to this Section 7.06.

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

2. Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 7.06(b). The required

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

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

4. Participant's Account Balance. The balance of the Participant's Account as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account balance for the valuation calendar year include any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

5. Required Beginning Date. The latest date for commencement of distributions for a Participant, as determined under Section 7.02 of the Plan.

(f) Special Rule for 2020 RMDs. Notwithstanding the provisions of this Section, a Participant or Beneficiary who would have been required to receive

required minimum distributions for 2020 but for the enactment of Code Section 401(a)(9)(I) (“2020 RMDs”), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s designated Beneficiary, or for a period of at least 10 years (“Extended 2020 RMDs”), will receive those distributions for 2020, unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding the provisions of Section 7.02, and solely for purposes of applying the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs will be treated as eligible rollover distributions.

Article VIII. BOARD OF TRUSTEES

Section 8.01 Establishment of Board of Trustees. A Board of Trustees was established in 2019, upon election and appointment of Trustees as described below in Section 8.03.

Section 8.02 Composition of Board. The Plan shall be administered by the Board of Trustees which shall consist of the City Mayor, one City Manager designee (sworn or non-sworn employee), four (4) sworn employees, four (4) non-sworn employees, and two (2) retirees (one sworn and one non-sworn).

- a) The City Mayor shall be a non-voting member of the Board, except when votes of the Board are equally divided, in which case the City Mayor can cast a tie-breaking vote either in writing or electronically.
- b) The City Manager designee is a voting member and will be a sworn or non-sworn employee selected by the City Manager.
- c) The four (4) sworn employees will be voting members elected to the Board by a majority vote of the voting Plan Participants.
- d) The four (4) non-sworn employees will be voting members elected to the Board by a majority vote of the voting non-sworn plan participants of the Lakewood Employees Money Purchase Pension Plan and Trust Agreement.
- e) The one (1) sworn retiree will be a voting member elected by a majority vote of the voting sworn Plan Participants.
- f) The one (1) non-sworn retiree will be a voting member elected by a majority vote of the voting non-sworn plan participants of the Lakewood Employees Money Purchase Pension Plan and Trust Agreement.

A Chairperson and a Vice-Chairperson/Secretary shall be selected by the Board of Trustees annually. Human Resources will maintain the role of Recording Secretary/Administrator.

Section 8.03 Board Meetings. Meetings will occur quarterly and members can attend via phone or video call/conference. To vote, there must be a quorum of 5 consisting of at least two (2) sworn employees and two (2) non-sworn employees. Such vote may be taken by written or electronically communicated consent.

Section 8.04 Terms. Members of the Board of Trustees shall serve specified terms as follows:

a) Elected Members. The initial members of the Board of Trustees elected in October of 2019, or such other agreed upon date and will serve the remaining portion of 2019 followed by one (1), two (2) or three (3) year terms, as determined by the Board after election, creating annually staggered terms. Thereafter, elected members shall serve three (3) year terms, staggered annually, with the ability to be elected in perpetuity.

b) Appointed Member. The member appointed by the City Manager will serve a three (3) year term with the ability to be appointed in perpetuity. The City Manager will appoint for this position upon the end of each term or vacancy.

Section 8.05 Elections. Elections with respect to Board seats will be held in January of the calendar year in which a seat is up for election. The City Clerk shall be responsible for developing the election procedures and elections shall be conducted by the City Clerk's office.

An employee or a retiree shall become a candidate for the Board of Trustees by notifying the City Clerk in writing on or before the notification date set by the City Clerk of his or her intention to run for election to the Board of Trustees. If only one sworn or non-sworn employee or retiree has indicated his or her intention to run for election for an open seat within his or her same category of employment by the designated notification deadline, the City Clerk shall declare the election for that specific seat (sworn or non-sworn) cancelled and the sworn or non-sworn employee or retiree shall be deemed to be elected to the Board of Trustees.

Section 8.06 Resignation of Board Member. A member of the Board of Trustees may resign at any time by giving written notice to the Board of Trustees. Resignation will be effective at the time specified in the written notice or if no time is specified, will be effective immediately. Acceptance by the Board of Trustees is not required for the resignation to be effective. Upon leaving his or her role as a member of the Board of Trustees, the member shall deliver any Pension Trust property or records in his or her possession.

Section 8.07 Vacancies. A vacancy occurs upon the resignation, termination of employment, or death of a member of the Board of Trustees. Vacancies shall be filled within 90 days, or at such later date as determined by the Board of Trustees, by election for an elected member or appointment for an appointed member. An elected or appointed member filling a vacancy mid-term shall serve for the unexpired term of the vacancy and shall thereafter be subject to election or appointment upon the expiration of said term. A vacancy for an elected member will be filled with the same category of employee or retiree (sworn or non-sworn).

Section 8.08 Successor Board Members. A successor Board of Trustees member, elected or appointed, shall have all of the rights, powers and discretions vested in him or her as his or her predecessor had vested. A successor Board of Trustees member shall have no duty to examine the accounts or doings of his or her predecessors. A successor Board of Trustees member is responsible only for money and property known to him or her to comprise the principal and income of the Pension Trust and shall in no way be liable or responsible for anything done or omitted by his or her predecessors.

Article IX. POWERS AND DUTIES OF BOARD OF TRUSTEES

Section 9.01 Organization and Operation of Offices of Board of Trustees. The Board of Trustees may adopt such procedures as it deems desirable for the conduct of its respective affairs and may appoint or employ a secretary or other agents, any of whom may be, but need not be, an officer or employee of the City. Any agent may be removed at any time by the Board of Trustees.

Section 9.02 Information to be Made Available to Board of Trustees. To enable the Board of Trustees to perform all of its respective duties under the Plan, the City shall provide the Board of Trustees with access to the following information for each Employee: name and address, social security number, birthdate, dates of commencement and termination of employment, reason for termination of employment, annual compensation, and such other information as the Board of Trustees may require. To the extent the information is available in City records, the City shall provide the Board of Trustees with access to information relating to each Employee's Participant contributions, benefits received under the Plan and marital status. If such information is not available from the City's records, the Board of Trustees shall obtain such information from the Participants. The Board of Trustees and the City may rely on and shall not be liable for any information which an Employee provides, either directly or indirectly. As soon as possible following a Participant's termination of employment for any reason, the City shall certify in writing to the Board of Trustees such Participant's name, address, date and reason for his or her termination of employment.

Section 9.03 General Duties and Powers of Board of Trustees. The Board of Trustees shall decide all questions arising in the administration, interpretation and application of

the Plan and Trust Agreement, including all questions relating to eligibility, vesting, and distribution. The Board of Trustees may designate any person or entity to carry out any of the Board of Trustees' responsibilities under the Plan and may employ one or more persons to render advice with regard to any responsibility the Board of Trustees has under the Plan. The Board of Trustees from time to time shall direct the Plan's third party administrator concerning the payments to be made out of the Pension Trust pursuant to this Plan. All notices, directions, information, and other communications from the Board of Trustees shall be in writing.

Section 9.04 Recordkeeping Duties and Powers of Board of Trustees. The Board of Trustees shall keep a record of all the Board of Trustees' proceedings and shall keep all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Plan and Pension Trust, including records to reflect the affairs of this Plan, to determine the amount of vested and/or forfeitable benefits of the respective Participants, and to determine the amount of all benefits payable under this Plan. Subject to the requirements of law, any person dealing with the Board of Trustees may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the Board of Trustees as evidence of any action taken or resolution adopted by the Board of Trustees.

Section 9.05 Investment of Pension Trust.

(a) **Duties of Board of Trustees.** The duty of the Board of Trustees is to hold in trust the funds it receives. Except to the extent Participants are allowed to self-

direct investment of the funds allocated to their Account, the Board of Trustees shall have exclusive authority and discretion to manage and control the assets of the Pension Trust and to manage, invest and reinvest the Pension Trust and the income from it under this Section, without distinction between principal and income. The Board of Trustees shall be responsible only for such sums that it actually receives as Trustee.

(b) Powers of Board of Trustees. The Board of Trustees 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 Pension Trust, without previous application to, or subsequent ratification of, any court, tribunal or commission, or any federal or state governmental agency. The Board of Trustees may invest in real property and all interests in real property, 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, in qualified pooled funds, or in pooled investment funds of an insurance company qualified to do business in the state, and in life insurance and annuity contracts (including group or individual annuities). All powers of the Board of Trustees shall be subject to the requirements of state law.

(c) Participant Direction of Investments. Pursuant to rules, regulations, and policies adopted by the Board of Trustees, each Participant shall direct the investment of funds allocated to the Participant's Account. The Board of Trustees

shall select and make available, several investment vehicles which Participants may elect to invest the funds allocated to their Account. The Board of Trustees shall adopt and establish rules, regulations, and policies concerning Participant direction of investment, including the options available, election forms, limitations on the type or mix of investment vehicles and procedures for Participants to change their investments.

Section 9.06 Administrative Powers of the Board of Trustees. Subject to the requirements imposed by law, the Board of Trustees shall have all powers necessary or advisable to carry out the provisions of this Plan and the Trust Agreement and all inherent, implied and statutory powers now or subsequently provided by law, including specifically the power to do any of the following:

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

individual holding and owning such property in absolute and unconditional ownership;

(c) To abandon, compromise, contest and arbitrate claims and demand; to institute, compromise and defend actions at law (but without obligation to do so); in connection with such powers, to employ counsel as the Board of Trustees shall deem advisable and to exercise such powers all at the risk and expense of the Pension Trust;

(d) To borrow money for this Pension Trust upon such terms and conditions as the Board of Trustees deem advisable, and to secure the repayment of such by the mortgage or pledge of any assets of the Pension Trust;

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

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

Section 9.07 Advice of Counsel. The Board of Trustees may consult with legal counsel, who may be counsel for the City, or the Board of Trustee's own counsel, with respect to the meaning or construction of the Plan and Trust Agreement or the Board of Trustees' obligations or duties. The Board of Trustees shall be protected from

any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of such counsel, to the extent permitted by law.

Section 9.08 Records and Accounts of the Board of Trustees. The Board of Trustees shall keep all such records and accounts which may be necessary in the administration and conduct of the Pension Trust. The Board of Trustees' records and accounts shall be open to inspection by the City at all reasonable times during business hours. 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 Board of Trustees 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. After the close of each year of the Pension Trust, the Board of Trustees shall render to the City a statement of assets and liabilities of the Pension Trust for such year.

Section 9.09 Compensation of Board of Trustees. A Trustee who is not a full-time employee or elected official of the City shall be entitled to reasonable compensation for its services. Compensation shall be comparable to charges for similar services made from time to time by other trustees in the geographic area in which the Trustee has its principal place of business.

Article X. CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN AND TRUST

Section 10.01 Termination of Plan. The expectation of the City is to 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 to terminate this Plan in whole or part at any time. The termination of this Plan by the City in no event shall have the effect of re-vesting any part of the Pension Trust in the City. If the Plan is terminated by action initiated by the City Council, each Participant shall receive a termination bonus in addition to receiving one hundred percent (100%) of his or her vested benefit under this Plan. Such termination bonus shall be equal to eighteen percent (18%) if the Plan is terminated prior to October 1, 2024, or twenty-four percent (24%) if the Plan is terminated on or after October 1, 2024, of the Participant's annual salary on the date the Plan is terminated and shall be credited to the Participant's Account in one or more annual installments, subject to the limitations of Section 4.02 and Code Section 415. A termination of this Plan shall not be deemed initiated by the City Council if the principal reason for such termination is any federal or state statute, regulation, judicial decision, other requirement or request of Plan Participants. The principal reason for termination shall be stated in the ordinance terminating the Plan and shall be controlling for all purposes of this Plan. Any termination bonus under this Plan shall be distributed under the terms of Article VII.

Section 10.02 Termination of Pension Trust. The Pension Trust created by execution of this Agreement shall continue in full force and effect for such time as may be necessary to accomplish the purposes for which it was created, unless sooner terminated and discontinued by the City. In its discretion, the Board of Trustees may request a favorable determination letter from the Internal Revenue Service stating that the prior qualified status of the Plan has not been affected by such

termination. Such termination shall take effect as of the date of the delivery of the notice of termination and favorable determination letter to the Board of Trustees.

Section 10.03 Distribution of Pension Trust on Termination. If the Pension Trust is terminated under this Section, the Board of Trustees shall determine the value of the terminated Pension Trust and of the respective interests of the Participants and Beneficiaries under Article V as of the business day next following the date of such termination. The value of the interest of the respective Participant or Beneficiary in the Pension Trust shall be vested in its entirety as of the date of the termination of the Plan. The Board of Trustees then shall transfer to each Participant or Beneficiary the net balance of the Participant's Account or interest in the Pension Trust unless the Board of Trustees decides to retain the assets and pay them under the terms of this Plan as if no termination had occurred.

Section 10.04 Amendments to Plan and Trust Agreement. At any time the City may amend the Plan and Trust Agreement, provided that pursuant to the requirements of the Colorado Revised Statutes, any amendment to the Plan must be approved by a vote of at least sixty-five percent of the total votes cast by all police officers actively employed by the City and all former employees who are entitled to a benefit from the Plan. Such vote may be taken by written or electronically communicated consent. No amendment shall cause the Pension Trust to be diverted to purposes other than for the exclusive benefit of the Participants and their Beneficiaries. No amendment shall discriminate in favor of highly-compensated Employees. Notwithstanding anything in the Plan at any time to the contrary, the Plan and Trust Agreement may be amended administratively by the

Director of Employee Relations, the Director of Finance and the City Clerk on behalf of the City at any time without a vote to conform to the provisions and requirements of federal and state law with respect to the Plan and Trust Agreement or any amendments to such laws or regulations or rulings issued pursuant to them or at the direction and requirement of the Internal Revenue Service. No such amendment shall be considered prejudicial to the interest of any Participant or Beneficiary under this Plan.

Article XI. MISCELLANEOUS

Section 11.01 Benefits to be Provided Solely from the Pension Trust. All benefits payable under this Plan shall be paid or provided solely from the Pension Trust, and the City assumes no liability or responsibility for payment of benefits.

Section 11.02 Notices from Participants to be Filed with Board of Trustees. Whenever provision is made in the Plan 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 signed by the Participant and delivered to the Board of Trustees in person or by certified mail. If a form is furnished by the Board of Trustees for such purpose, a Participant shall give written notice of his or her exercise of any option or election or of his or her designation of any Beneficiary on the form provided for such purpose. Written notice shall not be effective until received in good order by the Board of Trustees.

Section 11.03 Text to Control. The headings of articles and Sections are included solely for convenience of reference. If any conflict between any heading and the text of this Plan and Trust Agreement exists, the text shall control.

Section 11.04 Expenses of Plan. Any expenses of Plan administration, including but not limited to accounting fees, legal fees, premiums for errors and omissions insurance for the Board of Trustees, and Trustee fees, shall be payable from the Pension Trust to which the expenses are directly allocable. Any expenses incurred for the benefit of all Plan Participants shall be charged against the Pension Trust. In its discretion, the City may elect to pay all or any part of the administration expenses incurred under the Plan.

Section 11.05 Severability. If any provision of this Plan and Trust Agreement is illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions. On the contrary, such remaining provisions shall be fully severable, and the Plan and Trust Agreement shall be construed and enforced as if such illegal or invalid provisions never had been inserted in the Plan and Trust Agreement.

Section 11.06 Jurisdiction. This Plan shall be construed and administered under the laws of the State of Colorado when the laws of that jurisdiction are not in conflict with federal substantive law.

Section 11.07 Plan for Exclusive Benefit of Participants - Reversion Prohibited. This Plan and Trust Agreement has been established for the exclusive benefit of the Participants and their Beneficiaries. Under no circumstances shall any funds contributed to or held by the Board of Trustees at any time revert to or be used by or enjoyed by the City, except to the extent permitted by law.

Section 11.08 Terminated Pension Plan. The Board of Trustees is authorized to receive and add to the Pension Trust the assets, including insurance contracts, if any, of the

City Police Pension Plan as terminated (“Terminated Plan”). Upon such transfer, the assets of the Terminated Plan shall be allocated as follows:

- (a) The actual annual contribution by each Participant to the Terminated Plan shall be allocated to such Participant.
- (b) The actual amount of the City’s annual contribution on behalf of each Participant to the Terminated Plan shall be allocated to such Participant.
- (c) The actual amount of the state’s annual contribution on behalf of each Participant to the Terminated Plan shall be allocated to such Participant.
- (d) The earnings which have accrued to each Participant’s individual Account within the supplemental fund of the Terminated Plan shall be allocated to such Participant.
- (e) The balance of the Terminated Plan fund after purchasing annuity contracts on behalf of terminated Participants who have vested rights shall be allocated among Participants in the Terminated Plan in the ratio which each Participant’s Account, determined under Sections (a) through (d) of this Section, bears to the Accounts of all Participants in the Terminated Plan.

Such allocated amounts shall be held in segregated accounts for the Participants which shall be one hundred percent (100%) vested at all times and which shall be distributed pursuant to the provisions of Article VII.

APPROVED this ____ day of _____, 20____ by the Board of Trustees of the
Lakewood Police Money Purchase Pension Plan and Trust Agreement.

Brent Berninger, Chairperson

APPROVED by resolution the ____ day of _____, 20____ by the City Council of the
City of Lakewood, Colorado.

Wendi Strom, Mayor

CITY OF LAKEWOOD
POLICE MONEY PURCHASE PENSION PLAN
AND TRUST AGREEMENT

Amended and Restated Effective
~~September 9, 2019~~
January 1, 2024

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**CITY OF LAKEWOOD
POLICE MONEY PURCHASE PENSION PLAN
AND TRUST AGREEMENT**

Article I. PREAMBLE

Section 1.01 **Name and Purpose of Plan and Trust Agreement.** Effective March 28, 1978 by virtue of Ordinance 0-78-24, the City of Lakewood, Colorado, established the City of Lakewood Police Money Purchase Pension Plan to provide retirement benefits to police officers employed by the City, and in conjunction therewith, the City established the City of Lakewood Police Duty Death and Disability Trust to provide benefits to the survivors and dependents of police officers killed or incurring a Total Disability in the line of duty. Effective December 31, 1992, the Plan document was removed from the City of Lakewood Municipal Code, by virtue of Ordinance O-93-9. The Plan, as in effect under the Municipal Code on December 31, 1992, is hereby amended and restated in its entirety. The provisions of the City of Lakewood Police Money Purchase Pension Plan, as amended and restated effective September 9, 2019, shall supersede any and all provisions of the Plan in effect prior to September 9, 2019. The Plan was again amended and restated as of January 1, 2024. This restatement of the Plan shall be effective January 1, 2024, unless otherwise specified. Participants who terminate employment prior to ~~September 9~~January 1, 2019~~2024~~, shall have their benefit under the Plan determined in accordance with the provisions of the Plan in effect on the date of termination of employment. Any Participant who was a Participant in the Plan on ~~September 8~~January 1, 2019~~2024~~, shall continue as a Participant in the Plan under this amended and restated Plan. The Plan and Pension Trust-~~Fund~~ is created for the

exclusive benefit of employee-participants and their beneficiaries. The Plan is intended to qualify under Section 401(a) of the Code, and the trust created under the Plan is intended to be exempt under Section 501 of the Code. The Plan is a governmental plan under Code Section 414(d) and Section 3(32) of ERISA and is therefore exempt from complying with the requirements of ERISA.

In order to clarify the administration and operation of the Duty Death and Disability Trust, the provisions relating to the Duty Death and Disability Trust and the disability benefits provided to Participants thereunder are hereby governed by a separate Plan and Trust Agreement to be known as the City of Lakewood Police Duty Death and Disability Plan and Trust Agreement. Participants who suffer Total Disability or who are killed in the line of duty on or after January 1, 1994, shall have their disability and death benefits determined in accordance with the provisions of the City of Lakewood Police Duty Death and Disability Plan and Trust Agreement, as Amended and Restated January 1, 1994, and the provisions of such Plan and Trust Agreement shall supersede any and all prior versions of the Plan and Trust in effect prior to January 1, 1994.

Article II. DEFINITIONS

When used in this Plan, the following words shall have the following meanings, unless the context clearly indicates otherwise:

Section 2.01 "Account" unless otherwise indicated, means a Participant's entire interest in the Pension Trust Fund created by the City's contributions, the Participant's own contributions, and the income, expenses, gains and losses attributable to such contributions.

- Section 2.02** "Beneficiary" means the person who, under the Plan, becomes entitled to receive a Participant's Account upon the Participant's death.
- Section 2.03** **"Board of Trustees"** or "Board" means the individuals selected and/or appointed whose selection and duties are provided for in Article VIII.
- Section 2.04** "City" means the City of Lakewood, Colorado.
- Section 2.05** "Code" means the Internal Revenue Code of 1986, as it may be amended, or any successor statute of similar purpose.
- Section 2.06** "Compensation" means the total amount paid by the City to a Participant as basic salary (including performance incentive awards) during the Plan Year, excluding overtime pay, pension and retirement benefits, living expenses, other allowances, and all contributions by the City to this Plan, or any other tax qualified plan, or any health, accident or welfare fund or plan, or similar benefit. Effective January 1, 2009, Compensation shall include "differential wage payments" made to a Participant with respect to active military service, in accordance with Code Section 414(u)(12). Compensation shall be determined before taking into account any salary deferrals to a plan of deferred compensation under Code Section 457 ~~of the Code~~ or a cafeteria plan under Code Section 125 ~~of the Code~~. For Plan Years beginning after December 31, 1997, "Compensation" also includes elective deferrals under ~~§§~~Code Sections 125, 132(f)(4), 402(e), 402(h)(1)(B), 403(b), and 457(b) ~~of the Code~~ and employee contributions described in §Code Section 401(h) ~~of the Code~~ which are treated as ~~Employer~~employer contributions, to the extent such amounts would have been received and includable in the Employee's gross income but for the enumerated ~~sections~~Sections of the Code.

For Plan Years beginning after December 31, 2001, the amount of Compensation used to determine the retirement benefit of a Participant must not exceed ~~\$200,000~~the limitation amount set forth in Code Section 401(a)(17) for defined contribution plans as annually adjusted ~~in accordance with~~pursuant to Code ~~§Section~~ 401(a)(17). The Compensation limitation in effect for any Plan Year (or for any twelve-month Compensation period) is the limitation in effect at the beginning of that Plan Year (or other twelve-month period). For a Plan Year (or other compensation measuring period) or less than twelve months, the Compensation limitation is a prorated dollar amount, determined by multiplying the Compensation limitation by a fraction, the numerator of which is the number of months in the short period and the denominator of which is twelve.

Section 2.07 ~~"Effective Date"~~"Effective Date" of this Plan means March 26, 1978. ~~"Restated"~~Unless otherwise specified, the Effective Date~~"means September 9 of this restatement shall be January 1, 2019"~~2024.

Section 2.08 ~~"Eligible Retirement Plan"~~"Eligible Retirement Plan" means for the purposes of the direct rollover provisions of ~~§Code Section~~ 4.06(c) any defined contribution plan, defined benefit plan, annuity contract described in Code ~~§Section~~ 403(b), individual retirement account (IRA) or annuity described in Code ~~§§Sections~~ 408(a) or (b), Roth IRA described in Code ~~§Section~~ 408A, and any eligible plan under Code ~~§Section~~ 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution

to a surviving ~~spouse~~Spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code ~~§~~Section 414(p) or C.R.S. ~~§~~Section 14-10-113.

Section 2.09 ~~"Employee"~~"Employee" means any sworn police officer or agent of the Lakewood Police Department f/k/a the Department of Public Safety and recruits of the City.

Section 2.10 ~~"Normal Retirement Age"~~"Normal Retirement Age" means effective January 1, ~~1989~~2020, for purposes of eligibility to receive benefits under this Plan, the date a Participant attains age fifty~~five~~ or completes a minimum of twenty years of continuous service with the City.

Effective January 1, 1989, for purposes of eligibility to receive other benefits provided by the City to Employees upon retirement, the required retirement age shall be:

(a) For persons who are Employees, as of January 1, 1989, the date an Employee attains age fifty-five, provided the Employee has completed at least ten years of continuous service with the City, or at any age upon completion of twenty years of continuous service with the City.

(b) For persons who become Employees on or after January 1, 1989, the date an Employee attains age fifty-five, provided the Employee has completed at least twenty years of continuous service with the City, or at any age upon completion of twenty-five years of continuous service with the City.

Section 2.11 ~~"Participant"~~"Participant" means any Employee who has become a Participant under this Plan. Participation shall cease upon distribution of a Participant's entire vested interest and forfeiture of a Participant's entire non-vested interest after (or if a

Participant has no vested or non-vested interest then upon) termination of employment.

Section 2.12 **"Pension Trust"** means the pension trust established under Article IX, as it may be amended from time to time from which retirement benefits shall be paid under this Plan.

~~**Section 2.13** **"Plan"**~~

Section 2.13 **"Plan"** means the City of Lakewood Police Money Purchase Pension Plan and Trust Agreement set forth herein, and all subsequent amendments to it.

~~**Section 2.14** **"Plan Manager"** means the committee appointed to administer this Plan as described in Article VIII.~~

Section 2.14 ~~**Section 2.15**~~ **"Plan Year"** means the City's fiscal year, which, as presently established, commences on January 1st of each year, which shall also be the fiscal year of the trust established under this Plan.

Section 2.15 ~~**Section 2.16**~~ **"Spouse"** means, as of May 1, 2013, both a party who is married to a Participant pursuant to the provisions of the "Uniform Marriage Act", Colorado Revised Statutes Section 14-2-101, et. seq., as well as a party to a civil union pursuant to Colorado Revised Statutes Section 14-15-101, et. seq. However, in situations where the Code has a different definition of spouse in ~~sections~~ Sections pertaining to qualification or operation of governmental plans, the definition of spouse, as stated in the Code, shall control.

Section 2.16 ~~**Section 2.17**~~ **"Total Disability"** means a disability which is incurred by reason of service as a police officer and which renders a Participant unable to perform satisfactorily the duties of his or her employment with the City as a sworn police

officer or agent of the Lakewood Police Department as determined by a physician selected by the Board of Trustees, and which results in his or her termination of employment with the City.

Section 2.17 ~~Section 2.18~~ **"Trustee"** means a member of the Board of Trustees appointed or elected ~~per~~pursuant to Article VIII.

~~The masculine gender shall include the feminine, and the singular shall include the plural.~~

Article III. PARTICIPATION

Section 3.01 Who May Become a Participant. Any Employee ~~of the Lakewood Police Department~~ as of March 26, 1978, ~~as "Employee" is defined in Article II,~~ shall become a Participant on March 26, 1978. Any other ~~or new Employee~~individual shall become a Participant on the date he/ or she ~~is appointed as a sworn police officer or agent or becomes a recruit of the Lakewood Police Department provided such Employee must be an Employee of the City when he/she becomes a Participant~~becomes an Employee, as defined in Article II.

Article IV. CONTRIBUTIONS

Section 4.01 Determination of Contribution by City. Except as provided in this ~~section~~Section, the City shall contribute and pay into the Pension Trust annually (or more frequently, as the City may determine) on behalf of each Participant an amount equal to ten percent (10%) of such Participant's Compensation; effective April 1, 2018, the City's contribution on behalf of each Participant shall be increased by six-tenths of one percent (.6%) for each of the next five (5) twelve-month fiscal years beginning April 1 until the City contribution equals thirteen

percent (13%) (as demonstrated below) and thereafter until modified thirteen percent (13%), as reduced by any amounts forfeited under Section 7.03, and by any amounts that the City may be required to contribute by any state or federal law providing retirement, disability or death benefits for Participants under this Plan.

Prior to March 31, 2018	10%
April 1, 2018-March 31, 2019	10.60%
April 1, 2019-March 31, 2020	11.20%
April 1, 2020-March 31, 2021	11.80%
April 1, 2021-March 31, 2022	12.40%
April 1, 2022-March 31, 2023	13%

A Participant who retires, dies, incurs Total Disability or terminates employment for any other reason shall share in the contribution of the City based on his or her Compensation for the period when he or she was a Participant.

Section 4.02 Limitation on Annual Additions.

(a)

(a) Annual Additions Limitation. The “Annual Additions” to the ~~account~~Account of any Participant for a limitation year shall not exceed the lesser of ~~forty thousand dollars (\$40,000.00) (the limitation amount set forth in Code Section 415(d) for defined contribution plans as annually adjusted for cost of living increases by the Secretary of Treasury pursuant to Code Section 415(d))~~ or one-hundred percent (100%) of such Participant's “Compensation”. The Annual Additions limitation shall apply to limit the total Annual Additions to all of the

defined contribution plan accounts of a Participant. The Annual Additions limitation year shall be the Plan Year.

(b) ~~“Annual Addition”~~. For the purpose of applying the limitations of this ~~section~~Section, ~~“Annual Additions”~~ include City contributions, forfeitures, contributions by the state, and Participant contributions. “Annual Additions” shall not include (i) restorative payments made to restore losses to the Plan resulting from actions by a fiduciary for which there is a reasonable risk of liability for breach of fiduciary duty under applicable Colorado law, where participants who are similarly situated are treated similarly with respect to the payments; (ii) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (iii) rollover contributions as described in Code Sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16); or (iv) repayments of loans made to a ~~participant~~Participant from the Plan.

(c) ~~“Compensation”~~. For purposes of applying the limitations of this ~~section~~Section, the term ~~“Compensation”~~ shall be determined in accordance with Code Section 415(c)(3)(D) and Treasury Regulations Section 1.415(c)-2(d), and shall mean Compensation as defined in Section 2.06. In addition, the following amounts shall be included for Plan Years beginning on or after January 1, 2008:

1. wages and other regular pay, including overtime or shift differentials, commissions, bonuses, or other similar payments, received by a Participant within the later of 2 ½ months after the Participant’s severance from employment or the end of the limitation year in which the Participant’s severance from employment occurs, but only to the extent such wages and other regular pay represents payment for services performed prior to

- severance from employment and would have been paid to the Participant if he or she continued employment with the City; and
2. vacation and sick leave payments received by a Participant within the later of 2 ½ months after the Participant's severance from employment or the end of the limitation year in which the Participant's severance from employment occurs, but only to the extent such vacation and sick leave payments are for unused bona fide sick, vacation or other leave and the Participant would have been able to use the leave if he or she continued employment with the City; and
 3. amounts received pursuant to a nonqualified deferred compensation plan, but only if the payment would have been paid such amounts at the same time if the Participant had continued in employment with the City and only to the extent the payment is included in the Participant's gross income.

Further, for the purposes of applying the limitations of this ~~section~~Section, "Compensation" for Plan Years beginning on or after January 1, 2008 shall not include:

1. payments to a Participant who does not currently perform services for the City by reason of qualified military service;
2. amounts paid to a Participant who is permanently and totally disabled; or
3. any amounts earned by a Participant but not paid during the limitation year solely because of the timing of pay periods and pay dates.

Section 4.03 Time and Method of Payment of Contribution by the City. The City shall make payment of its contribution for any Plan Year in cash in one or more installments. The City's contributions for any Plan Year shall be paid to the Trustee and shall become a part of the Pension Trust.

Section 4.04 Return of City Contributions. A contribution by the City to the Plan shall be returned to the City, at the City's discretion, under any of the following circumstances:

- (a) If a contribution is made by the City by a mistake of fact, including a mistaken excess contribution, within one year of its payment to the Plan; or
- (b) If qualification of the Plan is denied, within one year after the date of denial of qualification of the Plan.

The City shall state by written request to the Trustee the amount of the contribution to be returned and the reason for such return. Such amount shall not include any earnings attributable to the contribution and shall be reduced by any losses attributable to the contribution. Upon sending such request to the Trustee, the City simultaneously shall send to the Board of Trustees a copy of the request. The Trustee shall return such contribution to the City immediately upon receipt of the written request by the City.

Section 4.05 City's Obligations. The adoption and continuance of the Plan shall not be deemed to constitute a contract between the City and any Employee or Participant, nor to be a consideration for, or an inducement or condition of, the employment of any person. Nothing in this Plan shall be deemed to give any Employee or Participant the right to be retained in ~~its~~the City's employ, nor shall it interfere with the right of any Employee or Participant to terminate his or her employment at any time.

Section 4.06 Contributions by Participants.

- (a) Mandatory ~~Pension~~ Contributions. To participate in this Plan, each Participant must contribute to the Pension Trust the specified percentage of his or

[her](#) Compensation each month. The specified percentage for the Plan Year beginning March 26, 1978, shall be six percent [\(6%\)](#); for the Plan Years beginning January 1, 1979, and January 1, 1980, seven percent [\(7%\)](#); and for the Plan Year beginning January 1, 1981, and thereafter, until modified, eight percent [\(8%\)](#); effective April 1, 2018, the eight percent (8%) shall be increased by six-tenths of one percent (.6%) for each of the next five (5) twelve-month fiscal years beginning April 1 until the Participant contribution equals eleven percent (11%) (as demonstrated below) and thereafter until modified eleven percent (11%). The City shall pick up the ~~Employee~~[mandatory](#) contributions required [hereunder](#) for all Compensation paid after January 1, 1986, and the contributions so picked up shall be treated as employer contributions pursuant to [Code](#) Section 414(h)(2) ~~of the Code~~ in determining tax treatment under the Code. The City shall pay these ~~Employee~~[mandatory](#) contributions directly to the Pension Trust, in lieu of paying such amounts to Employees, and such contributions shall be paid from the same funds which are used in paying salaries to the Employees. ~~Employee~~[Mandatory](#) contributions so picked up shall be treated for all purposes of this Plan other than federal tax, in the same manner as Employee contributions made prior to the date picked up.

January 1, 1981-March 31, 2018	8%
April 1, 2018-March 31, 2019	8.60%
April 1, 2019-March 31, 2020	9.20%
April 1, 2020-March 31, 2021	9.80%
April 1, 2021-March 31, 2022	10.40%

April 1, 2022-March 31, 2023	11%
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(b) Voluntary Contributions. In order to encourage savings and investments by Participants, each Participant voluntarily may contribute to the Pension Trust an amount equal to a percentage which is the difference of one hundred percent (100%) minus the City's contribution set forth in Section 4.01 and the Participant's mandatory contribution ~~(set forth in Section 4.06(a))~~ of Compensation on an after-tax basis subject to the ~~forty thousand dollar (\$40,000) contribution~~ limitation set forth in Section 4.02(a), in addition to the contributions under subparagraph (a) of this subsection. All voluntary contributions shall be made by payroll deduction. The percentage, if any, which a Participant contributes under this ~~section~~Section may be changed by filing a written notice with the Board of Trustees prior to the effective date of such change. All voluntary contributions shall be paid to the Board of Trustees by the City at least monthly. No Participant shall have any obligation to make any voluntary contribution. All voluntary contributions and any earnings or gains on those voluntary are nonforfeitable and eligible for withdrawal by the Participant at any time pursuant to the Participant's request completed in good order pursuant to the Plan's administrative procedures and provided to the Plan's third party administrator.

(c) Rollover Contributions. Notwithstanding the limits imposed upon Participant contributions, a Participant may contribute any amount of funds to the Plan in any year if such contribution comes from an Eligible Retirement Plan, as defined in Section 2.08, except that the Plan will not accept a rollover contribution

from a Roth IRA described in Code ~~§~~[Section](#) 408A. Rollover contributions shall be added to a segregated Account attributable to such Participant's voluntary contributions, if any, and shall be nonforfeitable.

**Article V. DETERMINATION AND VESTING
OF PARTICIPANTS' ACCOUNTS**

Section 5.01 Accounting and Allocation.

(a) Allocation of City Contributions. As of the last day of each calendar month of the Plan Year, the Board of Trustees shall allocate to the Account of each Participant any amounts contributed by the City to the Pension Trust pursuant to Section 4.01 for the year then ended ~~in the manner provided in Section 4.01.~~ Forfeitures used to reduce City contributions shall be allocated as of the last day of each Plan Year.

(b) Allocation of Earnings, Losses and Changes in Fair Market Value of the Net Assets of the Pension Trust Fund. Earnings and losses for each investment held by the Pension Trust and changes in the fair market value of the net assets of the Pension Trust shall be computed and allocated to each Participant who has their Account invested in such investment, in the ratio in which the total dollar value of each particular investment for each Participant (whether or not vested) in the Pension Trust bears to the aggregate dollar value of the particular investment held by all Participants, calculated on the last previous valuation date.

(c) Participants' Accounts. The Board of Trustees shall maintain an Account for each Participant showing the dollar value of his or her current Account in the Pension Trust as of the last previous valuation date. This Account shall be ~~known as the~~ comprised of separate accounts for City contributions ~~account. Separate~~

~~accounts, to be known as~~and Participant ~~contribution accounts, also shall be kept~~
~~showing the~~ contributions of each Participant and the earnings, losses and changes
in fair market value thereof. The Board of Trustees shall distribute, or cause to be
distributed to each Participant at least annually, a written statement setting forth the
current value of each Participant's Account, and setting forth such other
information as the Board of Trustees determines.

(d) Valuation Dates. The valuation date of the Pension Trust ~~fund~~ shall be
periodically as determined by the Board of Trustees, but at least once each calendar
quarter, at which time the Board of Trustees shall determine the value of the net
assets of the Pension Trust ~~fund~~ (i.e., the value of all assets of the Pension Trust
~~fund~~ at its then-current fair market value, less all liabilities) and the value of
contributions by the City and all Participants.

(e) Computation Dates. The Board of Trustees shall compute the value of each
Participant's Account in the Pension Trust periodically as determined by the Board
of Trustees, but at least once each calendar quarter, and shall base such
computations on the valuation of the assets in the Pension Trust. Upon distribution
under Section 7.02, the Board of Trustees shall adjust the dollar value of such
Participant's Account to reflect the values determined on the most recent valuation
date prior to distribution. The Participant's and the City's contributions shall be
allocated to the Participant's Account prior to distribution. The dollar value of the
Account, as of the most recent valuation date shall be the amount which the Board
of Trustees shall distribute to the Participant pursuant to Section 7.02.

(f) Expenses. General expenses of the Plan which are not attributable to any specific investment or Participant, such as insurance premiums, consulting, actuarial, legal, banking and accounting fees shall be allocated to and deducted from the Accounts of all Participants at the end of each calendar quarter in the ratio in which the value of each Participant's Account bears to the aggregate value of the Accounts of all Participants. Expenses which are incurred on behalf of a specific Participant, including but not limited to expenses incurred as a result of a Participant exercising his or her investment or distribution options under the Plan, shall be allocated to and deducted from the Account of the individual Participant.

Section 5.02 Vesting of Participants' Accounts.

(a) General Rules. If any Participant reaches his or her Normal Retirement Age, dies or suffers Total Disability while a Participant, his or her entire Account shall become fully vested without regard to the number of years of ~~continuous service~~Continuous Service, as defined in Section 5.04, under the Plan. Any Account, whether vested or forfeitable, shall become payable to a Participant or his ~~beneficiaries~~or her Beneficiaries only to the extent provided in this Plan. A Participant who has designated a Beneficiary and who dies shall cease to have any interest in this Plan or in his or her Account, and his or her Beneficiary shall become entitled to distribution of the Participant's Account under this Plan and not as a result of any transfer of the interest or Account. A Participant's Account attributable to his ~~own~~or her mandatory and voluntary contributions shall be fully vested at all times.

(b) Vesting Schedule. A Participant shall have a vested interest in the portion of his or her Account attributable to City contributions in accordance with the following schedule:

Years of Continuous Service	Percentage of Account Which is Vested
Less than 1.....	0%
1 or more but fewer than 2	20%
2 or more but fewer than 3	40%
3 or more but fewer than 4	60%
4 or more but fewer than 5	80%
5 or more	100%

Section 5.03 Full Vesting Upon Termination or Partial Termination of Plan. Upon the termination or partial termination of this Plan, the Accounts and other interests of all Participants affected, as of the date such termination or partial termination occurred, shall be fully vested.

Section 5.04 Service Included in Determination of Vested Accounts. All years of ~~continuous service~~Continuous Service under the Plan shall be included for the purpose of determining a Participant's vested Account under Section 5.02. Continuous ~~service~~Service shall be the period of time ~~a sworn police officer, agent or recruit of the Lakewood Police Department~~an Employee, as defined in Article II, is employed by the City without interruption. Continuous ~~service~~Service shall be determined in accordance with the following rules:

(a) A leave of absence, not in excess of one year, granted by the City for purposes other than military service, including, but not limited to, sickness, accident or other casualty, shall not be considered as a break in ~~continuity of service~~Continuous Service or a termination of employment, but such leave of

absence shall not be counted as additional ~~continuous-service~~Continuous Service. The City, from time to time, may extend such leave of absence for additional periods of not in excess of one year and in accordance with a uniform, nondiscriminatory policy applicable to all Participants.

(b) Any Participant who has entered or enters the Armed Forces of the United States, in a period of national emergency declared by the President or Congress 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~~Continuous Service or a termination of employment, and such leave of absence shall be counted as additional ~~continuous-service~~Continuous Service, provided ~~he~~the Participant returns to the employ of the City within ninety days of the date on which he or she has the right to release from military service, or from the hospital in the event of service-caused disability, without intervening employment elsewhere. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credits with respect to qualified military service will be provided in accordance with Code Section 414(u).

(c) Dismissal or voluntary termination of employment shall be considered as a break in ~~continuity-of-service~~Continuous Service and a termination of employment, in which event subsequent reemployment shall be deemed to be new employment.

(d) A layoff by the City shall not be considered as a termination of employment or a break in ~~continuity-of-service~~Continuous Service if the Employee returns to work within thirty days after notification by the City to do so, and if said layoff is not in excess of six consecutive months plus any unexpired period of such thirty-

day notice. If the layoff is in excess of said period, a termination of employment and a break in ~~continuity of service~~Continuous Service shall be deemed to have occurred as of the end of such six-month period or the end of the period of such notice, whichever is later. If the Employee fails to return to work prior to the end of the period of such notice, such failure to report for work shall be deemed a termination of employment and a break in ~~continuity of service~~Continuous Service as of the end of the period of such notice.

(e) Service for Employment with the City. In the event an individual who was employed by the City as a full-time common law employee transfers employment within the City to the Lakewood Police Department as a sworn officer, agent or recruit, such an individual shall be credited with one Year of Continuous Service under this Plan for each year of service credited to such an individual under any retirement plan maintained by the City, provided that such an individual has not incurred a break in service as set forth in Section 5.04(c).

(f) The provisions of this ~~section~~Section shall be applied to all Participants in a like manner.

Article VI. RETIREMENT DATE – DESIGNATION OF BENEFICIARY

Section 6.01 Retirement Date. A Participant may retire on the last day of the month in which a Participant attains his or her Normal Retirement Age. Until actual retirement a Participant shall continue to participate in the Plan.

Section 6.02 Designation of Beneficiary. Each Participant shall designate a Beneficiary to receive his or her Account in the Pension Trust upon his or her death on the form prescribed by and delivered to the Board of Trustees. The Participant shall have

the right to change or revoke a designation at any time by filing a new designation or notice of revocation with the Board of Trustees. No notice to any Beneficiary nor consent by any Beneficiary shall be required to effect any change of designation or revocation. If a Participant fails to designate a ~~beneficiary~~Beneficiary before his or her death, or if no designated Beneficiary survives the Participant, the Board of Trustees shall pay his or her Account in the Pension Trust first to his or her surviving ~~spouse~~Spouse, if any, next to his or her descendants by right of representation, if any, or, if none, then to his or her personal representative. If no personal representative has been appointed, if actual notice of such is given to the Board of Trustees within sixty days after the Participant's death, and if his or her Account does not exceed ~~five thousand dollars~~\$5,000 (or \$7,000 on and after October 1, 2024), the Board of Trustees may pay his or her Account to such person as may be entitled to it under the laws of the state where such Participant resided at the date of his or her death. In such case, the Board of Trustees may require such proof of right or identity from such person as the Board of Trustees may deem necessary.

Section 6.03 Participant or Beneficiary Whose Whereabouts Are Unknown. In the case of any Participant or Beneficiary whose whereabouts are unknown, the Board of Trustees shall notify such Participant or Beneficiary at his or her last known address by certified mail with return receipt requested advising him or her of his or her right to a pending distribution. If the Participant or Beneficiary cannot be located in this manner, the Board of Trustees shall establish a custodial account for such Participant or Beneficiary in any federally insured bank for the purpose of holding

the Participant's Account until it is claimed by the Participant or Beneficiary or until proof of death satisfactory to the Board of Trustees is received. If proof of the death is received, the Board of Trustees shall distribute the Participant's Account in accordance with the provisions of Section 6.02 ~~of this article~~.

Article VII. DISTRIBUTION FROM TRUST FUND

Section 7.01 When Benefits Become Distributable and Effect of Distribution. When a Participant dies, suffers Total Disability, retires, terminates his or her employment for any other reason or transfers to employment elsewhere within the City, the portion of his or her vested Account attributable to City and Participant contributions shall be distributable under Section 7.02. Notwithstanding the above, if a Participant terminates employment with a vested benefit of less than \$5,000 (or \$7,000 on and after October 1, 2024), the Participant shall have 60 days from the date of the mailing of the tax notice explaining the Participant's options in which to direct the Board of Trustees as to the disposition of the vested benefit. If after 60 days the Participant has failed to direct the investment of the vested benefit and such vested benefit is less than \$1,000, then the Board of Trustees shall distribute the Participant's vested benefit to the Participant. Alternatively, if the Participant's vested benefit is more than \$1,000 and less than \$5,000 (or \$7,000 on and after October 1, 2024), then such vested benefit shall not be distributed until the Participant provides direction to the Board of Trustees as to the disposition of the vested benefit. When benefits are distributed under this Plan, a Participant shall cease to have any further interest or participation in the Pension Trust-Fund or any subsequent accruals or contributions to the Pension Trust-Fund, except that a

Participant shall retain the right to receive distribution of the value of his [or her](#) Account as determined at the last prior valuation date.

Section 7.02 Distribution of Benefits.

(a) Distribution of Participant Account. As soon as possible after being notified by the City that a Participant's vested Account is distributable, the Board of Trustees shall convert the vested Account into cash and shall distribute the [vested](#) Account to the Participant in the optional form of benefit selected by the Participant in accordance with Section 7.02(g).

(b) Distribution Upon Retirement. If a Participant's Account becomes distributable upon his [or her](#) termination of employment with the City because such Participant has attained Normal Retirement Age, the Board of Trustees shall distribute the [vested](#) Account to the Participant in the optional form of benefit selected by the Participant in accordance with Section 7.02(g). If a Participant terminates employment because of a service or non-service-incurred disability, the Board of Trustees shall distribute the [vested](#) Account to the Participant in the optional form of benefit selected by the Participant in accordance with Section 7.02(g).

(c) Distribution Upon Disability. If the Participant terminates employment because of Total Disability and dies before the payment of his [or her](#) benefits has commenced, his [or her vested](#) Account shall be distributed to the Beneficiary designated under Section 6.02 in accordance with the optional form of benefit selected by the Beneficiary in accordance with Section 7.02(g).

(d) Distribution Upon Death. Upon a Participant's death for any reason, the Board of Trustees shall distribute the vested Account to the Beneficiary designated under Section 6.02, with benefits commencing as soon as practical following the Participant's death, in accordance with the optional form of benefit selected by the Beneficiary in accordance with Section 7.02(g). A Beneficiary shall be able to elect a rollover of his or her interest in a deceased Participant's vested Account to an individual retirement account (IRA) or annuity described in Code §§Sections 408(a) or (b), or to a Roth IRA described in Code §Section 408A, subject to applicable Code requirements. If the Participant has not designated a Beneficiary, or if he or she has designated a Beneficiary who dies and the Participant has not designated a contingent Beneficiary, the Participant's vested Account shall be paid under Section 6.02. In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death.

(e) Distribution Upon Other Termination of Employment or Upon Transfer to Other Employment Within the City.

If a Participant's Account ~~balance~~ becomes distributable upon his or her termination of employment for any reason other than retirement, disability or death, or upon the Participant's transfer to other employment with the City, the Board of Trustees shall distribute the vested Account to the Participant in the optional form

of benefit selected by the Participant in accordance with Section 7.02(g). If the Participant dies prior to the date his or her benefit payments commence, his or her vested Account shall be distributed to his or her Beneficiary under Section 6.02 in accordance with the optional form of benefit selected by the Beneficiary in accordance with Section 7.02(g).

(f) Deferral of Distribution. Notwithstanding the foregoing, a Participant may elect to defer receipt of his or her vested Account. Such Participant shall receive income and ~~expenses~~expense allocations pursuant to ~~Section~~Sections 5.01(b) and (f) until the balance of the Participant's vested Account has been distributed. A Participant may make application for distribution of his or her vested Account in accordance with the procedures contained in this ~~section~~Section. In any event, distribution of a Participant's vested Account ~~benefit~~ shall be made no later than ~~the close~~April 1st of the calendar year following the calendar year in which the Participant attains age ~~70½~~72 (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later) or retires, whichever occurs later.

(g) Optional Forms of Benefit. Within sixty days after termination of employment for any reason, a Participant may elect by filing the appropriate form with the Board of Trustees, to have his ~~benefit under this Plan payable~~or her vested Account paid in one of the following optional forms:

1. lump sum distribution, or
2. periodic payments , or

3. ~~used to purchase~~ a fully paid annuity in a form selected by the Participant and approved by the Board of Trustees, or
4. a partial distribution of the Account, or
5. deferral of all or part of the Account in accordance with Section 7.02(~~ef~~), or
6. a combination of the above.

An election of optional benefit may be changed or revoked at any time before the distribution ~~has been made~~commences.

If a Beneficiary is electing, pursuant to Sections 7.02(c) and (d), an optional form of benefit under this Section due to the Participant's death, occurring after December 31, 2019, the Beneficiary must receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death if the Beneficiary is not:

1. The surviving Spouse of the Participant; or

2. Disabled or chronically ill; or

3. An individual who is not more than 10 years younger than the Participant; or

4. A child of the Participant who has not reached age of majority.

(h) Distribution for Rollover Transactions and Direct Transfers.

Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a Participant's election under the Plan, a Participant may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution, as defined in Code Section 402(c)(4), paid directly to an Eligible Retirement Plan as defined in Section 2.08, specified by the

Participant as a direct rollover. The Participant shall make such rollover request in writing and shall provide such information to the Board of Trustees as requested, including the name of the plan to which his or her interest is to be transferred and the name and address of the sponsor and the trustee of the new plan, when applicable.

For purposes of the direct rollover provisions of this Section 7.02(h), a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account (IRA) or annuity described in §§Code Sections 408(a) or (b) ~~of the Code~~, to a Roth IRA described in Code §Section 408A, or to a qualified defined contribution plan described in §§Code Sections 401(a) or 403(a) ~~of the Code~~ that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(i) Distributions for Health and Long-Term Care Insurance. Retired Participants may direct the Plan ~~Administrator's~~ third party administrator to remit up to \$3,000 each year from their vested Account to pay the cost of qualified health insurance and/or long-term care insurance, subject to applicable limitations imposed under Code §Section 402 and the Treasury Regulations thereunder. In order to be eligible for health and long-term care insurance distributions, a Participant must be separated from service with the ~~Employer~~City by reason of Total Disability or attainment of Normal Retirement Age under the Plan. The Plan

~~Administrator's~~ third party administrator must remit such insurance payments directly to the insurance provider. The \$3,000 annual limitation limits the total distributions from all retirement plans in which a Participant has an account. Notwithstanding the foregoing, distributions hereunder made on or after October 1, 2024, may be remitted to the insurance provider or the Participant.

Section 7.03 Disposition of Forfeitable Account on Termination of Employment. If a Participant's employment is terminated for any reason other than retirement, death or Total Disability, while any part of his or her Account ~~in the Pension Trust~~ is forfeitable, then that portion of his or her Account which is forfeitable shall be forfeited by him or her on the last day of the calendar month of the Plan Year in which the Participant terminates employment, shall remain in the Pension Trust, and shall reduce the City contribution for the Plan Year in which it is forfeited as provided under Section 4.01.

Section 7.04 Assignment of Benefits. All amounts payable by the Board of Trustees shall be paid only to the person entitled to them, and all such payments shall be paid directly to such person and not to any other person or corporation. Such payments shall not be subject to the claim of any creditor of a Participant, nor shall such payments be taken in execution by attachment or garnishment or by any other legal or equitable proceedings. No person shall have any right to alienate, anticipate, commute, pledge, encumber or assign any payments or benefits which he or she may expect to receive, contingently or otherwise, under this Plan, except the right to designate a ~~beneficiary or beneficiaries~~ Beneficiary or Beneficiaries; provided that this

~~section~~Section shall not affect, restrict or abridge any right of setoff or lien which the Pension Trust may have by law.

Notwithstanding the above, the Board of Trustees will comply with a domestic relations order (~~"~~"DRO"~~"~~). A DRO is a judgment, decree or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law) that relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent (~~"~~"Alternate Payee"~~"~~) of a Participant and which:

- (a) creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable to a Participant under this Plan;
- (b) specifies:
 - 1. the name and last known mailing address of the Participant and each Alternate Payee covered by the order;
 - 2. the amount or percentage of the Participant's Plan benefits to be paid to any Alternate Payee; or the manner in which such amount or percentage is to be determined; and
 - 3. the number of payments or the period to which the order applies and each plan to which the order relates; and
 - 4. payment(s) must commence no sooner than thirty (30) days nor later than one hundred twenty (120) days, from the issuance of the qualified DRO.

- (c) does not require the Plan to:
1. provide any type or form of benefit or any option not otherwise provided under the Plan;
 2. provide increased benefit; or
 3. pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under a prior DRO.

For purposes of this Plan, an Alternate Payee who had been married to the Participant or a partner to a civil union with the Participant for at least one year may be treated as an ~~Eligible~~eligible Spouse with respect to the portion of the Participant's benefit in which such Alternate Payee has an interest provided that the DRO provides for such treatment. In addition, if the DRO so provides, this Plan shall have the right to make an immediate distribution of the Alternate Payee's benefit, notwithstanding the fact that the Participant may not be eligible for immediate payment.

However, under no circumstances, may the spouse of an Alternate Payee (who is not a Participant hereunder) be treated as an ~~Eligible~~eligible Spouse under the terms of the Plan.

Upon receipt of any judgment, decree or order relating to the provision of payment by the Plan to an Alternate Payee pursuant to a state domestic relations law, the Board of Trustees shall promptly notify the affected Participant and any Alternate Payee of the receipt of such judgment, decree or order and shall notify the affected Participant and any Alternate Payee of the Board of Trustees' procedure for determining whether or not the judgment, decree or order is a DRO.

The Board of Trustees¹s shall establish a procedure to determine the status of a judgment, decree or order as a DRO and to administer Plan distributions in accordance with such procedure. Such procedure shall be in writing, shall include a provision specifying the notification requirements enumerated in the proceeding paragraph, shall permit an Alternate Payee to designate a representative for receipt of communications from the Board of Trustees and shall include such other provisions as the Board of Trustees shall determine, including provisions required under regulations promulgated by the General Assembly of the State of Colorado.

Section 7.05 Withdrawals. ~~Except as provided in this Plan~~ Effective October 1, 2024, a Participant ~~may withdraw any part~~ who is a Terminally Ill Individual and who has attained age 59-1/2 is eligible to request a withdrawal of his or her vested Account attributable to City or Participant contributions or to the earnings, losses and changes in the fair market value of such contributions without penalty under Code Section 72(t), subject to the Participant providing sufficient evidence to the Board of Trustees of his or her eligibility to receive a withdrawal hereunder. For purposes of this Section, "Terminally Ill Individual" means an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification. Participants may contact the Board of Trustees if repayment of this withdrawal is desired, provided, however, such repayment must be within three years of the date the withdrawal is made.

Section 7.06 Required Minimum Distribution Rules.

(a) General Rules.

1. Effective Date. The provisions of this Section 7.06 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
 2. Precedence. The requirements of this Section 7.06 will take precedence over any inconsistent provisions of the ~~plan~~[Plan](#).
 3. Requirements of Treasury Regulations Incorporated. All distributions required under this Section 7.06 will be determined and made in accordance with the Treasury Regulations under Code ~~§~~[Section](#) 401(a)(9), [and Section 401 of the Setting Every Community Up for Retirement Enhancement \(“SECURE”\) Act \(Division O of the Further Consolidated Appropriations Act, enacted December 20, 2019\), and the SECURE 2.0 Act of 2022 \(Division T of the Consolidated Appropriations Act of 2023, enacted December 29, 2022\), and the Treasury Regulations promulgated thereunder.](#)
 4. TEFRA ~~§~~[Section](#) 242(b)(2) Elections. Notwithstanding the other provisions of this Section 7.06, distributions may be made under a designation made before January 1, 1984, in accordance with ~~§~~[Section](#) 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the ~~plan~~[Plan](#) that relate to ~~§~~[Section](#) 242(b)(2) of TEFRA.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant¹'s entire interest will be distributed, or begin to be distributed, no later than as follows:

1. If the Participant's surviving ~~spouse~~Spouse is the Participant's sole designated beneficiary, then distributions to the surviving ~~spouse~~Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2 (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later), if later.
2. If the Participant's surviving ~~spouse~~Spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
3. If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
4. If the Participant's surviving ~~spouse~~Spouse is the Participant's sole designated beneficiary and the surviving ~~spouse~~Spouse dies after the Participant but before distributions to the surviving ~~spouse~~Spouse begin, this Section 7.06(b), other than Section 7.06(b)(1), will apply as if the surviving ~~spouse~~Spouse were the Participant.

5. For purposes of this Section 7.06(b) and Section 7.06(d), unless Section 7.06(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 7.06(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 7.06(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 7.06(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

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

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

- a) the quotient obtained by dividing the Participant's ~~account~~ Account balance by the distribution period in the Uniform Lifetime Table set forth in ~~§ 1.401(a)(9)-9 of the~~ Treasury Regulations Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- b) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's ~~account~~ Account

balance by the number in the Joint and Last Survivor Table set forth in ~~§ 1.401(a)(9)-9 of the~~ Treasury Regulations Section 1.401(a)(9)-9, using the Participant's and ~~spouse~~ Spouse's attained ages as of the Participant's and ~~spouse~~ Spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this Section 7.06(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

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

1. Death On or After Date Distributions Begin.

a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's ~~account~~ Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

- i. The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- ii. If the Participant's surviving ~~spouse~~Spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving ~~spouse~~Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving ~~spouse~~'Spouse's age as of the ~~spouse~~'Spouse's birthday in that year. For distribution calendar years after the year of the surviving ~~spouse~~'Spouse's death, the remaining life expectancy of the surviving ~~spouse~~Spouse is calculated using the age of the surviving ~~spouse~~Spouse as of the ~~spouse~~'Spouse's birthday in the calendar year of the ~~spouse~~'Spouse's death, reduced by one for each subsequent calendar year. Effective January 1, 2024, however, the surviving Spouse may elect to be treated as the Participant for purposes of calculating the minimum amount that will be distributed each year.
- iii. If the Participant's surviving ~~spouse~~Spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

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

c) Beneficiary Distribution Limitation. If the Participant dies after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, must receive all distributions under the Participant's vested Account by the end of the tenth calendar year following the year of the Participant's death.

2. Death Before Date Distributions Begin.

a) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's

~~account~~Account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 7.06(d)(1).

For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving Spouse of the Participant, (2) disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

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

c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving ~~spouse~~Spouse is the Participant's sole designated beneficiary, and the surviving ~~spouse~~Spouse dies before distributions are required to begin to the surviving ~~spouse~~Spouse under Section 7.06(b)(1), this

Section 7.06(d)(2) will apply as if the surviving ~~spouse~~Spouse were the Participant.

(e) Definitions. The following definitions apply to this Section 7.06.

1. Designated Beneficiary. The individual who is designated as the Beneficiary by a Participant, or by the Plan, who is a ~~“~~“designated beneficiary~~”~~” under Code §Section 401(a)(9) and ~~§ 1.401(a)(9)-1, Q&A-4, of the~~ Treasury Regulations Section 1.401(a)(9)-1, Q&A-4.

2. Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant~~'~~'s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant~~'~~'s required beginning date. For distributions beginning after the Participant~~'~~'s death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 7.06(b). The required minimum distribution for the Participant~~'~~'s first distribution calendar year will be made on or before the Participant~~'~~'s required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant~~'~~'s required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

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

4. Participant's Account Balance. The balance of the Participant's ~~Accounts~~Account as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the ~~Accounts~~Account as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The ~~account balances~~Account balance for the valuation calendar year include any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

5. Required Beginning Date. The latest date for commencement of distributions for a Participant, as determined under Section 7.02 of the Plan.

(f) Special Rule for 20092020 RMDs. Notwithstanding the provisions of this Section, a Participant or Beneficiary who would have been required to receive required minimum distributions for 20092020 but for the enactment of Code Section 401(a)(9)(~~HI~~) ~~of the Code~~ (“20092020 RMDs”), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 20092020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 20092020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years (“Extended 20092020 RMDs”), will

receive those distributions for ~~2009~~2020, unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding the provisions of Section 7.02, and solely for purposes of applying the direct rollover provisions of the Plan, ~~2009~~2020 RMDs and Extended ~~2009~~2020 RMDs will be treated as eligible rollover distributions.

Article VIII. BOARD OF TRUSTEES

~~Section 8.01~~ ~~Existing Plan Manager~~. The existing Plan Manager shall continue to serve until the new Board of Trustees is empaneled pursuant to the following terms.

Section 8.01 ~~Section 8.02~~ Establishment of Board of Trustees. A Board of Trustees ~~will be~~was established in 2019, upon election and appointment of Trustees as described below in ~~section~~Section 8.03.

Section 8.02 ~~Section 8.03~~ Composition of Board. The Plan shall be administered by the Board of Trustees which shall consist of the City Mayor, one City Manager designee (sworn or non-sworn employee), four (4) sworn employees, four (4) non-sworn employees, and two (2) retirees (one sworn and one non-sworn).

- a) The City Mayor shall be a non-voting member of the Board, except when votes of the ~~board~~Board are equally divided, in which case the City Mayor can cast a tie-breaking vote either in writing or electronically.
- b) The City Manager designee is a voting member and will be a sworn or non-sworn employee selected by the City Manager.

- c) The four (4) sworn employees will be voting members elected to the Board by a majority vote of the voting Plan Participants.
- d) The four (4) non-sworn employees will be voting members elected to the Board by a majority vote of the voting non-sworn plan participants of the ~~City of~~ Lakewood Employees Money Purchase Pension Plan and Trust Agreement.
- e) The one (1) sworn retiree will be a voting member elected by a majority vote of the voting sworn Plan Participants.
- f) The one (1) non-sworn retiree will be a voting member elected by a majority vote of the voting non-sworn plan participants of the ~~City of~~ Lakewood Employees Money Purchase Pension Plan and Trust Agreement.

A Chairperson and a Vice-Chairperson/Secretary shall be selected by the Board of Trustees annually. Human Resources will maintain the role of Recording Secretary/Administrator.

[Section 8.03](#) ~~Section 8.04~~ **Board Meetings**. Meetings will occur quarterly and members can attend via phone or video call/conference. To vote, there must be a quorum of 5 consisting of at least two (2) sworn employees and two (2) non-sworn employees. [Such vote may be taken by written or electronically communicated consent.](#)

[Section 8.04](#) ~~Section 8.05~~ **Terms**. Members of the Board of Trustees shall serve specified terms as follows:

- a) [Elected Members](#). The initial members of the Board of Trustees elected in October of 2019, or such other agreed upon date and will serve the remaining portion of 2019 followed by one (1), two (2) or three (3) year terms, as determined by the Board after election, creating annually staggered terms.

Thereafter, elected members shall serve three (3) year terms, staggered annually, with the ability to be elected in perpetuity.

b) Appointed Member. The member appointed by the City Manager will serve a three (3) year term with the ability to be appointed in perpetuity. The City Manager will appoint for this position upon the end of each term or vacancy.

Section 8.05 ~~Section 8.06~~ **Elections**. Elections with respect to Board seats will be held in January of the calendar year in which a seat is up for election. The City Clerk shall be responsible for developing the election procedures and elections shall be conducted by the City Clerk's office.

An employee~~/or a~~ retiree shall become a candidate for the Board of Trustees by notifying the City Clerk in writing on or before the notification date set by the City Clerk of his~~/or~~ her intention to run for election to the Board of Trustees. If only one sworn or non-sworn employee~~/or~~ retiree has indicated his~~/or~~ her intention to run for election for an open seat within his~~/or~~ her same category of employment by the designated notification deadline, the City Clerk shall declare the election for that specific seat (sworn or non-sworn) cancelled and the sworn or non-sworn employee~~/or~~ retiree shall be deemed to be elected to the Board of Trustees.

Section 8.06 ~~Section 8.07~~ **Resignation of Board Member**. A member of the Board of Trustees may resign at any time by giving written notice to the Board of Trustees. Resignation will be effective at the time specified in the written notice or if no time is specified, will be effective immediately. Acceptance by the Board of Trustees is not required for the resignation to be effective. Upon leaving his~~/or~~ her role as a

member of the Board of Trustees, the member shall deliver any Pension Trust property or records in his~~/~~or her possession.

Section 8.07 ~~Section 8.08~~ **Vacancies**. A vacancy occurs upon the resignation, termination of employment, or death of a member of the Board of Trustees. Vacancies shall be filled within ~~30~~90 days, or at such later date as determined by the Board of Trustees, by election for an elected member or appointment for an appointed member. An elected or appointed member filling a vacancy mid-term shall serve for the unexpired term of the vacancy and shall thereafter be subject to election or appointment upon the expiration of said term. A vacancy for an elected member will be filled with the same category of employee~~/~~or retiree (sworn or non-sworn).

Section 8.08 ~~Section 8.09~~ **Successor Board Members**. A successor Board of Trustees member, elected or appointed, shall have all of the rights, powers and discretions vested in him~~/~~or her as his~~/~~or her predecessor had vested. A successor Board of Trustees member shall have no duty to examine the accounts or doings of his~~/~~or her predecessors. A successor Board of Trustees member is responsible only for money and property known to him~~/~~or her to comprise the principal and income of the ~~Fund~~Pension Trust and shall in no way be liable or responsible for anything done or omitted by his~~/~~or her predecessors.

Article IX. POWERS AND DUTIES OF BOARD OF TRUSTEES

Section 9.01 **Organization and Operation of Offices of Board of Trustees**. The Board of Trustees may adopt such procedures as it deems desirable for the conduct of its respective affairs and may appoint or employ a secretary or other agents, any of

whom may be, but need not be, an officer or employee of the City. Any agent may be removed at any time by the Board of Trustees.

Section 9.02 Information to be Made Available to Board of Trustees. To enable the Board of Trustees to perform all of its respective duties under the Plan, the City shall provide the Board of Trustees with access to the following information for each Employee: name and address, social security number, birthdate, dates of commencement and termination of employment, reason for termination of employment, annual compensation, and such other information as the Board of Trustees may require. To the extent the information is available in City records, the City shall provide the Board of Trustees with access to information relating to each Employee's Participant contributions, benefits received under the Plan and marital status. If such information is not available from the City's records, the Board of Trustees shall obtain such information from the Participants. The Board of Trustees and the City may rely on and shall not be liable for any information which an Employee provides, either directly or indirectly. As soon as possible following a Participant's termination of employment for any reason, the City shall certify in writing to the Board of Trustees such Participant's name, address, date and reason for his or her termination of employment.

Section 9.03 General Duties and Powers of Board of Trustees. The Board of Trustees shall decide all questions arising in the administration, interpretation and application of the Plan and Trust Agreement, including all questions relating to eligibility, vesting, and distribution. The Board of Trustees may designate any person or entity to carry out any of the Board of Trustees' responsibilities under the Plan and may employ

one or more persons to render advice with regard to any responsibility the Board of Trustees has under the Plan. The Board of Trustees from time to time shall direct the ~~Third Party Administrator~~Plan's third party administrator concerning the payments to be made out of the Pension Trust~~-fund~~ pursuant to this Plan. All notices, directions, information, and other communications from the Board of Trustees shall be in writing.

Section 9.04 Recordkeeping Duties and Powers of Board of Trustees. The Board of Trustees shall keep a record of all the Board of Trustees' proceedings and shall keep all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Plan and Pension Trust, including records to reflect the affairs of this Plan, to determine the amount of vested and/or forfeitable benefits of the respective Participants, and to determine the amount of all benefits payable under this Plan. Subject to the requirements of law, any person dealing with the Board of Trustees may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the Board of Trustees as evidence of any action taken or resolution adopted by the Board of Trustees.

Section 9.05 Investment of Pension Trust~~Fund~~.

(a) Duties of Board of Trustees. The duty of the Board of Trustees is to hold in trust the funds it receives. Except to the extent Participants are allowed to self-direct investment of the funds allocated to their Account, the Board of Trustees shall have exclusive authority and discretion to manage and control the assets of the Pension Trust and to manage, invest and reinvest the Pension Trust and the income from it under this ~~section~~Section, without distinction between principal and

income. The Board of Trustees shall be responsible only for such sums that it actually receives as Trustee.

(b) Powers of Board of Trustees. The Board of Trustees 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 Pension Trust~~-fund~~, without previous application to, or subsequent ratification of, any court, tribunal or commission, or any federal or state governmental agency. The Board of Trustees may invest in real property and all interests in real property, 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, in qualified pooled funds, or in pooled investment funds of an insurance company qualified to do business in the state, and in life insurance and annuity contracts (including group or individual annuities). All powers of the Board of Trustees shall be subject to the requirements of state law.

(c) Participant Direction of Investments. Pursuant to rules, regulations, and policies adopted by the Board of Trustees, each Participant shall direct the investment of funds allocated to the Participant's Account. The Board of Trustees shall select and make available, several investment vehicles which Participants may elect to invest the funds allocated to their Account. The Board of Trustees shall adopt and establish rules, regulations, and policies concerning Participant direction of investment, including the options available, election forms, limitations on the

type or mix of investment vehicles and procedures for Participants to change their investments.

Section 9.06 Administrative Powers of the Board of Trustees. Subject to the requirements imposed by law, the Board of Trustees shall have all powers necessary or advisable to carry out the provisions of this Plan and the Trust [Agreement](#) and all inherent, implied and statutory powers now or subsequently provided by law, including specifically the power to do any of the following:

- (a) 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;
- (b) To sell, grant options to sell, exchange, pledge, encumber, mortgage, deed in trust or use any other form of hypothecation, or otherwise dispose of the whole or any part of the [Pension](#) Trust-~~fund~~ on such terms and for such property or cash, or part cash and credit, as it may deem best; to retain, hold, maintain or continue any securities or investments which it may hold as part of the [Pension](#) Trust-~~fund~~ for such length of time as it may deem advisable; and, generally, in all respects, to do all things and exercise each and every right, power and privilege in connection with and in relation to the [Pension](#) Trust-~~fund~~ as could be done, exercised or executed by an individual holding and owning such property in absolute and unconditional ownership;
- (c) To abandon, compromise, contest and arbitrate claims and demand; to institute, compromise and defend actions at law (but without obligation to do so); in connection with such powers, to employ counsel as the Board of Trustees shall

deem advisable and to exercise such powers all at the risk and expense of the Pension Trust ~~fund~~;

(d) To borrow money for this Pension Trust upon such terms and conditions as the Board of Trustees deem advisable, and to secure the repayment of such by the mortgage or pledge of any assets of the Pension Trust ~~fund~~;

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

(f) To pay any amount due on any loan or advance made to the Pension Trust ~~fund~~, to charge against and pay from the Pension Trust ~~fund~~ all taxes of any nature levied, assessed or imposed upon the Pension Trust ~~fund~~, and to pay all reasonable expenses and attorney fees necessarily incurred by the ~~Trustee~~Board with respect to any of the foregoing matters.

Section 9.07 Advice of Counsel. The Board of Trustees may consult with legal counsel, who may be counsel for the City, or the Board of Trustees' own counsel, with respect to the meaning or construction of the Plan and Trust Agreement or the Board of Trustees' obligations or duties. The Board of Trustees shall be protected from any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of such counsel, to the extent permitted by law.

Section 9.08 Records and Accounts of the Board of Trustees. The Board of Trustees shall keep all such records and accounts which may be necessary in the administration and conduct of the Pension Trust. The Board of Trustees' records and accounts

shall be open to inspection by the City at all reasonable times during business hours. 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 Board of Trustees 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. After the close of each year of the [Pension](#) Trust, the Board of Trustees shall render to the City a statement of assets and liabilities of the [Pension](#) Trust ~~fund~~ for such year.

Section 9.09 Compensation of Board of Trustees. A Trustee who is not a full-time employee or elected official of the City shall be entitled to reasonable compensation for its services. Compensation shall be comparable to charges for similar services made from time to time by other trustees in the geographic area in which the Trustee has its principal place of business.

Article X. CONTINUANCE, TERMINATION AND AMENDMENT OF PLAN AND TRUST

Section 10.01 Termination of Plan. The expectation of the City is to 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 to terminate this Plan in whole or part at any time. The termination of this Plan by the City in no event shall have the effect of re-vesting any part of the [Pension](#) Trust ~~fund~~ in the City. If the Plan is terminated by action initiated by the City Council, each Participant shall receive a termination bonus in addition to receiving one hundred percent ([100%](#)) of

his or her vested benefit under this Plan. Such termination bonus shall be equal to eighteen percent (18%) if the Plan is terminated prior to October 1, 2024, or twenty-four percent (24%) if the Plan is terminated on or after October 1, 2024, of the Participant's annual salary on the date the Plan is terminated and shall be credited to the Participant's Account in one or more annual installments, subject to the limitations of Section 4.02 ~~of this Plan~~ and Code Section 415. A termination of this Plan shall not be deemed initiated by the City Council if the principal reason for such termination is any federal or state statute, regulation, judicial decision, other requirement or request of Plan Participants. The principal reason for termination shall be stated in the ordinance terminating the Plan and shall be controlling for all purposes of this Plan. Any termination bonus under this Plan shall be distributed under the terms of Article VII.

Section 10.02 Termination of Pension Trust. The Pension Trust created by execution of this Agreement shall continue in full force and effect for such time as may be necessary to accomplish the purposes for which it was created, unless sooner terminated and discontinued by the City. In its discretion, the Board of Trustees may request a favorable determination letter from the Internal Revenue Service stating that the prior qualified status of the Plan has not been affected by such termination. Such termination shall take effect as of the date of the delivery of the notice of termination and favorable determination letter to the Board of Trustees.

Section 10.03 Distribution of Pension Trust ~~Fund~~ on Termination ~~of Trust~~. If the Pension Trust is terminated under this ~~section~~Section, the Board of Trustees shall determine the value of the terminated Pension Trust ~~fund~~ and of the respective interests of the

Participants and Beneficiaries under Article V as of the business day next following the date of such termination. The value of the interest of the respective Participant or Beneficiary in the [Pension](#) Trust ~~fund~~ shall be vested in its entirety as of the date of the termination of the Plan. The Board of Trustees then shall transfer to each Participant or Beneficiary the net balance of the Participant's Account or interest in the [Pension](#) Trust unless the Board of Trustees decides to retain the assets and pay them under the terms of this Plan as if no termination had occurred.

Section 10.04 Amendments to Plan and Trust [Agreement](#). At any time the City may amend the Plan and Trust [Agreement](#), provided that pursuant to the requirements of the Colorado Revised Statutes, any amendment to the Plan must be approved by a vote of at least sixty-five percent of the total votes cast by all police officers actively employed by the City and all former employees who are entitled to a benefit from the Plan. [Such vote may be taken by written or electronically communicated consent.](#) No amendment shall cause the [Pension](#) Trust ~~fund~~ to be diverted to purposes other than for the exclusive benefit of the Participants and their Beneficiaries. No amendment shall discriminate in favor of highly-compensated Employees. Notwithstanding anything in the Plan at any time to the contrary, the Plan and Trust [Agreement](#) may be amended administratively by the Director of Employee Relations, the Director of Finance and the City Clerk on behalf of the City at any time without a vote to conform to the provisions and requirements of federal and state law with respect to the Plan and Trust [Agreement](#) or any amendments to such laws or regulations or rulings issued pursuant to them or at the direction and requirement of the Internal Revenue Service. No such amendment

shall be considered prejudicial to the interest of any Participant or Beneficiary under this Plan.

Article XI. MISCELLANEOUS

Section 11.01 Benefits to be Provided Solely from the Pension Trust Fund. All benefits payable under this Plan shall be paid or provided solely from the Pension Trust fund, and the City assumes no liability or responsibility for payment of benefits.

Section 11.02 Notices from Participants to be Filed with Board of Trustees. Whenever provision is made in the Plan 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 signed by the Participant and delivered to the Board of Trustees in person or by certified mail. If a form is furnished by the Board of Trustees for such purpose, a Participant shall give written notice of his or her exercise of any option or election or of his or her designation of any Beneficiary on the form provided for such purpose. Written notice shall not be effective until received in good order by the Board of Trustees.

Section 11.03 Text to Control. The headings of articles and ~~sections~~Sections are included solely for convenience of reference. If any conflict between any heading and the text of this Plan and Trust Agreement exists, the text shall control.

Section 11.04 Expenses of Plan. Any expenses of Plan administration, including but not limited to accounting fees, legal fees, premiums for errors and omissions insurance for the Board of Trustees, and Trustee fees, shall be payable from the Pension Trust fund to which the expenses are directly allocable. Any expenses incurred for the benefit of all Plan Participants shall be charged against the Pension Trust Fund. In its

discretion, the City may elect to pay all or any part of the administration expenses incurred under the Plan.

Section 11.05 Severability. If any provision of this Plan and Trust [Agreement](#) is illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions. On the contrary, such remaining provisions shall be fully severable, and the Plan and Trust [Agreement](#) shall be construed and enforced as if such illegal or invalid provisions never had been inserted in the Plan and Trust [Agreement](#).

Section 11.06 Jurisdiction. This Plan shall be construed and administered under the laws of the State of Colorado when the laws of that jurisdiction are not in conflict with federal substantive law.

Section 11.07 Plan for Exclusive Benefit of Participants - Reversion Prohibited. This Plan and Trust [Agreement](#) has been established for the exclusive benefit of the Participants and their Beneficiaries. Under no circumstances shall any funds contributed to or held by the Board of Trustees at any time revert to or be used by or enjoyed by the City, except to the extent permitted by law.

Section 11.08 Terminated Pension Plan. The Board of Trustees is authorized to receive and add to the Pension Trust the assets, including insurance contracts, if any, of the City Police Pension Plan as terminated ([“Terminated Plan”](#)). Upon such transfer, the assets of the ~~terminated-pension~~[Terminated](#) Plan shall be allocated as follows:

- (a) The actual annual contribution by each Participant to the ~~terminated~~[Terminated](#) Plan shall be allocated to such Participant.
- (b) The actual amount of the City's annual contribution on behalf of each Participant to the ~~terminated~~[Terminated](#) Plan shall be allocated to such Participant.

(c) The actual amount of the state's annual contribution on behalf of each Participant to the ~~terminated~~Terminated Plan shall be allocated to such Participant.

(d) The earnings which have accrued to each Participant's individual Account within the supplemental fund of the ~~terminated~~Terminated Plan shall be allocated to such Participant.

(e) The balance of the ~~terminated~~Terminated Plan fund after purchasing annuity contracts on behalf of terminated Participants who have vested rights shall be allocated among Participants in the ~~terminated~~Terminated Plan in the ratio which each Participant's Account, determined under ~~sections~~Sections (a) through (d) of this ~~section~~Section, bears to the Accounts of all Participants in the ~~terminated~~Terminated Plan.

Such allocated amounts shall be held in segregated accounts for the Participants which shall be one hundred percent (100%) vested at all times and which shall be distributed pursuant to the provisions of Article VII.

APPROVED this ____ day of _____, 20____ by the Board of Trustees of the Lakewood Police Money Purchase Pension Plan and Trust [Agreement](#).

Brent Berninger, Chairperson

APPROVED by resolution the ____ day of _____, 20____ by the City Council of the City of Lakewood, Colorado.

Wendi Strom, Mayor

STAFF MEMO

DATE OF MEETING: JULY 8, 2024 / AGENDA ITEM NO. 7

To: Mayor and City Council
From: Mary Newland, Director of Community Resources
Subject: **Lakewood Deferred Compensation Plan Amendment**

SUMMARY STATEMENT: This Amendment and Restatement of City of Lakewood Amended and Restated Deferred Compensation Plan and Trust Agreement is to incorporate all prior approved amendments to the Amended and Restated Plan, making required CARES Act and required Selected Security Act 2.0 changes, and clarifying and conforming the Plan language.

BACKGROUND INFORMATION: The Lakewood Deferred Compensation Plan (the “Plan”) was last restated effective January 1, 2011. The Plan will be restated effective January 1, 2024 (or as specified below), to incorporate the following:

Description of Change

Clarifying and Conforming Changes

- Incorporate prior amendments.
- Update annual limits for 2024 and subsequent amounts.
- Clarify and conform existing language for consistency and incorporation of other changes.
- Allow voting through written or electronic means.

Discretionary Changes

- Implement participant deferral elections for the pay period after election is received in good order and processed, rather than only on first day of the month, effective November 1, 2023.
- Allow participants to elect to receive non-elective employer contributions (if made) as Roth contributions, effective April 1, 2025.
- Increase 2-year cash-out amount for which participant must provide distribution direction from \$5,000 to \$7,000, effective October 1, 2024.
- Allow distributions for long-term care insurance to be paid to insurance provider or participant, effective October 1, 2024.
- Add long-term care premium in-service withdrawals, effective January 1, 2026 (or as soon as administratively feasible thereafter).

Legislative Changes

- Treat catch-up contributions for “high-earner” participants as Roth contributions in accordance with SECURE 2.0, effective January 1, 2026.
- Increase catch-up contribution amounts for participant who attain age 60 through 63 to applicable limits in accordance with SECURE 2.0, effective January 1, 2025.
- Update age at which required minimum distributions must begin in accordance with SECURE 2.0.
- Allow surviving spouse to elect to be treated as participant for calculation of annual required minimum distribution amount in accordance with SECURE

2.0, effective January 1, 2024.

- Exclude Roth contribution amounts from account balance when calculating required minimum distributions in accordance with SECURE 2.0, effective January 1, 2024.
- Add 2020 required minimum distribution waiver in accordance with CARES Act.

BUDGETARY IMPACTS: None

STAFF RECOMMENDATIONS: Approval of Amendment and Restatement of City of Lakewood Amended and Restated Deferred Compensation Plan and Trust Agreement

ALTERNATIVES: None

PUBLIC OUTREACH: This item has been discussed and approved by the Lakewood Employee Pension Board.

NEXT STEPS: None

ATTACHMENTS:

1. Resolution 2024-34
2. 2024 Lakewood Deferred Compensation Plan Restatement Summary of Changes
3. Comprehensive Redline with Prior Amendments Highlighted - Lakewood 457(b)Deferred Comp Plan Amended and Restated (Effective 1-1-2024)
4. Lakewood 457(b)Deferred Comp Plan-Amended and Restated (Effective 1-1-2024)

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

2024-34

A RESOLUTION

AUTHORIZING THE AMENDMENT OF THE CITY OF LAKEWOOD AMENDED AND
RESTATED DEFERRED COMPENSATION PLAN AND TRUST AGREEMENT

WHEREAS, the City of Lakewood adopted the City of Lakewood Amended and Restated Deferred Compensation Plan and Trust Agreement (the "Plan"), effective January 4, 1999 (the "Plan");

WHEREAS, the City of Lakewood most recently amended and restated the Plan, effective January 1, 2011;

WHEREAS, the City of Lakewood adopted the First Amendment to the Plan, effective on August 22, 2016;

WHEREAS, the City of Lakewood adopted the Second Amendment to the Plan, effective on September 9, 2019;

WHEREAS, the City of Lakewood adopted the Third Amendment to the Plan, effective on September 28, 2020;

WHEREAS, the City of Lakewood adopted the Fourth Amendment to the Plan, effective on April 1, 2022;

WHEREAS, the City of Lakewood adopted the Fifth Amendment to the Plan, effective January 23, 2003;

WHEREAS, the City of Lakewood desires to again Amend and Restate the Plan effective January 1, 2024 by incorporating all prior approved Amendments to the Amended and Restated Plan, effective January 1, 2024, making required CARES Act and required Selected Secure Act 2.0 changes, and clarifying and conforming the Plan language; and

WHEREAS, the City Council hereby finds and determines that authorizing the foregoing Amended and Restated Plan effective January 1, 2024 is and shall be in the best interest of the residents of the City.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The Amended and Restated City of Lakewood Deferred Compensation Plan and Trust Agreement attached hereto, is approved and shall be effective January 1, 2024.

SECTION 2. The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, the Amended and Restated effective January 1, 2024 City of Lakewood Deferred Compensation Plan and Trust Agreement on behalf of the City.

SECTION 3. This Resolution shall become effective immediately upon adoption.

INTRODUCED, READ, AND ADOPTED by a vote of __ for and __ against at a hybrid regular meeting of the Lakewood City Council on July 8, 2024, at 7 o'clock p.m., at the Lakewood Civic Center, 480 S. Allison Parkway, Lakewood, Colorado.

Wendi Strom, Mayor

ATTEST:

Jay Robb, City Clerk

Approved as to form:

Alison McKenney Brown, City Attorney

LAKEWOOD DEFERRED COMPENSATION PLAN

SUMMARY OF 2024 CHANGES

The Lakewood Deferred Compensation Plan (the “Plan”) was last restated effective January 1, 2011. The Plan will be restated effective January 1, 2024 (or as specified below), to incorporate the following:

	Description of Change
Clarifying and Conforming Changes	Incorporate prior amendments. Update annual limits for 2024 and subsequent amounts. Clarify and conform existing language for consistency and incorporation of other changes. Allow voting through written or electronic means.
Discretionary Changes	Implement participant deferral elections for the pay period after election is received in good order and processed, rather than only on first day of the month, effective November 1, 2023. Allow participants to elect to receive non-elective employer contributions (if made) as Roth contributions, effective April 1, 2025. Increase 2-year cash-out amount for which participant must provide distribution direction from \$5,000 to \$7,000, effective October 1, 2024. Allow distributions for long-term care insurance to be paid to insurance provider or participant, effective October 1, 2024. Add long-term care premium in-service withdrawals, effective January 1, 2026 (or as soon as administratively feasible thereafter).
Legislative Changes	Treat catch-up contributions for “high-earner” participants as Roth contributions in accordance with SECURE 2.0, effective January 1, 2026. Increase catch-up contribution amounts for participant who attain age 60 through 63 to applicable limits in accordance with SECURE 2.0, effective January 1, 2025.

	Description of Change
	Update age at which required minimum distributions must begin in accordance with SECURE 2.0. Allow surviving spouse to elect to be treated as participant for calculation of annual required minimum distribution amount in accordance with SECURE 2.0, effective January 1, 2024. Exclude Roth contribution amounts from account balance when calculating required minimum distributions in accordance with SECURE 2.0, effective January 1, 2024. Add 2020 required minimum distribution waiver in accordance with CARES Act.

CITY OF LAKEWOOD

~~**AMENDED AND RESTATED**~~

DEFERRED COMPENSATION PLAN AND TRUST AGREEMENT

AMENDED AND RESTATED

January 1, ~~2011~~2024

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THE CITY OF LAKEWOOD

AMENDED AND RESTATED

DEFERRED COMPENSATION PLAN AND TRUST AGREEMENT

THIS AMENDED AND RESTATED PLAN AND TRUST AGREEMENT amends and restates the City of Lakewood Deferred Compensation Plan and Trust Agreement, dated January 1, ~~2006~~2011 (the "Plan"); and is made effective by the Employer and Trustees under the Plan as of January 1, ~~2011~~2024, except as otherwise set forth herein.

ARTICLE I. PURPOSE

The City of Lakewood (the "Employer") established the Plan, originally effective January 4, 1999, as the City of Lakewood Deferred Compensation Plan and Trust Agreement. The Employer most recently amended and restated the Plan effective January 1, ~~2006~~. ~~This amended and restated Plan consists~~2011, which consisted of the provisions set forth in the January 1, 2006 document, and the First, Second and Third Amendments thereto, as well as additional changes. This amended and restated Plan consists of the provisions set forth in the January 1, 2011 document, and the First, Second and Third, Fourth, and Fifth Amendments thereto, as well as additional changes, and is made effective January 1, ~~2011~~2024, except as otherwise set forth herein.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended ~~(the "Code")~~.

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

ARTICLE II. DEFINITIONS

2.1 Account: The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation (including separate Pre-Tax Deferred Compensation and Roth Deferred Compensation subaccounts), including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

2.2 Accounting Date: Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.6 for valuing the Trust's assets.

2.3 Beneficiary: The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each

Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreement, if the Designated Beneficiary predeceases the Participant, or if the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary.

2.4 Code: The Internal Revenue Code of 1986, as amended.

2.5 Deferred Compensation: The amount of Normal Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 6.8, or any other amount which the Employer agrees to credit to a Participant's Account. A Participant's Deferred Compensation includes his or her Pre-Tax Deferred Compensation and Roth Deferred Compensation.

2.6 Employee: Any individual who provides services for the Employer, whether as an employee of the Employer or as an elected official and who has been designated by the Employer as eligible to participate in the Plan. The term "Employee" ~~excludes casual, emergency or intermittent employees, but~~ includes regular and Provisional part time as well as regular and Provisional full time employees.

Provisional Employees for purposes of this Section 2.6 is one who is either part-time or full-time and is hired for a period of time not to exceed two (2) years, and who receives benefits.

Employees classified as Variable Employees shall automatically become Participants in the Plan solely with respect to the provision of FICA replacement retirement benefits pursuant to Code Section 3121(b)(7)(F) and the Treasury Regulations thereunder. Variable Employees shall not be eligible to defer Normal Compensation or enter Joinder Agreements under the Plan.

Effective as of December 14, 2008, "Employee" shall not include employees of the Lakewood Housing Authority.

2.7 Includible Compensation: The amount of an Employee's compensation from the Employer for a taxable year that is attributable to services performed for the Employer and that is includible in the Employee's gross income for the taxable year for federal income tax purposes. Solely for the purposes of determining the Normal and Catch-Up Limitations in Section 5.1 and 5.2 herein, Includible Compensation shall include any amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under ~~Section~~Code Sections 125, 132(f), 401(k), 403(b), or 457(b) ~~of the Code~~ (including an election to defer compensation under Section 4.1 or Section 4.2). Includible Compensation taken into account for an Employee for any Plan Year shall be limited to ~~\$200,000~~\$345,000 (or such higher maximum as may apply under Code Section 401(a)(17)).

2.8 Joinder Agreement: An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, including the respective amounts of Pre-Tax Deferred Compensation and Roth Deferred Compensation, specify a preference among the investment

alternatives designated by the Employer, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.

2.9 Nonelective Employer Contribution: A contribution made by the Employer for a Participant with respect to which the Participant does not have the choice to receive the contribution in cash or property.

2.10 Normal Compensation:

(a) Effective August 22, 2016, the amount of base salary which is payable to an Employee by the Employer for a taxable year, including any amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Section 4.1 or Section 4.2), and excluding overtime pay and hazard pay.

(b) Prior to August 22, 2016, the amount of cash compensation which is payable to an Employee by the Employer for a taxable year, including any amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under ~~Section~~Code Sections 125, 132(f), 401(k), 403(b), or 457(b) ~~of the Code~~ (including an election to defer compensation under Section 4.1 or Section 4.2).

(c) Effective January 1, 2009, Normal Compensation shall include "differential wage payments" made to an Employee with respect to active military service, in accordance with Code Section 414(u)(12). Includible Compensation shall be determined without regard to any community property laws.

(d) To the extent permitted under Treasury Regulations Section 1.457-4(d)(1), Normal Compensation shall include accrued bona fide sick leave, vacation or other leave pay so long as the Employee would have been able to use the leave if employment had continued and such pay is actually paid by the later of two and a half (~~2-1/2~~2-1/2) months after the Employee's Severance from Employment or the end of the calendar year in which the Employee's Severance from Employment occurs.

~~2.10~~2.11 Normal Retirement Age: Age ~~70-1/2~~72, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Plan Administrator prior to Severance from Employment. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the catch-up limitation of Section 5.2 hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.2, his or her Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive unreduced retirement benefits under the Employer's basic retirement plan covering the Participant and may not be later than the date the Participant will attain age ~~70-1/2~~72. If a Participant continues employment after attaining age ~~70-1/2~~72, not having previously elected an alternate Normal Retirement Age, the Participant's alternate Normal Retirement Age shall not be later than the mandatory retirement age, if any, established by the Employer, or the age at which the Participant actually separates from service if the Employer has no mandatory retirement age. If the Participant will not

become eligible to receive benefits under a basic retirement plan maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than age 55 and may not be later than age ~~70 1/2~~72.

~~2.11~~2.12 Participant: Any Employee who has joined the Plan pursuant to the requirements of Article IV. Participation shall cease upon distribution of a Participant's entire Account.

~~2.12~~2.13 Plan Administrator: The person or persons engaged to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described.

~~2.13~~2.14 Plan Year: The calendar year.

~~2.14~~2.15 Pre-Tax Deferred Compensation: A Participant's Deferred Compensation which is not Includible Compensation to the Participant at the time deferred and has been irrevocably designated as Pre-Tax Deferred Compensation by the Participant in his or her Joinder Agreement, or by reason of Automatic Enrollment. A Participant's Pre-Tax Deferred Compensation will be separately accounted for, as will gains and losses attributable to such Pre-Tax Deferred Compensation.

~~2.15~~2.16 Retirement: The first date upon which both of the following shall have occurred with respect to a ~~participant~~Participant: Severance from Employment and attainment of age 55.

~~2.16~~2.17 Roth Deferred Compensation: Effective November 1, 2011, Participants may elect to direct all or a portion of their Deferred Compensation to a separate Roth Deferred Compensation account. Roth Deferred Compensation means a Participant's Deferred Compensation that is Includible Compensation to the Participant at the time deferred and has been irrevocably designated as Roth Deferred Compensation by the Participant in his or her ~~Enrollment~~Joinder Agreement. A Participant's Roth Deferred Compensation will be separately accounted for, together with any rollovers into the Plan by the Participant from his or her 403(b) or 457(b) Roth accounts, as well as any gains and losses attributable to such amounts. However, forfeitures may not be allocated to such account.

~~2.17~~2.18 Severance From Employment: In general, the Participant shall be deemed to have severed from employment with the Employer for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship between the Employer and Participant is considered to have actually terminated.

~~2.18~~2.19 Trust: The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

~~2.19~~
~~2.20~~ Trustee, Trustees, or Board of Trustees: The ~~persons serving as Director of Employee Relations, Director of Finance and City Clerk~~Board of Trustees appointed or elected per Article VI.A.

Upon Severance From Employment of an Employee who is a Trustee, such person's position as Trustee shall terminate and such person's successor in office shall fill the vacancy.

Such resignation shall become effective upon the receipt of such written notice by the then City Clerk. Each successor Trustee shall upon succeeding as Trustee be vested with all of the rights, powers, and discretions herein vested in and imposed upon the Trustee. Upon the resignation of any Trustee, he or she shall cause to be delivered to the successor Trustee any Trust property or records then in his or her possession. No successor Trustee shall have any duty to examine the accounts or doings of his or her predecessors. Any successor Trustee shall be responsible only for the money and property known to him to comprise the principal and ~~Income~~income of the Trust and shall in no way be liable or responsible for anything done or omitted to have been done by his or her predecessors.

ARTICLE III. ADMINISTRATION

3.1 Duties of the Trustee: The Trustee shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants which may be required in the administration of this Plan. The Trustee's decisions shall be afforded the maximum deference permitted by applicable law.

3.2 Duties of Plan Administrator: The Plan Administrator, as agent for the Employer and the Trustee, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Trustee in accordance with the provisions of this Plan.

The Plan Administrator shall administer the Plan in accordance with applicable regulations and other binding authority not reflected in this Plan, including but not limited to applicable regulations and binding authority pursuant to Section 401 of the Setting Every Community Up for Retirement Enhancement ("SECURE") Act (Division O of the Further Consolidated Appropriations Act, enacted December 20, 2019), and the SECURE 2.0 Act of 2022 (Division T of the Consolidated Appropriations Act of 2023, enacted December 29, 2022), and the Treasury Regulations promulgated thereunder.

ARTICLE IV. PARTICIPATION IN THE PLAN

4.1 Initial Participation: ~~Each~~Prior to November 1, 2023, each Employee may become a Participant in this Plan on the first day of the month next following commencement of employment as an Employee. Any person elected or appointed to a term of office with the Employer is deemed to commence employment at the time such person assumes office. An Employee may become a Participant by entering into a Joinder Agreement prior to the first day of the calendar month in which the Joinder Agreement is to become effective to defer Normal Compensation not yet earned. Participants shall elect on their Joinder Agreements the respective portions of their Deferred Compensation that will be Pre-Tax Deferred Compensation and Roth Deferred Compensation.

Effective November 1, 2023, each Employee may become a Participant in this Plan by executing a Joinder Agreement to defer Normal Compensation not yet earned. Such Agreement shall become effective no later than the pay period that occurs after the executed Agreement is received in good order by the Plan Administrator. Any person elected or appointed to a term of office with the Employer is deemed to commence employment at the time such person assumes office. Participants shall elect on their Joinder Agreements the

respective portions of their Deferred Compensation that will be Pre-Tax Deferred Compensation and Roth Deferred Compensation.

Employees classified as Variable Employees shall be immediately eligible to participate in FICA replacement retirement benefits pursuant to Code Section 3121(b)(7)(F) and the Treasury Regulations thereunder. The Employer shall make contributions (from amounts deducted from each Variable Employee's Normal Compensation) to the Participant Account of each Variable Employee equal to 7.5% of such Variable Employee's Normal Compensation during the Plan Year.

4.2 Automatic Enrollment: Notwithstanding Section 4.1, each Employee that does not enter into a Joinder Agreement, except as to Variable Employees whose timing of participation is set forth in Section 2.6, shall automatically become a Participant in the Plan and make default salary deferrals to the Plan in accordance with this Section and with the procedures established by the Employer and the Plan Administrator. An Employee subject to this Section is deemed to have elected to participate in the Plan and consents to the deferral by the Employer of the specified default percentage of Normal Compensation for any payroll period for which a Joinder Agreement is not in effect. Default elective deferrals shall initially be made by the Employee in the amount of two percent (2%) of the Employee's Normal Compensation. Effective as of April 1, 2023, and April 1 of each year thereafter, the Employer shall automatically increase the default elective deferral rate of every Employee subject to this Section 4.2 by one percent (1%); provided, however, that in no case shall an Employee's default elective deferral exceed ten percent (10%) of Normal Compensation.

4.3 Amendment of Joinder Agreement: A Participant may amend an executed Joinder Agreement to change the amount of Normal Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero) or to change his or her investment preference (subject to such restrictions as may result from the nature of terms of any investment made by the Employer). ~~Such~~ at any time. Prior to November 1, 2023, such amendment shall become effective as of the first day of the calendar month following the calendar month in which the amendment is executed. Effective November 1, 2023, such amendment shall become effective no later than the pay period that occurs after the executed amendment is ~~executed~~ received in good order by the Plan Administrator. A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary and such amendment shall become effective immediately.

~~4.3~~4.4 Minimum Deferrals: A Participant must comply with any minimum monthly deferral requirements which may be set by the Employer from time to time on a nondiscriminatory basis.

~~4.4~~4.5 Suspension of Deferrals: A Joinder Agreement shall be automatically suspended for any pay period in which there are insufficient monies available to make the entire deduction agreed upon, and automatically reinstated in the next pay period that ~~compensation~~ is monies are sufficient to make the agreed upon ~~Deferral~~ deferral. In addition, if a Participant receives a Qualified Reservist Distribution pursuant to Section 7.9 hereunder, the Participant's deferrals under his or her or her Joinder Agreement shall be suspended for a period of six (6) months after the date on which the Qualified Reservist Distribution is made.

4.6 Discretionary Nonelective Employer Contributions: The Employer may, for any Plan Year and in its sole discretion, make Nonelective Employer Contributions to the

accounts of Participants. Nonelective Employer Contributions shall be made as a percentage of Normal Compensation.

Variable Employees shall not be eligible to receive discretionary Nonelective Employer Contributions.

Effective April 1, 2025, Participants may elect to receive Nonelective Employer Contributions if made by the Employer, as Roth Deferred Compensation, subject to the conditions of Section 2.17, including that such amounts shall be Includible Compensation to the Participant and shall be nonforfeitable.

ARTICLE V. LIMITATIONS ON DEFERRALS

5.1 Normal Limitation: Except as provided in Section 5.2, the maximum amount of Deferred Compensation for any Participant for any taxable year shall not exceed the lesser of ~~\$11,32~~23,000, as adjusted for the cost-of-living in accordance with Code ~~§Section~~ 457(e)(15) (the "dollar limitation"), or 100 percent of the Participant's Includible Compensation for the taxable year.

If the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described above, or the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) ~~of the Code~~ for which the Participant provides information that is accepted by the Plan Administrator, then the Deferred Compensation, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant, first from the Participant's Roth Deferred Compensation from such Plan Year, and then from the Participant's Pre-Tax Deferred Compensation for such Plan Year.

5.2 Catch-Up Limitation: For each of the last three (3) taxable years of a Participant ending before his or her attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of: (1) twice the otherwise maximum deferral amount of Section 5.1, or (2) the Participant's Underutilized Limitation amount, as determined by the Plan Administrator pursuant to §Treasury Regulation Section 1.457-4(c)(3) ~~of the Treasury Regulations~~.

5.3 Other Code §Section 457 Plans: If a Participant participates in more than one eligible deferred compensation plan, as defined in Code ~~§Section~~ 457, the total deferral under all such plans shall be subject to the maximum limitations specified in Section 5.1, and, if applicable, Sections 5.2 or 5.4.

5.4 Catch-Up Contributions: All Employees who are eligible to make ~~Deferral~~deferral contributions under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make Catch-Up Contributions in accordance with, and subject to the limitations of, Code ~~§Section~~ 414(v). Such Catch-Up Contributions shall not be taken into account for purposes of the provisions of the plan implementing the required limitations of Code Sections 402(g) and 415. Catch-Up Contributions shall not be made during a Participant's last three years before Normal Retirement Age if the Participant has elected to make a Catch-Up Limitation contribution pursuant to Section 5.2. Catch-Up Contributions may

be comprised of Pre-Tax Deferred Compensation or Roth Deferred Compensation, or both, except that, effective January 1, 2026, any Employee who receives compensation (as defined in Code Section 3121(a)) from the Employer for the preceding calendar year in excess of \$145,000 (as adjusted), who is a Participant and who makes Catch-Up Contributions during the Plan Year pursuant to this Section 5.4, shall make such Catch-Up Contributions as Roth Deferred Compensation, not Pre-Tax Deferred Compensation.

Effective January 1, 2025, all Participants who are eligible to make Catch-Up Contributions and who have attained age 60 through age 63 before the close of the Plan Year, shall be eligible to make Catch-Up Contributions in accordance with and subject to the limitations of Code Section 414(v)(2)(B)(ii).

5.5 Roth Deferred Compensation: The Plan Administrator will administer Roth Deferred Compensation in accordance with applicable regulations or other binding authority not reflected in the Plan. Any applicable regulations or other binding authority shall supersede any contrary provisions of the Plan.

ARTICLE VI. TRUST AND INVESTMENT OF ACCOUNTS

6.1 Investment of Deferred Compensation: A Trust is hereby created to hold all the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.3.

6.2 Investment Powers: The Trustee or the Plan Administrator, acting as agent for the Trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.5.

(a) To invest and reinvest the Trust without distinction between principal and income in any form of tangible or intangible property, real, personal, or mixed, and wherever situated, including, but not by way of limitation, common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, mortgages, certificates of deposit, interest, or participation, equipment trust certificates, commercial paper including but not limited to participation in pooled commercial paper accounts, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, and guaranteed interest contracts, deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit, and other forms of securities or investments of any kind, class, or character whatsoever and representing interests in any form of enterprise, wherever it may be located, organized or operated within or without the United States of America, whether such investments are income producing or not, without being limited in any respect by statute or court rule or decision of any jurisdiction now or hereafter in force purporting to limit or otherwise affect such investments. Assets of the Trust may be invested in securities or new ventures that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.

(b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under ~~sections~~Code Sections 457 or 401 ~~of the Code~~, or

any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.

(c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other 457 plan or trust qualified under [Code](#) Section 401(a) ~~of the Code~~ or any other plan described in [Code](#) Section 401(a)(24) ~~of the Code~~, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

(d) To purchase part interests in real property or in mortgages on real property, wherever such real property may be situated, and to delegate to a property manager or the holder or holders of a majority interest in such real property or mortgage on real property the management and operation of any part interest in such real property or mortgages.

(e) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.

(f) To retain, manage, operate, administer, divide, subdivide, partition, mortgage, pledge, improve, alter, demolish, remodel, repair, and develop in any manner any property, or any part of or partial interest in any property, real or personal, held in the Trust, to lease such property for any period of time, and to grant options to sell, exchange, lease, or otherwise dispose of any such property, without regard to restrictions applicable to fiduciaries or others and without the approval of any court.

(g) To sell for cash or credit, redeem, exchange for other property, convey, transfer, or otherwise dispose of any property held in the Trust in any manner and at any time, by private contract or at public auction or otherwise, and no other person shall be bound to see the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition.

(h) To enter into contracts for or to make commitments either alone or in company with others to purchase or sell at any future date any property acquired for the Trust.

(i) To vote or to refrain from voting any stocks, bonds, or other securities held in the Trust, to exercise any other right appurtenant to any securities or other property held in the Trust, to give general or special proxies or powers of attorney with or without power of substitution with respect to such securities and other property, to exercise any conversion privileges, subscription rights, or other options or privileges with respect to such securities and other property and make any payments incidental thereto, and generally to exercise, personally or by general or limited power of attorney, any of the powers of an owner with respect to stocks, bonds, securities, or other property held in the Trust at any time.

(j) To oppose or to consent to and participate in any organization, reorganization, consolidation, merger, combination, readjustment of finances, or similar arrangement with respect to any corporation, company, or association, any of the securities of which are held in the Trust, to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments, or subscriptions that may be deemed necessary or advisable in connection therewith, and to accept, hold, and retain any securities or other property that may be so acquired.

(k) To deposit any property held in the Trust with any protective, reorganization, or similar committee, and to delegate discretionary power thereto and to pay and agree to pay part of its expenses and compensation and any assessments levied with respect to any such property so deposited.

(l) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.

(m) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

(n) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.

(o) To make, execute, acknowledge, and deliver any and all deeds, leases, mortgages, conveyances, contracts, waivers, releases, or other instruments in writing necessary or proper for the accomplishment of any of the foregoing powers.

(p) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.

(q) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.3 Taxes and Expenses: All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

6.4 Payment of Benefits: The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Trustee, or by any custodian or other person so authorized by the Employer to make such disbursement. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Trustee or the Employer.

6.5 Investment Funds: In accordance with uniform and nondiscriminatory rules established by the Trustee and the Plan Administrator, the Participant may direct his ~~or~~ or her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Trustee or the Plan Administrator. Neither the Employer, the Trustee, the Plan Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

6.6 Valuation of Accounts: As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.7 Crediting of Accounts: The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Trustee through the investment of the Participant's Deferred Compensation pursuant to Sections 6.5 and 6.6. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

6.8 Transfers:

(a) Incoming Transfers: A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's Account under the Plan if (i) the Participant has separated from service with that employer and become an Employee of the Employer, and (ii) the other employer's plan provides that such transfer will be made. The Trustee or Plan Administrator may require such documentation from the

predecessor plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of [Code](#) Section 457~~-of the Code~~, and to assure that transfers are provided for under such plan. The Trustee or Plan Administrator may refuse to accept a transfer in the form of assets other than cash, unless the Trustee and the Plan Administrator agree to hold such other assets under the Plan. Any such transferred amount shall be treated as a deferral subject to the limitations of Article V, except that, for purposes of applying the limitations of Sections 5.1 and 5.2, an amount deferred during any taxable year under the plan from which the transfer is accepted shall be treated as if it had been deferred under this Plan during such taxable year and compensation paid by the transferor employer shall be treated as if it had been paid by the Employer.

(b) **Outgoing Transfers:** An Eligible Rollover Distribution amount may be transferred to any Eligible Rollover Plan maintained by another employer, and charged to a Participant's Account under this Plan, if (i) the Participant has separated from service with the Employer and become an employee of the other employer, (ii) the other employer's plan, or the custodian's IRA, as the case may be, provides that such transfer will be accepted, and (iii) the Participant and the employers and/or custodians have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer or custodian.

An "Eligible Rollover Distribution", for the purposes of this paragraph, means any distribution of all or any portion of the balance to the credit of the distributee, except that an ~~eligible rollover distribution~~[Eligible Rollover Distribution](#) does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under [Code](#) Section 401(a)(9)~~-of the Code~~; and any hardship distribution; 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).

An "Eligible Rollover Plan", for the purposes of this paragraph, means an eligible plan under [Code](#) Section 457(b)~~-of the Code~~ which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (including Roth Deferred Compensation accounts from such eligible plans), a defined contribution plan which is either an individual retirement account described in [Code](#) Section 408(a)~~-of the Code~~, an individual retirement annuity described in [Code](#) Section 408(b) ~~of the Code~~ (other than an endowment contract), a "Roth" individual retirement annuity described in [Code](#) Section 408A (subject to certain additional Code requirements), an annuity plan described in [Code](#) Section 403(a)~~-of the Code~~ (including Roth Deferred Compensation accounts from such annuity plan), or a qualified trust described in [Code](#) Section 401(a)~~-of the Code~~, that accepts the prospective recipient's ~~eligible rollover distribution. An eligible retirement plan~~[Eligible Rollover Distribution. An Eligible Rollover Plan](#) shall also mean an annuity contract described in [Code](#) Section 403(b)~~-of the Code~~. The definition of ~~eligible retirement plan~~[Eligible Rollover Plan](#) applicable to a Participant shall also apply in the case of a distribution to a Participant's surviving spouse and to a Participant's spouse or former spouse who is the alternate payee under a Plan Approved Domestic Relations Order, as defined in Section 6.9. In the case of a distribution to a non-spouse Beneficiary, an ~~eligible retirement plan~~[Eligible Rollover Plan](#) means an "inherited individual retirement account or annuity" described in Code Sections 408(a) or (b), or a Roth IRA described in Code Section 408A. The

Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of [Code](#) Section 457 ~~of the Code~~, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under [Code](#) Section 457 ~~of the Code~~ and the ~~regulations~~ [Treasury Regulations](#) thereunder.

(c) Roth Transfers: Effective for benefit distributions on or after January 1, 2011, Participants may direct all or a portion of any distributions made in accordance with Article VII to a Roth Deferred Compensation account within the Plan. The Plan Administrator will administer transfers of benefit distributions into Roth Deferred Compensation accounts in accordance with applicable regulations or other binding authority not reflected in the Plan. The Plan Administrator will report Roth Transfers on appropriate income tax forms in accordance with applicable IRS rules.

(d) Incoming Rollovers: This Plan shall accept Rollover Contributions. A "Rollover Contribution" means the amount of cash or property which an Eligible Rollover Plan distributes to a Participant in an Eligible Rollover Distribution under Code Section 402(c)(4) and which the Participant transfers directly or indirectly to this Plan. A Rollover Contribution includes net income, gain or loss attributable to the Rollover Contribution. A Rollover Contribution excludes after-tax Employee contributions, as adjusted for net income, gain or loss. The Employer, operationally and on a nondiscriminatory basis, may elect to limit a Participant's right to make a Rollover Contribution. Before accepting a Rollover Contribution, the Trustee may require a Participant to furnish satisfactory evidence the proposed transfer is in fact a Rollover Contribution which the Code permits an employee to make to an Eligible Rollover Plan. The Trustee, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

6.9 Domestic Relations Orders: A Participant's benefits under the Plan may be distributed to an alternate payee pursuant to a domestic relations order which complies with the provisions of [§C.R.S. Section 14-10-113\(6\)](#), ~~C.R.S.~~, applicable provisions of Code [§Section 414\(p\)](#) and any rules and procedures implemented by the Trustee ("Plan Approved Domestic Relations Order"). An alternate payee must withdraw his or her share of a Participant's Account from the Plan as a lump sum payment.

6.10 Employer Liability: In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer, the Trustee nor the Plan Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

ARTICLE VI.A. BOARD OF TRUSTEES

6.A.01 Existing Trustee(s): The existing Trustee(s) shall continue to serve until the new Board of Trustees is empaneled pursuant to the following terms.

6.A.02 Establishment of Board of Trustees: A Board of Trustees was established in 2019, upon election and appointment of Trustees as described below in section 6.A.03.

6.A.03 Composition of Board: The Plan shall be administered by the Board of Trustees which shall consist of the City Mayor, one City Manager designee (sworn or non-sworn employee), four (4) sworn employees, four (4) non-sworn employees, and two (2) retirees (one sworn and one non-sworn).

(a) The City Mayor shall be a non-voting member of the Board, except when votes of the board are equally divided, in which case the City Mayor can cast a tie-breaking vote either in writing or electronically.

(b) The City Manager designee is a voting member and will be a sworn or non-sworn employee selected by the City Manager.

(c) The four (4) sworn employees will be voting members elected to the Board by a majority vote of the voting plan participants of the City of Lakewood Police Money Purchase Pension Plan and Trust Agreement.

(d) The four (4) non-sworn employees will be voting members elected to the Board by a majority vote of the voting non-sworn plan participants of the City of Lakewood Employees Money Purchase Pension Plan and Trust Agreement.

(e) The one (1) sworn retiree will be a voting member elected by a majority vote of the voting sworn plan participants of the City of Lakewood Police Money Purchase Pension Plan and Trust Agreement.

(f) The one (1) non-sworn retiree will be a voting member elected by a majority vote of the voting non-sworn plan participants of the City of Lakewood Employees Money Purchase Pension Plan and Trust Agreement.

A Chairperson and a Vice-Chairperson/Secretary shall be selected by the Board of Trustees annually. Human Resources will maintain the role of Recording Secretary/Administrator.

6.A.04 Board Meetings: Meetings will occur quarterly and members can attend via phone or video call/conference. To vote, there must be a quorum of 5 consisting of at least two (2) sworn employees and two (2) non-sworn employees. Such vote may be taken by written or electronically communicated consent.

6.A.05 Terms: Members of the Board of Trustees shall serve specified terms as follows:

(a) Elected Members: The initial members of the Board of Trustees elected in October of 2019 or such other agreed upon date and will serve the remaining portion of 2019 followed by one (1), two (2) or three (3) year terms, as determined by the Board after election, creating annually staggered terms. Thereafter, elected members shall serve three (3) year terms, staggered annually, with the ability to be elected in perpetuity.

(b) Appointed Member: The member appointed by the City Manager will serve a three (3) year term with the ability to be appointed in perpetuity. The City Manager will appoint for this position upon the end of each term or vacancy.

6.A.06 Elections: Elections with respect to Board seats will be held in January of the calendar year in which a seat is up for election. The City Clerk shall be responsible for developing the election procedures and elections shall be conducted by the City Clerk's office. An employee or a retiree shall become a candidate for the Board of Trustees by notifying the City Clerk in writing on or before the notification date set by the City Clerk of his or her intention to run for election to the Board of Trustees. If only one sworn or non-sworn employee or retiree has indicated his or her intention to run for election for an open seat within his or her same category of employment by the designated notification deadline, the City Clerk shall declare the election for that specific seat (sworn or non-sworn) cancelled and the sworn or non-sworn employee or retiree shall be deemed to be elected to the Board of Trustees.

6.A.07 Resignation of Board Member: A member of the Board of Trustees may resign at any time by giving written notice to the Board of Trustees. Resignation will be effective at the time specified in the written notice or if no time is specified, will be effective immediately. Acceptance by the Board of Trustees is not required for the resignation to be effective. Upon leaving his or her role as a member of the Board of Trustees, the member shall deliver any Trust property or records in his or her possession.

6.A.08 Vacancies: A vacancy occurs upon the resignation, termination of employment, or death of a member of the Board of Trustees. Vacancies shall be filled within 90 days, or at such later date as determined by the Board of Trustees, by election for an elected member or appointment for an appointed member. An elected or appointed member filling a vacancy mid-term shall serve for the unexpired term of the vacancy and shall thereafter be subject to election or appointment upon the expiration of said term. A vacancy for an elected member will be filled with the same category of employee or retiree (sworn or non-sworn).

6.A.09 Successor Board Members: A successor Board of Trustees member, elected or appointed, shall have all of the rights, powers and discretions vested in him or her as his or her predecessor had vested. A successor Board of Trustees member shall have no duty to examine the accounts or doings of his or her predecessors. A successor Board of Trustees member is responsible only for money and property known to him or her to comprise the principal and income of the Trust and shall in no way be liable or responsible for anything done or omitted by his or her predecessors.

6.A.10 Organization and Operation of Offices of Board of Trustees: The Board of Trustees may adopt such procedures as it deems desirable for the conduct of its respective affairs and may appoint or employ a secretary or other agents, any of whom may be, but need not be, an officer or employee of the City. Any agent may be removed at any time by the Board of Trustees.

6.A.11 Information to be Made Available to Board of Trustees: To enable the Board of Trustees to perform all of its respective duties under the Plan, the City shall provide the Board of Trustees with access to the following information for each Employee: name and address, social security number, birthdate, dates of commencement and termination of employment, reason for termination of employment, annual compensation, and such other information as the Board of Trustees may require. To the extent the information is available in City records, the City shall provide the Board of Trustees with access to information relating to each Employee's Participant contributions, benefits received under the Plan and marital status. If such information is not available from the City's records, the Board of Trustees shall obtain such information from the Participants. The Board of Trustees and the City may rely

on and shall not be liable for any information which an Employee provides, either directly or indirectly. As soon as possible following a Participant's termination of employment for any reason, the City shall certify in writing to the Board of Trustees such Participant's name, address, date and reason for his termination of employment.

6.A.12 General Duties and Powers of Board of Trustees: The Board of Trustees shall decide all questions arising in the administration, interpretation and application of the Plan and Trust Agreement, including all questions relating to eligibility, vesting, and distribution. The Board of Trustees may designate any person or entity to carry out any of the Board of Trustees' responsibilities under the Plan and may employ one or more persons to render advice with regard to any responsibility the Board of Trustees has under the Plan. The Board of Trustees from time to time shall direct the third party administrator concerning the payments to be made out of the Trust pursuant to this Plan. All notices, directions, information, and other communications from the Board of Trustees shall be in writing.

6.A.13 Recordkeeping Duties and Powers of Board of Trustees: The Board of Trustees shall keep a record of all the Board of Trustees' proceedings and shall keep all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Plan and Trust Agreement, including records to reflect the affairs of this Plan, to determine the amount of vested and/or forfeitable benefits of the respective Participants, and to determine the amount of all benefits payable under this Plan. Subject to the requirements of law, any person dealing with the Board of Trustees may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the Board of Trustees as evidence of any action taken or resolution adopted by the Board of Trustees.

6.A.14 Advice of Counsel: The Board of Trustees may consult with legal counsel, who may be counsel for the City, or the Board of Trustees' own counsel, with respect to the meaning or construction of the Plan and Trust or the Board of Trustees' obligations or duties. The Board of Trustees shall be protected from any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of such counsel, to the extent permitted by law.

6.A.15 Compensation of Board of Trustees: A Trustee who is not a full-time employee or elected official of the City shall be entitled to reasonable compensation for its services. Compensation shall be comparable to charges for similar services made from time to time by other trustees in the geographic area in which the Trustee has its principal place of business.

ARTICLE VII. BENEFITS

7.1 Retirement Benefits and Election:

(a) Severance from Employment: Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence upon the election of the Participant at any time after the Participant's Severance from Employment. Notwithstanding the foregoing, a Participant's distribution of his or her Account must commence not later than the Participant's "Required Beginning Date" which is April 1 of the calendar year following the calendar year of in which the Participant's attainment of attains age 70½ (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the

Participant is born on January 1, 1960, or later), or Severance from Employment, whichever is later.

(b) Death: A Participant's Account shall become distributable upon the death of the Participant.

(c) In-Service Distribution: A Participant's Account shall become distributable upon attainment of age 59-1/2, even if the Participant has not severed employment.

(d) ~~(b)~~ Other Distribution Events: A Participant's Account shall also become distributable ~~upon the death of the Participant~~, on account of the Participant's unforeseeable emergency, or as otherwise provided in this Article VII ~~with respect to rollover accounts, de minimus distributions, and required minimum distributions.~~

7.2 Payment Options: A Participant or Beneficiary may elect to have value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.3:

(a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;

(b) One lump-sum payment;

(c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant;

(d) Annual Payments equal to the minimum distributions required under Code Section 401(a)(9) ~~of the Code~~ over the life expectancy of the Participant or over the life expectancies of the Participant and his Beneficiary;

(e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Trustee;

(f) A split distribution under which payments under ~~options~~ Subsections (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.1, provided that all payments commence (or are made) by the latest benefit commencement date under Section 7.1 and that once a payment is made subsequent payments will be made in substantially nonincreasing amounts;

(g) Any payment option elected by the Participant and agreed to by the Employer and Plan Administrator, provided that such option must provide for substantially nonincreasing payments for any period after the benefit commencement date under Section 7.1.

A Participant's or Beneficiary's selection of a payment option under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of-living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

As a part of their distribution elections, Participants may direct the respective amounts to be taken from their Pre-Tax Deferred Compensation and Roth Deferred Compensation accounts, subject to any reasonable limitations that may be established by the Trustee or the Plan Administrator.

Distributions of Roth Deferred Compensation shall be reported by the Trustee or Plan Administrator and taxable to the Participant or Beneficiary in accordance with applicable provisions of the Code, Treasury Regulations and other binding authority.

7.3 Limitation on Options:

(a) No payment option may be selected by a Participant under Sections 7.2(a) or (c) unless the amount of any installment is not less than \$1,200 per year. No payment option may be selected by a Participant or Beneficiary under Sections 7.2 or 7.4 unless such payment option satisfies the requirements of Section 7.4.

(b) For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

7.4 Minimum Distribution Requirements:

(a) During the Participant's Lifetime. A Participant who has attained age 70½ his or her Required Beginning Date (as defined in Section 7.1(a)) must receive an annual distribution equal to or exceeding the required minimum amount under Code Section 401(a)(9) ~~of the Code~~. In general, the minimum amount payable each year shall equal a fraction of the Account balance equal to one divided by the distribution period set forth in the Uniform Lifetime Table at Treasury Regulations Section 1.401(a)(9)-9, A-2, ~~of the Income Tax Regulations~~ (as such Lifetime Table may be amended or replaced from time to time) for the Participant's age on the Participant's birthday for that year.

If a Participant who elects a form of payment other than lump sum distribution has not attained the age 70½ applicable to him or her under Section 7.1(a) in the year distribution commences, the distribution period necessary to satisfy this Section 7.4(a) is 27.4 plus the number of years that the Participant's age is less than such applicable age 70½. The Account balance for this calculation (other than the final installment payment) is the Account balance as of the end of the year prior to the year for which the distribution is being calculated. Payments shall commence on the date elected under this Article VII; however, even if an election is not made by a Participant who has attained the age 70½ applicable to him or her under Section 7.1(a), the required minimum distributions required under this Section 7.4(a) shall be made to the Participant.

For any year, the Participant can elect distribution of a greater amount (not to exceed the amount of the remaining Account balance), or of a lesser amount if such amount is specifically permitted under the Treasury Regulations, in lieu of the amount calculated using the formula in this ~~paragraph~~ Subsection (a).

(b) After the Participant's Death. Commencing in the calendar year following the calendar year of the Participant's death, the Participant's Account shall be paid to the Beneficiary in a lump sum.

Alternatively, if the Beneficiary with respect to the Participant's Account is a natural person, at the Beneficiary's election, distribution can be made in annual installments with the distribution period determined under this paragraph. If the Beneficiary is the Participant's surviving spouse, the distribution period is equal to the Beneficiary's life expectancy using the single life table in ~~section~~Treasury Regulations Section 1.401(a)(9)-9, A-1, ~~of the Income Tax Regulations~~ (as such single life table may be amended or replaced from time to time) for the spouse's age on the spouse's birthday for that year. Effective January 1, 2024, however, the Participant's surviving spouse may elect to be treated as the Participant for purposes of the minimum amount payable and the distribution period, as set forth in this Section 7.4. If the Beneficiary is not the Participant's surviving spouse, the distribution period is the Beneficiary's life expectancy determined in the year following the year of the Participant's death using the single life table in Treasury Regulations Section 1.401(a)(9)-9, A-1, ~~of the Income Tax Regulations~~ for the Beneficiary's age on the Beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year.

For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

For any year, a Beneficiary can elect distribution of a greater amount (not to exceed the amount of the remaining Account), or of a lesser amount if such amount is specifically permitted under the Treasury Regulations, in lieu of the amount calculated using the formula in this ~~paragraph~~Subsection (b).

(c) Compliance with Code Section 401(a)(9): Notwithstanding any provisions of this Section 7.4, if the minimum distribution requirements stated in the Income Tax Regulations under Code Section 401(a)(9) ~~of the Code~~ are amended, distributions under the Plan shall comply with such amended requirements. Effective January 1, 2024, a Participant's Roth Deferred Compensation shall be excluded from the Participant's Account balance when calculating the minimum amount payable each year under Code Section 401(a)(9) and the Treasury Regulations thereunder.

(d) Special Rule for 2009/2020 RMDs: Notwithstanding the provisions of this Section, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009/2020 but for the enactment of Code Section 401(a)(9)(H) ~~of the Code~~ ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009/2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009/2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009/2020 RMDs"), will receive those distributions for 2009/2020 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity

to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding the provisions of Section 6.8, and solely for purposes of applying the direct rollover provisions of the Plan, ~~2009~~2020 RMDs and Extended ~~2009~~2020 RMDs will be treated as Eligible Rollover Distributions.

7.5 Unforeseeable Emergencies:

(a) In the event an unforeseeable emergency occurs, a Participant may apply to the Board to receive that part of the value of his ~~or~~ her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Board, the Participant shall be paid only such amount as the Board deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

(b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant, or to the spouse, dependent or Beneficiary of the Participant, resulting from a sudden unexpected illness, accident, or disability, loss of property due to casualty, imminent foreclosure of, or eviction from, a primary residence, the need to pay for medical expenses (including non refundable deductibles and prescription medicine), and the need to pay funeral expenses for a family member, or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant, or of the spouse, dependent or Beneficiary of the Participant, as the case may be. The need to send a child to college or to purchase a new home shall not be considered unforeseeable emergencies. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case.

(c) Participants may direct the respective amounts to be taken from their Pre-Tax Deferred Compensation and Roth Deferred Compensation accounts to carry out distributions under this Section 7.5, subject to any reasonable limitations that may be established by the Trustee or the Plan Administrator.

(d) Participants in the Plan who receive FICA replacement retirement benefits pursuant to Code Section 3121(b)(7)(F) and the Treasury Regulations thereunder shall not be eligible to receive Unforeseeable Emergency distributions under this Section 7.5.

7.6 Transitional Rule for Pre-1989 Benefit Elections: In the event that, prior to January 1, 1989, a Participant or Beneficiary has commenced receiving benefits under a payment option or has irrevocably elected a payment option or benefit commencement date, then that payment option or election shall remain in effect notwithstanding any other provision of the Plan.

7.7 De Minimis Accounts: Notwithstanding ~~Section 5.2~~Sections 7.1, 5.37.2 and ~~5.4~~7.3, if the amount of a Participant's Account is not in excess of \$1,000 (or \$5,000 for distributions commencing on or before December 31, 2005) on the date that payments commence or on the date of the Participant's death, then payment of the Participant's entire Account shall be made to the Participant (or to the Beneficiary if the Participant is deceased), in lump sum, as soon as is practicable following the Participant's retirement, death, or other Severance from Employment.

If an active Participant's Account does not exceed \$5,000 (or \$7,000 on and after October 1, 2024), exclusive of rollovers, and (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.7, the Participant may elect to receive, or the Employer may distribute (with the Participant's consent, or, if the Account is less than \$1,000, without the Participant's consent), the Participant's entire Account, in lump sum.

Participants in the Plan who receive FICA replacement retirement benefits pursuant to Code Section 3121(b)(7)(F) and the Treasury Regulations thereunder shall not be eligible to receive de minimus Account in-service distributions under this Section 7.7.

7.8 Distributions for Health and Long-Term Care Insurance: Retired Participants who were employed as sworn police officers of the City of Lakewood may direct the Plan Administrator to remit up to \$3,000 each year from their Account to pay the cost of qualified health insurance and/or long-term care insurance, subject to applicable limitations imposed under Code ~~§~~Section 402 and the Treasury Regulations thereunder. In order to be eligible for health and long-term care insurance distributions, a Participant must be separated from service with the Employer by reason of Disability or attainment of Normal Retirement Age under the Plan. The Plan Administrator must remit such insurance payments directly to the insurance provider. The \$3,000 annual limitation limits the total distributions from all retirement plans in which a Participant has an account. Distributions made under this Section 7.8 shall first be taken from a Participant's Pre-Tax Deferred Compensation account, and then from the Participant's Roth Deferred Compensation account. Notwithstanding the foregoing, long-term care distributions made on and after October 1, 2024, may be remitted to the Participant or the insurance provider.

Effective January 1, 2026 (or as soon as administratively feasible thereafter), except for Variable Employees, a Participant is eligible to withdraw up to the lesser of: (a) \$2,500 (as adjusted), (b) the actual amount of the insurance premium, or (c) ten percent (10%) of the Participant's vested Account without penalty under Code Section 72(t) for Certified Long-Term Care Insurance, as defined under Code Section 401(a)(39)(C), and subject to the Plan's procedures, including but not limited to, the Participant filing a long-term care premium statement (as described in Code Section 401(a)(39)(E)) with the Plan Administrator and the insurance issuer providing disclosure to the Secretary, as required under Code Section 401(a)(39)(C)(iii).

7.9 Qualified Reservist Distributions (~~"~~QRDs~~"~~):

(a) QRD Eligibility and Amount.

(1) Notwithstanding the restrictions set forth in this Article VII, Participants may receive a distribution of all or a portion of their Account if the distribution fulfills the requirements for a QRD under Code Section 72(t).

(2) A Participant is entitled to a QRD equal to all or a portion of his or her Account if: ~~(1a)~~ the Participant is a member of a reserve component, as defined in 37 U.S.C. ~~§~~Section 101, and is ordered or called to active duty for a period of 180 days or more or for an indefinite period, and ~~(2b)~~ the request for distribution is made during the period beginning with the order or call to active duty and ending on the last day of the active duty period.

(b) Rules and Procedures.

(1) A Participant requesting a QRD must provide the Trustee with a copy of the order or call to active duty before the QRD may be made. The order or call to active duty must specify that the Participant's period of active duty is for 180 days or more or is indefinite.

(2) If the period specified in an order or call to active duty is less than 180 days, subsequent calls or orders that increase the total period of active duty to 180 days or more will qualify the Participant for a QRD.

(3) Participants are limited to a maximum of one (1) QRD in each Plan Year.

(4) The Plan shall process and pay QRDs no more than sixty days (60) after a Participant's request for a QRD has been made.

(5) After a Participant receives a QRD, the Participant's deferrals under his or her Joinder Agreement shall be suspended for a period of six (6) months after the date on which the QRD is made.

7.10 Birth or Adoption Withdrawal: Except for Variable Employees, a Participant is eligible to withdraw up to \$5,000 from his or her Account without penalty under Code Section 72(t) for expenses related to the birth or adoption of a child (under age 18 or incapable of self-support) during the year following birth or adoption. When a Participant is eligible for this withdrawal under multiple Employer plans, the Participant may withdraw up to \$5,000 in total from all Employer plans. Participants may contact the Board of Trustees if repayment of this withdrawal is desired. Provided, however, effective December 29, 2022, any repayment hereunder must be made within three years of the date the withdrawal is made, except withdrawals made on or before December 29, 2022, must be repaid no later than December 31, 2025.

7.11 Coronavirus Relief Distribution: Except for Variable Employees, a Participant eligible for relief under the Coronavirus Relief, Aid, and Economic Security Act (the "CARES Act") may withdraw up to \$100,000 in total from all Employer plans, subject to the terms and conditions of the CARES Act, effective March 27, 2020 through December 31, 2020, without incurring a penalty for distribution.

7.12 Distribution of Rollover Contributions: A Participant may request and receive a distribution of the Participant's Account attributable to rollover contributions from any Eligible Rollover Plan before the Participant has a distributable event under Article VII.

7.13 Withdrawal of Automatic Enrollment Contribution: If a Participant declines to participate in Automatic Enrollment as set forth in Section 4.2 within ninety (90) days after the first payroll date on which an Automatic Deferred Compensation contribution is made for the Participant, the Participant may make an election to withdraw the Automatic Deferred Compensation amounts in his or her Account. The Participant may thereafter enter a Joinder Agreement in accordance with the provisions of Article IV.

7.14 Participant Loan Policy: The Trustees may adopt a policy and procedure to allow Participants to obtain loans from the Plan. Such loan policy must be approved and

adopted by the Trustees and shall comply with the requirements of Code Section 72(p), as it may be amended from time to time. The Trustees shall adopt such forms and procedures necessary to implement such a Participant Loan Policy and shall make available to Participants the provisions of the Participant Loan Policy if adopted by the Trustees.

ARTICLE VIII. NON-ASSIGNABILITY

Except for distributions made to alternate payees pursuant to domestic relations orders which comply with the provisions of [§C.R.S. Section 14-10-113\(6\)](#), ~~C.R.S.~~, and applicable provisions of Code [§Section 414\(p\)](#), benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

ARTICLE IX. RELATIONSHIP TO OTHER PLANS AND EMPLOYMENT AGREEMENTS

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

ARTICLE X. AMENDMENT OR TERMINATION OF PLAN

The Employer may at any time amend this Plan [and Trust Agreement](#) provided that it transmits such amendment in writing to the Trustee at least 30 days prior to the effective date of the amendment. The consent of the Trustee shall not be required in order for such amendment to become effective. The Employer may at any time terminate this Plan.

Notwithstanding the foregoing, the Employer delegates to the Trustee the power to amend the Plan [and Trust Agreement](#) solely for the purpose of incorporating minor, technical amendments which are required, from time to time, by changes in state or federal laws or regulations.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under [Code](#) Section 457 ~~of the Code~~ or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

ARTICLE XI. APPLICABLE LAW

This Plan and Trust shall be construed under the laws of Colorado and is established with the intent that it meet the requirements of an "eligible deferred compensation plan" under [Code](#) Section 457-~~of the Code~~, as amended. The provisions of this Plan and Trust [Agreement](#) shall be interpreted wherever possible in conformity with the requirements of that ~~section~~[Code Section](#).

ARTICLE XII. ~~GENDER AND~~ NUMBER

The ~~masculine pronoun, whenever used herein, shall include the feminine pronoun, and the~~ singular shall include the plural, except where the context requires otherwise.

ARTICLE XIII. SEVERABILITY

If a court of competent jurisdiction holds any provisions of this Plan to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

[Space intentionally left blank. Signature page follows.]

APPROVED this _____ day of _____, 20____ by the Board of Trustees of the City of Lakewood Deferred Compensation Plan and Trust Agreement.

Brent Berninger, Chairperson

APPROVED by resolution this _____ day of _____, 20____ by the City Council of the City of Lakewood, Colorado.

Wendi Strom, Mayor

Document comparison by Workshare Compare on Monday, September 18, 2023 12:22:16 PM

Input:	
Document 1 ID	iManage://spencerfane-mobility.imanage.work/DENVER/7855980/1
Description	#7855980v1<spencerfane-mobility.imanage.work> - Lakewood 457(b)Deferred Comp Plan--Amended and Restated--1-1-11
Document 2 ID	iManage://spencerfane-mobility.imanage.work/DENVER/7846979/3
Description	#7846979v3<spencerfane-mobility.imanage.work> - Lakewood 457(b)Deferred Comp Plan--Amended and Restated--1-1-2023
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Moved from	3
Moved to	3
Style changes	0
Format changes	0
Total changes	496

CITY OF LAKEWOOD
DEFERRED COMPENSATION PLAN AND TRUST AGREEMENT
AMENDED AND RESTATED
January 1, 2024

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THE CITY OF LAKEWOOD

DEFERRED COMPENSATION PLAN AND TRUST AGREEMENT

THIS AMENDED AND RESTATED PLAN AND TRUST AGREEMENT amends and restates the City of Lakewood Deferred Compensation Plan and Trust Agreement, dated January 1, 2011 (the "Plan") and is made effective by the Employer and Trustees under the Plan as of January 1, 2024, except as otherwise set forth herein.

ARTICLE I. PURPOSE

The City of Lakewood (the "Employer") established the Plan, originally effective January 4, 1999, as the City of Lakewood Deferred Compensation Plan and Trust Agreement. The Employer most recently amended and restated the Plan effective January 1, 2011, which consisted of the provisions set forth in the January 1, 2006 document, and the First, Second and Third Amendments thereto, as well as additional changes. This amended and restated Plan consists of the provisions set forth in the January 1, 2011 document, and the First, Second and Third, Fourth, and Fifth Amendments thereto, as well as additional changes, and is made effective January 1, 2024, except as otherwise set forth herein.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended.

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

ARTICLE II. DEFINITIONS

2.1 Account: The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation (including separate Pre-Tax Deferred Compensation and Roth Deferred Compensation subaccounts), including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

2.2 Accounting Date: Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.6 for valuing the Trust's assets.

2.3 Beneficiary: The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreement, if the Designated Beneficiary predeceases the Participant,

or if the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary.

2.4 Code: The Internal Revenue Code of 1986, as amended.

2.5 Deferred Compensation: The amount of Normal Compensation otherwise payable to the Participant which the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 6.8, or any other amount which the Employer agrees to credit to a Participant's Account. A Participant's Deferred Compensation includes his or her Pre-Tax Deferred Compensation and Roth Deferred Compensation.

2.6 Employee: Any individual who provides services for the Employer, whether as an employee of the Employer or as an elected official and who has been designated by the Employer as eligible to participate in the Plan. The term "Employee" includes regular and Provisional part-time as well as regular and Provisional full-time employees.

Provisional Employees for purposes of this Section 2.6 is one who is either part-time or full-time and is hired for a period of time not to exceed two (2) years, and who receives benefits.

Employees classified as Variable Employees shall automatically become Participants in the Plan solely with respect to the provision of FICA replacement retirement benefits pursuant to Code Section 3121(b)(7)(F) and the Treasury Regulations thereunder. Variable Employees shall not be eligible to defer Normal Compensation or enter Joinder Agreements under the Plan.

Effective as of December 14, 2008, "Employee" shall not include employees of the Lakewood Housing Authority.

2.7 Includible Compensation: The amount of an Employee's compensation from the Employer for a taxable year that is attributable to services performed for the Employer and that is includible in the Employee's gross income for the taxable year for federal income tax purposes. Solely for the purposes of determining the Normal and Catch-Up Limitations in Section 5.1 and 5.2 herein, Includible Compensation shall include any amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Section 4.1 or Section 4.2). Includible Compensation taken into account for an Employee for any Plan Year shall be limited to \$345,000 (or such higher maximum as may apply under Code Section 401(a)(17)).

2.8 Joinder Agreement: An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, including the respective amounts of Pre-Tax Deferred Compensation and Roth Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.

2.9 Nonelective Employer Contribution: A contribution made by the Employer for a Participant with respect to which the Participant does not have the choice to receive the contribution in cash or property.

2.10 Normal Compensation:

(a) Effective August 22, 2016, the amount of base salary which is payable to an Employee by the Employer for a taxable year, including any amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Section 4.1 or Section 4.2), and excluding overtime pay and hazard pay.

(b) Prior to August 22, 2016, the amount of cash compensation which is payable to an Employee by the Employer for a taxable year, including any amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Section 4.1 or Section 4.2).

(c) Effective January 1, 2009, Normal Compensation shall include "differential wage payments" made to an Employee with respect to active military service, in accordance with Code Section 414(u)(12). Includible Compensation shall be determined without regard to any community property laws.

(d) To the extent permitted under Treasury Regulations Section 1.457-4(d)(1), Normal Compensation shall include accrued bona fide sick leave, vacation or other leave pay so long as the Employee would have been able to use the leave if employment had continued and such pay is actually paid by the later of two and a half (2-1/2) months after the Employee's Severance from Employment or the end of the calendar year in which the Employee's Severance from Employment occurs.

2.11 Normal Retirement Age: Age 72, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Plan Administrator prior to Severance from Employment. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the catch-up limitation of Section 5.2 hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.2, his or her Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive unreduced retirement benefits under the Employer's basic retirement plan covering the Participant and may not be later than the date the Participant will attain age 72. If a Participant continues employment after attaining age 72, not having previously elected an alternate Normal Retirement Age, the Participant's alternate Normal Retirement Age shall not be later than the mandatory retirement age, if any, established by the Employer, or the age at which the Participant actually separates from service if the Employer has no mandatory retirement age. If the Participant will not become eligible to receive benefits under a basic retirement plan maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than age 55 and may not be later than age 72.

2.12 Participant: Any Employee who has joined the Plan pursuant to the requirements of Article IV. Participation shall cease upon distribution of a Participant's entire Account.

2.13 Plan Administrator: The person or persons engaged to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described.

2.14 Plan Year: The calendar year.

2.15 Pre-Tax Deferred Compensation: A Participant's Deferred Compensation which is not Includible Compensation to the Participant at the time deferred and has been irrevocably designated as Pre-Tax Deferred Compensation by the Participant in his or her Joinder Agreement, or by reason of Automatic Enrollment. A Participant's Pre-Tax Deferred Compensation will be separately accounted for, as will gains and losses attributable to such Pre-Tax Deferred Compensation.

2.16 Retirement: The first date upon which both of the following shall have occurred with respect to a Participant: Severance from Employment and attainment of age 55.

2.17 Roth Deferred Compensation: Effective November 1, 2011, Participants may elect to direct all or a portion of their Deferred Compensation to a separate Roth Deferred Compensation account. Roth Deferred Compensation means a Participant's Deferred Compensation that is Includible Compensation to the Participant at the time deferred and has been irrevocably designated as Roth Deferred Compensation by the Participant in his or her Joinder Agreement. A Participant's Roth Deferred Compensation will be separately accounted for, together with any rollovers into the Plan by the Participant from his or her 403(b) or 457(b) Roth accounts, as well as any gains and losses attributable to such amounts. However, forfeitures may not be allocated to such account.

2.18 Severance From Employment: In general, the Participant shall be deemed to have severed from employment with the Employer for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship between the Employer and Participant is considered to have actually terminated.

2.19 Trust: The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

2.20 Trustee, Trustees, or Board of Trustees: The Board of Trustees appointed or elected per Article VI.A.

Upon Severance From Employment of an Employee who is a Trustee, such person's position as Trustee shall terminate and such person's successor in office shall fill the vacancy. Such resignation shall become effective upon the receipt of such written notice by the then City Clerk. Each successor Trustee shall upon succeeding as Trustee be vested with all of the rights, powers, and discretions herein vested in and imposed upon the Trustee. Upon the resignation of any Trustee, he or she shall cause to be delivered to the successor Trustee any Trust property or records then in his or her possession. No successor Trustee shall have any duty to examine the accounts or doings of his or her predecessors. Any successor Trustee shall be responsible

only for the money and property known to him to comprise the principal and income of the Trust and shall in no way be liable or responsible for anything done or omitted to have been done by his or her predecessors.

ARTICLE III. ADMINISTRATION

3.1 Duties of the Trustee: The Trustee shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants which may be required in the administration of this Plan. The Trustee's decisions shall be afforded the maximum deference permitted by applicable law.

3.2 Duties of Plan Administrator: The Plan Administrator, as agent for the Employer and the Trustee, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Trustee in accordance with the provisions of this Plan.

The Plan Administrator shall administer the Plan in accordance with applicable regulations and other binding authority not reflected in this Plan, including but not limited to applicable regulations and binding authority pursuant to Section 401 of the Setting Every Community Up for Retirement Enhancement ("SECURE") Act (Division O of the Further Consolidated Appropriations Act, enacted December 20, 2019), and the SECURE 2.0 Act of 2022 (Division T of the Consolidated Appropriations Act of 2023, enacted December 29, 2022), and the Treasury Regulations promulgated thereunder.

ARTICLE IV. PARTICIPATION IN THE PLAN

4.1 Initial Participation: Prior to November 1, 2023, each Employee may become a Participant in this Plan on the first day of the month next following commencement of employment as an Employee. Any person elected or appointed to a term of office with the Employer is deemed to commence employment at the time such person assumes office. An Employee may become a Participant by entering into a Joinder Agreement prior to the first day of the calendar month in which the Joinder Agreement is to become effective to defer Normal Compensation not yet earned. Participants shall elect on their Joinder Agreements the respective portions of their Deferred Compensation that will be Pre-Tax Deferred Compensation and Roth Deferred Compensation.

Effective November 1, 2023, each Employee may become a Participant in this Plan by executing a Joinder Agreement to defer Normal Compensation not yet earned. Such Agreement shall become effective no later than the pay period that occurs after the executed Agreement is received in good order by the Plan Administrator. Any person elected or appointed to a term of office with the Employer is deemed to commence employment at the time such person assumes office. Participants shall elect on their Joinder Agreements the respective portions of their Deferred Compensation that will be Pre-Tax Deferred Compensation and Roth Deferred Compensation.

Employees classified as Variable Employees shall be immediately eligible to participate in FICA replacement retirement benefits pursuant to Code Section 3121(b)(7)(F) and the Treasury Regulations thereunder. The Employer shall make contributions (from amounts deducted from each Variable Employee's Normal Compensation) to the Participant

Account of each Variable Employee equal to 7.5% of such Variable Employee's Normal Compensation during the Plan Year.

4.2 Automatic Enrollment: Notwithstanding Section 4.1, each Employee that does not enter into a Joinder Agreement, except as to Variable Employees whose timing of participation is set forth in Section 2.6, shall automatically become a Participant in the Plan and make default salary deferrals to the Plan in accordance with this Section and with the procedures established by the Employer and the Plan Administrator. An Employee subject to this Section is deemed to have elected to participate in the Plan and consents to the deferral by the Employer of the specified default percentage of Normal Compensation for any payroll period for which a Joinder Agreement is not in effect. Default elective deferrals shall initially be made by the Employee in the amount of two percent (2%) of the Employee's Normal Compensation. Effective as of April 1, 2023, and April 1 of each year thereafter, the Employer shall automatically increase the default elective deferral rate of every Employee subject to this Section 4.2 by one percent (1%); provided, however, that in no case shall an Employee's default elective deferral exceed ten percent (10%) of Normal Compensation.

4.3 Amendment of Joinder Agreement: A Participant may amend an executed Joinder Agreement to change the amount of Normal Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero) or to change his or her investment preference (subject to such restrictions as may result from the nature of terms of any investment made by the Employer) at any time. Prior to November 1, 2023, such amendment shall become effective as of the first day of the calendar month following the calendar month in which the amendment is executed. Effective November 1, 2023, such amendment shall become effective no later than the pay period that occurs after the executed amendment is received in good order by the Plan Administrator. A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary and such amendment shall become effective immediately.

4.4 Minimum Deferrals: A Participant must comply with any minimum monthly deferral requirements which may be set by the Employer from time to time on a nondiscriminatory basis.

4.5 Suspension of Deferrals: A Joinder Agreement shall be automatically suspended for any pay period in which there are insufficient monies available to make the entire deduction agreed upon, and automatically reinstated in the next pay period that monies are sufficient to make the agreed upon deferral. In addition, if a Participant receives a Qualified Reservist Distribution pursuant to Section 7.9 hereunder, the Participant's deferrals under his or her or her Joinder Agreement shall be suspended for a period of six (6) months after the date on which the Qualified Reservist Distribution is made.

4.6 Discretionary Nonelective Employer Contributions: The Employer may, for any Plan Year and in its sole discretion, make Nonelective Employer Contributions to the accounts of Participants. Nonelective Employer Contributions shall be made as a percentage of Normal Compensation.

Variable Employees shall not be eligible to receive discretionary Nonelective Employer Contributions.

Effective April 1, 2025, Participants may elect to receive Nonelective Employer Contributions if made by the Employer, as Roth Deferred Compensation, subject to the conditions of Section 2.17, including that such amounts shall be Includible Compensation to the Participant and shall be nonforfeitable.

ARTICLE V. LIMITATIONS ON DEFERRALS

5.1 Normal Limitation: Except as provided in Section 5.2, the maximum amount of Deferred Compensation for any Participant for any taxable year shall not exceed the lesser of \$23,000, as adjusted for the cost-of-living in accordance with Code Section 457(e)(15) (the "dollar limitation"), or 100 percent of the Participant's Includible Compensation for the taxable year.

If the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described above, or the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Plan Administrator, then the Deferred Compensation, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant, first from the Participant's Roth Deferred Compensation from such Plan Year, and then from the Participant's Pre-Tax Deferred Compensation for such Plan Year.

5.2 Catch-Up Limitation: For each of the last three (3) taxable years of a Participant ending before his or her attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of: (1) twice the otherwise maximum deferral amount of Section 5.1, or (2) the Participant's Underutilized Limitation amount, as determined by the Plan Administrator pursuant to Treasury Regulation Section 1.457-4(c)(3).

5.3 Other Code Section 457 Plans: If a Participant participates in more than one eligible deferred compensation plan, as defined in Code Section 457, the total deferral under all such plans shall be subject to the maximum limitations specified in Section 5.1, and, if applicable, Sections 5.2 or 5.4.

5.4 Catch-Up Contributions: All Employees who are eligible to make deferral contributions under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make Catch-Up Contributions in accordance with, and subject to the limitations of, Code Section 414(v). Such Catch-Up Contributions shall not be taken into account for purposes of the provisions of the plan implementing the required limitations of Code Sections 402(g) and 415. Catch-Up Contributions shall not be made during a Participant's last three years before Normal Retirement Age if the Participant has elected to make a Catch-Up Limitation contribution pursuant to Section 5.2. Catch-Up Contributions may be comprised of Pre-Tax Deferred Compensation or Roth Deferred Compensation, or both, except that, effective January 1, 2026, any Employee who receives compensation (as defined in Code Section 3121(a)) from the Employer for the preceding calendar year in excess of \$145,000 (as adjusted), who is a Participant and who makes Catch-Up Contributions during the Plan Year pursuant to this Section 5.4, shall make such Catch-Up Contributions as Roth Deferred Compensation, not Pre-Tax Deferred Compensation.

Effective January 1, 2025, all Participants who are eligible to make Catch-Up Contributions and who have attained age 60 through age 63 before the close of the Plan Year, shall be eligible to make Catch-Up Contributions in accordance with and subject to the limitations of Code Section 414(v)(2)(B)(ii).

5.5 Roth Deferred Compensation: The Plan Administrator will administer Roth Deferred Compensation in accordance with applicable regulations or other binding authority not reflected in the Plan. Any applicable regulations or other binding authority shall supersede any contrary provisions of the Plan.

ARTICLE VI. TRUST AND INVESTMENT OF ACCOUNTS

6.1 Investment of Deferred Compensation: A Trust is hereby created to hold all the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.3.

6.2 Investment Powers: The Trustee or the Plan Administrator, acting as agent for the Trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.5.

(a) To invest and reinvest the Trust without distinction between principal and income in any form of tangible or intangible property, real, personal, or mixed, and wherever situated, including, but not by way of limitation, common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, mortgages, certificates of deposit, interest, or participation, equipment trust certificates, commercial paper including but not limited to participation in pooled commercial paper accounts, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, and guaranteed interest contracts, deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit, and other forms of securities or investments of any kind, class, or character whatsoever and representing interests in any form of enterprise, wherever it may be located, organized or operated within or without the United States of America, whether such investments are income producing or not, without being limited in any respect by statute or court rule or decision of any jurisdiction now or hereafter in force purporting to limit or otherwise affect such investments. Assets of the Trust may be invested in securities or new ventures that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.

(b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Code Sections 457 or 401, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.

(c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other

457 plan or trust qualified under Code Section 401(a) or any other plan described in Code Section 401(a)(24), and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

(d) To purchase part interests in real property or in mortgages on real property, wherever such real property may be situated, and to delegate to a property manager or the holder or holders of a majority interest in such real property or mortgage on real property the management and operation of any part interest in such real property or mortgages.

(e) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.

(f) To retain, manage, operate, administer, divide, subdivide, partition, mortgage, pledge, improve, alter, demolish, remodel, repair, and develop in any manner any property, or any part of or partial interest in any property, real or personal, held in the Trust, to lease such property for any period of time, and to grant options to sell, exchange, lease, or otherwise dispose of any such property, without regard to restrictions applicable to fiduciaries or others and without the approval of any court.

(g) To sell for cash or credit, redeem, exchange for other property, convey, transfer, or otherwise dispose of any property held in the Trust in any manner and at any time, by private contract or at public auction or otherwise, and no other person shall be bound to see the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition.

(h) To enter into contracts for or to make commitments either alone or in company with others to purchase or sell at any future date any property acquired for the Trust.

(i) To vote or to refrain from voting any stocks, bonds, or other securities held in the Trust, to exercise any other right appurtenant to any securities or other property held in the Trust, to give general or special proxies or powers of attorney with or without power of substitution with respect to such securities and other property, to exercise any conversion privileges, subscription rights, or other options or privileges with respect to such securities and other property and make any payments incidental thereto, and generally to exercise, personally or by general or limited power of attorney, any of the powers of an owner with respect to stocks, bonds, securities, or other property held in the Trust at any time.

(j) To oppose or to consent to and participate in any organization, reorganization, consolidation, merger, combination, readjustment of finances, or similar arrangement with respect to any corporation, company, or association, any of the securities of which are held in the Trust, to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments, or subscriptions that may be deemed necessary or advisable in connection therewith, and to accept, hold, and retain any securities or other property that may be so acquired.

(k) To deposit any property held in the Trust with any protective, reorganization, or similar committee, and to delegate discretionary power thereto and to pay and agree to pay part of its expenses and compensation and any assessments levied with respect to any such property so deposited.

(l) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.

(m) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

(n) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.

(o) To make, execute, acknowledge, and deliver any and all deeds, leases, mortgages, conveyances, contracts, waivers, releases, or other instruments in writing necessary or proper for the accomplishment of any of the foregoing powers.

(p) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.

(q) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.3 Taxes and Expenses: All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by

the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

6.4 Payment of Benefits: The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Trustee, or by any custodian or other person so authorized by the Employer to make such disbursement. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Trustee or the Employer.

6.5 Investment Funds: In accordance with uniform and nondiscriminatory rules established by the Trustee and the Plan Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Trustee or the Plan Administrator. Neither the Employer, the Trustee, the Plan Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

6.6 Valuation of Accounts: As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.7 Crediting of Accounts: The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Trustee through the investment of the Participant's Deferred Compensation pursuant to Sections 6.5 and 6.6. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

6.8 Transfers:

(a) Incoming Transfers: A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's Account under the Plan if (i) the Participant has separated from service with that employer and become an Employee of the Employer, and (ii) the other employer's plan provides that such transfer will be made. The Trustee or Plan Administrator may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Code Section 457, and to assure that transfers are provided for under such plan. The Trustee or Plan Administrator may refuse to accept a transfer in the form of assets other than cash, unless the Trustee and the Plan Administrator agree to hold such other assets under the Plan. Any such transferred amount shall be treated as a deferral subject to the limitations of Article V, except that, for purposes of applying the limitations of Sections 5.1 and 5.2, an amount deferred during any taxable year

under the plan from which the transfer is accepted shall be treated as if it had been deferred under this Plan during such taxable year and compensation paid by the transferor employer shall be treated as if it had been paid by the Employer.

(b) **Outgoing Transfers:** An Eligible Rollover Distribution amount may be transferred to any Eligible Rollover Plan maintained by another employer, and charged to a Participant's Account under this Plan, if (i) the Participant has separated from service with the Employer and become an employee of the other employer, (ii) the other employer's plan, or the custodian's IRA, as the case may be, provides that such transfer will be accepted, and (iii) the Participant and the employers and/or custodians have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer or custodian.

An "Eligible Rollover Distribution", for the purposes of this paragraph, means any distribution of all or any portion of the balance to the credit of the distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and any hardship distribution; 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).

An "Eligible Rollover Plan", for the purposes of this paragraph, means an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state (including Roth Deferred Compensation accounts from such eligible plans), a defined contribution plan which is either an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), a Roth individual retirement annuity described in Code Section 408A (subject to certain additional Code requirements), an annuity plan described in Code Section 403(a) (including Roth Deferred Compensation accounts from such annuity plan), or a qualified trust described in Code Section 401(a), that accepts the prospective recipient's Eligible Rollover Distribution. An Eligible Rollover Plan shall also mean an annuity contract described in Code Section 403(b). The definition of Eligible Rollover Plan applicable to a Participant shall also apply in the case of a distribution to a Participant's surviving spouse and to a Participant's spouse or former spouse who is the alternate payee under a Plan Approved Domestic Relations Order, as defined in Section 6.9. In the case of a distribution to a non-spouse Beneficiary, an Eligible Rollover Plan means an "inherited individual retirement account or annuity" described in Code Sections 408(a) or (b), or a Roth IRA described in Code Section 408A. The Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Code Section 457, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Code Section 457 and the Treasury Regulations thereunder.

(c) **Roth Transfers:** Effective for benefit distributions on or after January 1, 2011, Participants may direct all or a portion of any distributions made in accordance with Article VII to a Roth Deferred Compensation account within the Plan. The Plan Administrator will

administer transfers of benefit distributions into Roth Deferred Compensation accounts in accordance with applicable regulations or other binding authority not reflected in the Plan. The Plan Administrator will report Roth Transfers on appropriate income tax forms in accordance with applicable IRS rules.

(d) Incoming Rollovers: This Plan shall accept Rollover Contributions. A "Rollover Contribution" means the amount of cash or property which an Eligible Rollover Plan distributes to a Participant in an Eligible Rollover Distribution under Code Section 402(c)(4) and which the Participant transfers directly or indirectly to this Plan. A Rollover Contribution includes net income, gain or loss attributable to the Rollover Contribution. A Rollover Contribution excludes after-tax Employee contributions, as adjusted for net income, gain or loss. The Employer, operationally and on a nondiscriminatory basis, may elect to limit a Participant's right to make a Rollover Contribution. Before accepting a Rollover Contribution, the Trustee may require a Participant to furnish satisfactory evidence the proposed transfer is in fact a Rollover Contribution which the Code permits an employee to make to an Eligible Rollover Plan. The Trustee, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

6.9 Domestic Relations Orders: A Participant's benefits under the Plan may be distributed to an alternate payee pursuant to a domestic relations order which complies with the provisions of C.R.S. Section 14-10-113(6), applicable provisions of Code Section 414(p) and any rules and procedures implemented by the Trustee ("Plan Approved Domestic Relations Order"). An alternate payee must withdraw his or her share of a Participant's Account from the Plan as a lump sum payment.

6.10 Employer Liability: In no event shall the Employer's liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Employer, the Trustee nor the Plan Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

ARTICLE VI.A. BOARD OF TRUSTEES

6.A.01 Existing Trustee(s): The existing Trustee(s) shall continue to serve until the new Board of Trustees is empaneled pursuant to the following terms.

6.A.02 Establishment of Board of Trustees: A Board of Trustees was established in 2019, upon election and appointment of Trustees as described below in section 6.A.03.

6.A.03 Composition of Board: The Plan shall be administered by the Board of Trustees which shall consist of the City Mayor, one City Manager designee (sworn or non-sworn employee), four (4) sworn employees, four (4) non-sworn employees, and two (2) retirees (one sworn and one non-sworn).

(a) The City Mayor shall be a non-voting member of the Board, except when votes of the board are equally divided, in which case the City Mayor can cast a tie-breaking vote either in writing or electronically.

(b) The City Manager designee is a voting member and will be a sworn or non-sworn employee selected by the City Manager.

(c) The four (4) sworn employees will be voting members elected to the Board by a majority vote of the voting plan participants of the City of Lakewood Police Money Purchase Pension Plan and Trust Agreement.

(d) The four (4) non-sworn employees will be voting members elected to the Board by a majority vote of the voting non-sworn plan participants of the City of Lakewood Employees Money Purchase Pension Plan and Trust Agreement.

(e) The one (1) sworn retiree will be a voting member elected by a majority vote of the voting sworn plan participants of the City of Lakewood Police Money Purchase Pension Plan and Trust Agreement.

(f) The one (1) non-sworn retiree will be a voting member elected by a majority vote of the voting non-sworn plan participants of the City of Lakewood Employees Money Purchase Pension Plan and Trust Agreement.

A Chairperson and a Vice-Chairperson/Secretary shall be selected by the Board of Trustees annually. Human Resources will maintain the role of Recording Secretary/Administrator.

6.A.04 Board Meetings: Meetings will occur quarterly and members can attend via phone or video call/conference. To vote, there must be a quorum of 5 consisting of at least two (2) sworn employees and two (2) non-sworn employees. Such vote may be taken by written or electronically communicated consent.

6.A.05 Terms: Members of the Board of Trustees shall serve specified terms as follows:

(a) Elected Members: The initial members of the Board of Trustees elected in October of 2019 or such other agreed upon date and will serve the remaining portion of 2019 followed by one (1), two (2) or three (3) year terms, as determined by the Board after election, creating annually staggered terms. Thereafter, elected members shall serve three (3) year terms, staggered annually, with the ability to be elected in perpetuity.

(b) Appointed Member: The member appointed by the City Manager will serve a three (3) year term with the ability to be appointed in perpetuity. The City Manager will appoint for this position upon the end of each term or vacancy.

6.A.06 Elections: Elections with respect to Board seats will be held in January of the calendar year in which a seat is up for election. The City Clerk shall be responsible for developing the election procedures and elections shall be conducted by the City Clerk's office. An employee or a retiree shall become a candidate for the Board of Trustees by notifying the City Clerk in writing on or before the notification date set by the City Clerk of his or her intention to run for election to the Board of Trustees. If only one sworn or non-sworn employee or retiree has indicated his or her intention to run for election for an open seat within his or her same category of employment by the designated notification deadline, the City Clerk shall

declare the election for that specific seat (sworn or non-sworn) cancelled and the sworn or non-sworn employee or retiree shall be deemed to be elected to the Board of Trustees.

6.A.07 Resignation of Board Member: A member of the Board of Trustees may resign at any time by giving written notice to the Board of Trustees. Resignation will be effective at the time specified in the written notice or if no time is specified, will be effective immediately. Acceptance by the Board of Trustees is not required for the resignation to be effective. Upon leaving his or her role as a member of the Board of Trustees, the member shall deliver any Trust property or records in his or her possession.

6.A.08 Vacancies: A vacancy occurs upon the resignation, termination of employment, or death of a member of the Board of Trustees. Vacancies shall be filled within 90 days, or at such later date as determined by the Board of Trustees, by election for an elected member or appointment for an appointed member. An elected or appointed member filling a vacancy mid-term shall serve for the unexpired term of the vacancy and shall thereafter be subject to election or appointment upon the expiration of said term. A vacancy for an elected member will be filled with the same category of employee or retiree (sworn or non-sworn).

6.A.09 Successor Board Members: A successor Board of Trustees member, elected or appointed, shall have all of the rights, powers and discretions vested in him or her as his or her predecessor had vested. A successor Board of Trustees member shall have no duty to examine the accounts or doings of his or her predecessors. A successor Board of Trustees member is responsible only for money and property known to him or her to comprise the principal and income of the Trust and shall in no way be liable or responsible for anything done or omitted by his or her predecessors.

6.A.10 Organization and Operation of Offices of Board of Trustees: The Board of Trustees may adopt such procedures as it deems desirable for the conduct of its respective affairs and may appoint or employ a secretary or other agents, any of whom may be, but need not be, an officer or employee of the City. Any agent may be removed at any time by the Board of Trustees.

6.A.11 Information to be Made Available to Board of Trustees: To enable the Board of Trustees to perform all of its respective duties under the Plan, the City shall provide the Board of Trustees with access to the following information for each Employee: name and address, social security number, birthdate, dates of commencement and termination of employment, reason for termination of employment, annual compensation, and such other information as the Board of Trustees may require. To the extent the information is available in City records, the City shall provide the Board of Trustees with access to information relating to each Employee's Participant contributions, benefits received under the Plan and marital status. If such information is not available from the City's records, the Board of Trustees shall obtain such information from the Participants. The Board of Trustees and the City may rely on and shall not be liable for any information which an Employee provides, either directly or indirectly. As soon as possible following a Participant's termination of employment for any reason, the City shall certify in writing to the Board of Trustees such Participant's name, address, date and reason for his termination of employment.

6.A.12 General Duties and Powers of Board of Trustees: The Board of Trustees shall decide all questions arising in the administration, interpretation and application of the Plan and Trust Agreement, including all questions relating to eligibility, vesting, and

distribution. The Board of Trustees may designate any person or entity to carry out any of the Board of Trustees' responsibilities under the Plan and may employ one or more persons to render advice with regard to any responsibility the Board of Trustees has under the Plan. The Board of Trustees from time to time shall direct the third party administrator concerning the payments to be made out of the Trust pursuant to this Plan. All notices, directions, information, and other communications from the Board of Trustees shall be in writing.

6.A.13 Recordkeeping Duties and Powers of Board of Trustees: The Board of Trustees shall keep a record of all the Board of Trustees' proceedings and shall keep all such books of account, records and other data as may be necessary or advisable in its judgment for the administration of this Plan and Trust Agreement, including records to reflect the affairs of this Plan, to determine the amount of vested and/or forfeitable benefits of the respective Participants, and to determine the amount of all benefits payable under this Plan. Subject to the requirements of law, any person dealing with the Board of Trustees may rely on, and shall incur no liability in relying on, a certificate or memorandum in writing signed by the Board of Trustees as evidence of any action taken or resolution adopted by the Board of Trustees.

6.A.14 Advice of Counsel: The Board of Trustees may consult with legal counsel, who may be counsel for the City, or the Board of Trustees' own counsel, with respect to the meaning or construction of the Plan and Trust or the Board of Trustees' obligations or duties. The Board of Trustees shall be protected from any responsibility with respect to any action taken or omitted by it in good faith pursuant to the advice of such counsel, to the extent permitted by law.

6.A.15 Compensation of Board of Trustees: A Trustee who is not a full-time employee or elected official of the City shall be entitled to reasonable compensation for its services. Compensation shall be comparable to charges for similar services made from time to time by other trustees in the geographic area in which the Trustee has its principal place of business.

ARTICLE VII. BENEFITS

7.1 Retirement Benefits and Election:

(a) Severance from Employment: Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence upon the election of the Participant at any time after the Participant's Severance from Employment. Notwithstanding the foregoing, a Participant's distribution of his or her Account must commence not later than the Participant's "Required Beginning Date" which is April 1 of the calendar year following the calendar year in which the Participant attains age 72 (if the Participant is born on July 1, 1949, through and including December 31, 1950), age 73 (if the Participant is born on January 1, 1951, through and including December 31, 1959), or age 75 (if the Participant is born on January 1, 1960, or later), or Severance from Employment, whichever is later.

(b) Death: A Participant's Account shall become distributable upon the death of the Participant.

(c) In-Service Distribution: A Participant's Account shall become distributable upon attainment of age 59-1/2, even if the Participant has not severed employment.

(d) Other Distribution Events: A Participant's Account shall also become distributable on account of the Participant's unforeseeable emergency, or as otherwise provided in this Article VII.

7.2 Payment Options: A Participant or Beneficiary may elect to have value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.3:

(a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;

(b) One lump-sum payment;

(c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant;

(d) Annual Payments equal to the minimum distributions required under Code Section 401(a)(9) over the life expectancy of the Participant or over the life expectancies of the Participant and his Beneficiary;

(e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Trustee;

(f) A split distribution under which payments under Subsections (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7. 1, provided that all payments commence (or are made) by the latest benefit commencement date under Section 7.1 and that once a payment is made subsequent payments will be made in substantially nonincreasing amounts;

(g) Any payment option elected by the Participant and agreed to by the Employer and Plan Administrator, provided that such option must provide for substantially nonincreasing payments for any period after the benefit commencement date under Section 7. 1.

A Participant's or Beneficiary's selection of a payment option under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of-living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

As a part of their distribution elections, Participants may direct the respective amounts to be taken from their Pre-Tax Deferred Compensation and Roth Deferred Compensation accounts, subject to any reasonable limitations that may be established by the Trustee or the Plan Administrator.

Distributions of Roth Deferred Compensation shall be reported by the Trustee or Plan Administrator and taxable to the Participant or Beneficiary in accordance with applicable provisions of the Code, Treasury Regulations and other binding authority.

7.3 Limitation on Options:

(a) No payment option may be selected by a Participant under Sections 7.2(a) or (c) unless the amount of any installment is not less than \$1,200 per year. No payment option may be selected by a Participant or Beneficiary under Sections 7.2 or 7.4 unless such payment option satisfies the requirements of Section 7.4.

(b) For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

7.4 Minimum Distribution Requirements:

(a) During the Participant's Lifetime. A Participant who has attained his or her Required Beginning Date (as defined in Section 7.1(a)) must receive an annual distribution equal to or exceeding the required minimum amount under Code Section 401(a)(9). In general, the minimum amount payable each year shall equal a fraction of the Account balance equal to one divided by the distribution period set forth in the Uniform Lifetime Table at Treasury Regulations Section 1.401(a)(9)-9, A-2, (as such Lifetime Table may be amended or replaced from time to time) for the Participant's age on the Participant's birthday for that year.

If a Participant who elects a form of payment other than lump sum distribution has not attained the age applicable to him or her under Section 7.1(a) in the year distribution commences, the distribution period necessary to satisfy this Section 7.4(a) is 27.4 plus the number of years that the Participant's age is less than such applicable age. The Account balance for this calculation (other than the final installment payment) is the Account balance as of the end of the year prior to the year for which the distribution is being calculated. Payments shall commence on the date elected under this Article VII; however, even if an election is not made by a Participant who has attained the age applicable to him or her under Section 7.1(a), the required minimum distributions required under this Section 7.4 shall be made to the Participant.

For any year, the Participant can elect distribution of a greater amount (not to exceed the amount of the remaining Account balance), or of a lesser amount if such amount is specifically permitted under the Treasury Regulations, in lieu of the amount calculated using the formula in this Subsection (a).

(b) After the Participant's Death. Commencing in the calendar year following the calendar year of the Participant's death, the Participant's Account shall be paid to the Beneficiary in a lump sum.

Alternatively, if the Beneficiary with respect to the Participant's Account is a natural person, at the Beneficiary's election, distribution can be made in annual installments with the distribution period determined under this paragraph. If the Beneficiary is the Participant's surviving spouse, the distribution period is equal to the Beneficiary's life expectancy using the single life table in Treasury Regulations Section 1.401(a)(9)-9, A-1, (as such single life table may be amended or replaced from time to time) for the spouse's age on the spouse's birthday for that year. Effective January 1, 2024, however, the Participant's surviving spouse may elect

to be treated as the Participant for purposes of the minimum amount payable and the distribution period, as set forth in this Section 7.4. If the Beneficiary is not the Participant's surviving spouse, the distribution period is the Beneficiary's life expectancy determined in the year following the year of the Participant's death using the single life table in Treasury Regulations Section 1.401(a)(9)-9, A-1, for the Beneficiary's age on the Beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year.

For Participants who die after December 31, 2019, a Beneficiary, other than (1) the surviving spouse of the Participant, (2) a disabled or chronically ill individual, (3) individuals who are not more than 10 years younger than the Participant, or (4) a child of the Participant who has not reached the age of majority, is required to receive all distributions under the Participant's Account by the end of the tenth calendar year following the year of the Participant's death.

For any year, a Beneficiary can elect distribution of a greater amount (not to exceed the amount of the remaining Account), or of a lesser amount if such amount is specifically permitted under the Treasury Regulations, in lieu of the amount calculated using the formula in this Subsection (b).

(c) Compliance with Code Section 401(a)(9): Notwithstanding any provisions of this Section 7.4, if the minimum distribution requirements stated in the Income Tax Regulations under Code Section 401(a)(9) are amended, distributions under the Plan shall comply with such amended requirements. Effective January 1, 2024, a Participant's Roth Deferred Compensation shall be excluded from the Participant's Account balance when calculating the minimum amount payable each year under Code Section 401(a)(9) and the Treasury Regulations thereunder.

(d) Special Rule for 2020 RMDs: Notwithstanding the provisions of this Section, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 but for the enactment of Code Section 401(a)(9)(I) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs"), will receive those distributions for 2020 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding the provisions of Section 6.8, and solely for purposes of applying the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs will be treated as Eligible Rollover Distributions.

7.5 Unforeseeable Emergencies:

(a) In the event an unforeseeable emergency occurs, a Participant may apply to the Board to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Board, the Participant shall be paid only such amount as the Board deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of

deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

(b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant, or to the spouse, dependent or Beneficiary of the Participant, resulting from a sudden unexpected illness, accident, or disability, loss of property due to casualty, imminent foreclosure of, or eviction from, a primary residence, the need to pay for medical expenses (including non refundable deductibles and prescription medicine), and the need to pay funeral expenses for a family member, or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant, or of the spouse, dependent or Beneficiary of the Participant, as the case may be. The need to send a child to college or to purchase a new home shall not be considered unforeseeable emergencies. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case.

(c) Participants may direct the respective amounts to be taken from their Pre-Tax Deferred Compensation and Roth Deferred Compensation accounts to carry out distributions under this Section 7.5, subject to any reasonable limitations that may be established by the Trustee or the Plan Administrator.

(d) Participants in the Plan who receive FICA replacement retirement benefits pursuant to Code Section 3121(b)(7)(F) and the Treasury Regulations thereunder shall not be eligible to receive Unforeseeable Emergency distributions under this Section 7.5.

7.6 Transitional Rule for Pre-1989 Benefit Elections: In the event that, prior to January 1, 1989, a Participant or Beneficiary has commenced receiving benefits under a payment option or has irrevocably elected a payment option or benefit commencement date, then that payment option or election shall remain in effect notwithstanding any other provision of the Plan.

7.7 De Minimis Accounts: Notwithstanding Sections 7.1, 7.2 and 7.3, if the amount of a Participant's Account is not in excess of \$1,000 (or \$5,000 for distributions commencing on or before December 31, 2005) on the date that payments commence or on the date of the Participant's death, then payment of the Participant's entire Account shall be made to the Participant (or to the Beneficiary if the Participant is deceased), in lump sum, as soon as is practicable following the Participant's retirement, death, or other Severance from Employment.

If an active Participant's Account does not exceed \$5,000 (or \$7,000 on and after October 1, 2024), exclusive of rollovers, and (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.7, the Participant may elect to receive, or the Employer may distribute (with the Participant's consent, or, if the Account is less than \$1,000, without the Participant's consent), the Participant's entire Account, in lump sum.

Participants in the Plan who receive FICA replacement retirement benefits pursuant to Code Section 3121(b)(7)(F) and the Treasury Regulations thereunder shall not be eligible to receive de minimus Account in-service distributions under this Section 7.7.

7.8 Distributions for Health and Long-Term Care Insurance: Retired Participants who were employed as sworn police officers of the City of Lakewood may direct the Plan Administrator to remit up to \$3,000 each year from their Account to pay the cost of qualified health insurance and/or long-term care insurance, subject to applicable limitations imposed under Code Section 402 and the Treasury Regulations thereunder. In order to be eligible for health and long-term care insurance distributions, a Participant must be separated from service with the Employer by reason of Disability or attainment of Normal Retirement Age under the Plan. The Plan Administrator must remit such insurance payments directly to the insurance provider. The \$3,000 annual limitation limits the total distributions from all retirement plans in which a Participant has an account. Distributions made under this Section 7.8 shall first be taken from a Participant's Pre-Tax Deferred Compensation account, and then from the Participant's Roth Deferred Compensation account. Notwithstanding the foregoing, long-term care distributions made on and after October 1, 2024, may be remitted to the Participant or the insurance provider.

Effective January 1, 2026 (or as soon as administratively feasible thereafter), except for Variable Employees, a Participant is eligible to withdraw up to the lesser of: (a) \$2,500 (as adjusted), (b) the actual amount of the insurance premium, or (c) ten percent (10%) of the Participant's vested Account without penalty under Code Section 72(t) for Certified Long-Term Care Insurance, as defined under Code Section 401(a)(39)(C), and subject to the Plan's procedures, including but not limited to, the Participant filing a long-term care premium statement (as described in Code Section 401(a)(39)(E)) with the Plan Administrator and the insurance issuer providing disclosure to the Secretary, as required under Code Section 401(a)(39)(C)(iii).

7.9 Qualified Reservist Distributions ("QRDs"):

(a) QRD Eligibility and Amount.

(1) Notwithstanding the restrictions set forth in this Article VII, Participants may receive a distribution of all or a portion of their Account if the distribution fulfills the requirements for a QRD under Code Section 72(t).

(2) A Participant is entitled to a QRD equal to all or a portion of his or her Account if: (a) the Participant is a member of a reserve component, as defined in 37 U.S.C. Section 101, and is ordered or called to active duty for a period of 180 days or more or for an indefinite period, and (b) the request for distribution is made during the period beginning with the order or call to active duty and ending on the last day of the active duty period.

(b) Rules and Procedures.

(1) A Participant requesting a QRD must provide the Trustee with a copy of the order or call to active duty before the QRD may be made. The order or call to active duty must specify that the Participant's period of active duty is for 180 days or more or is indefinite.

(2) If the period specified in an order or call to active duty is less than 180 days, subsequent calls or orders that increase the total period of active duty to 180 days or more will qualify the Participant for a QRD.

(3) Participants are limited to a maximum of one (1) QRD in each Plan Year.

(4) The Plan shall process and pay QRDs no more than sixty days (60) after a Participant's request for a QRD has been made.

(5) After a Participant receives a QRD, the Participant's deferrals under his or her Joinder Agreement shall be suspended for a period of six (6) months after the date on which the QRD is made.

7.10 Birth or Adoption Withdrawal: Except for Variable Employees, a Participant is eligible to withdraw up to \$5,000 from his or her Account without penalty under Code Section 72(t) for expenses related to the birth or adoption of a child (under age 18 or incapable of self-support) during the year following birth or adoption. When a Participant is eligible for this withdrawal under multiple Employer plans, the Participant may withdraw up to \$5,000 in total from all Employer plans. Participants may contact the Board of Trustees if repayment of this withdrawal is desired. Provided, however, effective December 29, 2022, any repayment hereunder must be made within three years of the date the withdrawal is made, except withdrawals made on or before December 29, 2022, must be repaid no later than December 31, 2025.

7.11 Coronavirus Relief Distribution: Except for Variable Employees, a Participant eligible for relief under the Coronavirus Relief, Aid, and Economic Security Act (the "CARES Act") may withdraw up to \$100,000 in total from all Employer plans, subject to the terms and conditions of the CARES Act, effective March 27, 2020 through December 31, 2020, without incurring a penalty for distribution.

7.12 Distribution of Rollover Contributions: A Participant may request and receive a distribution of the Participant's Account attributable to rollover contributions from any Eligible Rollover Plan before the Participant has a distributable event under Article VII.

7.13 Withdrawal of Automatic Enrollment Contribution: If a Participant declines to participate in Automatic Enrollment as set forth in Section 4.2 within ninety (90) days after the first payroll date on which an Automatic Deferred Compensation contribution is made for the Participant, the Participant may make an election to withdraw the Automatic Deferred Compensation amounts in his or her Account. The Participant may thereafter enter a Joinder Agreement in accordance with the provisions of Article IV.

7.14 Participant Loan Policy: The Trustees may adopt a policy and procedure to allow Participants to obtain loans from the Plan. Such loan policy must be approved and adopted by the Trustees and shall comply with the requirements of Code Section 72(p), as it may be amended from time to time. The Trustees shall adopt such forms and procedures necessary to implement such a Participant Loan Policy and shall make available to Participants the provisions of the Participant Loan Policy if adopted by the Trustees.

ARTICLE VIII. NON-ASSIGNABILITY

Except for distributions made to alternate payees pursuant to domestic relations orders which comply with the provisions of C.R.S. Section 14-10-113(6), and applicable provisions of Code Section 414(p), benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

ARTICLE IX. RELATIONSHIP TO OTHER PLANS AND EMPLOYMENT AGREEMENTS

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

ARTICLE X. AMENDMENT OR TERMINATION OF PLAN

The Employer may at any time amend this Plan and Trust Agreement provided that it transmits such amendment in writing to the Trustee at least 30 days prior to the effective date of the amendment. The consent of the Trustee shall not be required in order for such amendment to become effective. The Employer may at any time terminate this Plan.

Notwithstanding the foregoing, the Employer delegates to the Trustee the power to amend the Plan and Trust Agreement solely for the purpose of incorporating minor, technical amendments which are required, from time to time, by changes in state or federal laws or regulations.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Code Section 457 or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

ARTICLE XI. APPLICABLE LAW

This Plan and Trust shall be construed under the laws of Colorado and is established with the intent that it meet the requirements of an "eligible deferred compensation plan" under Code Section 457, as amended. The provisions of this Plan and Trust Agreement shall be interpreted wherever possible in conformity with the requirements of that Code Section.

ARTICLE XII. NUMBER

The singular shall include the plural, except where the context requires otherwise.

ARTICLE XIII. SEVERABILITY

If a court of competent jurisdiction holds any provisions of this Plan to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

[Space intentionally left blank. Signature page follows.]

APPROVED this _____ day of _____, 20____ by the Board of Trustees of the City of Lakewood Deferred Compensation Plan and Trust Agreement.

Brent Berninger, Chairperson

APPROVED by resolution this _____ day of _____, 20____ by the City Council of the City of Lakewood, Colorado.

Wendi Strom, Mayor

STAFF MEMO

DATE OF MEETING: JULY 8, 2024 / AGENDA ITEM NO. 8

To: Mayor and City Council

From:

Subject:

SUMMARY STATEMENT:

BACKGROUND INFORMATION:

BUDGETARY IMPACTS: None

STAFF RECOMMENDATIONS: None

ALTERNATIVES: None

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: None

ATTACHMENTS: None

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

STAFF MEMO

DATE OF MEETING: JULY 8, 2024 / AGENDA ITEM NO. A.

To: Mayor and City Council
From: Jay Robb, City Clerk
Subject: **SHORT-TERM RENTAL LOOKBACK**

SUMMARY STATEMENT: Chapter 5.55.130 of the Lakewood Municipal Code requires a program lookback of the City’s short-term rental licensing regulations to the City Council in June 2024. This memo will discuss the work City staff has completed to implement the STR licensing program, the challenges the program has faced, and how City staff intends to overcome these challenges. The table below shows the current numbers of short-term rental licenses (STRs) issued, and total applications received by the City as of June 1, 2024.

Current Short-Term Rental Numbers	
STR Licenses Issued	94
Applications Denied	5
Applications Pending	6
Total Applications Received	105

BACKGROUND INFORMATION: City Council Adopts Ordinance O-2023-5 Regulating Short-Term Rentals. On March 13, 2023, the Lakewood City Council voted to legalize and regulate STRs in our community through the adoption of [Ordinance O-2023-5](#). This Ordinance created [Chapter 5.55 of the Lakewood Municipal Code](#), which legalized STRs in Lakewood subject to the regulations found in the ordinance. Further, this ordinance required all STRs to be compliant and licensed by September 1, 2023.

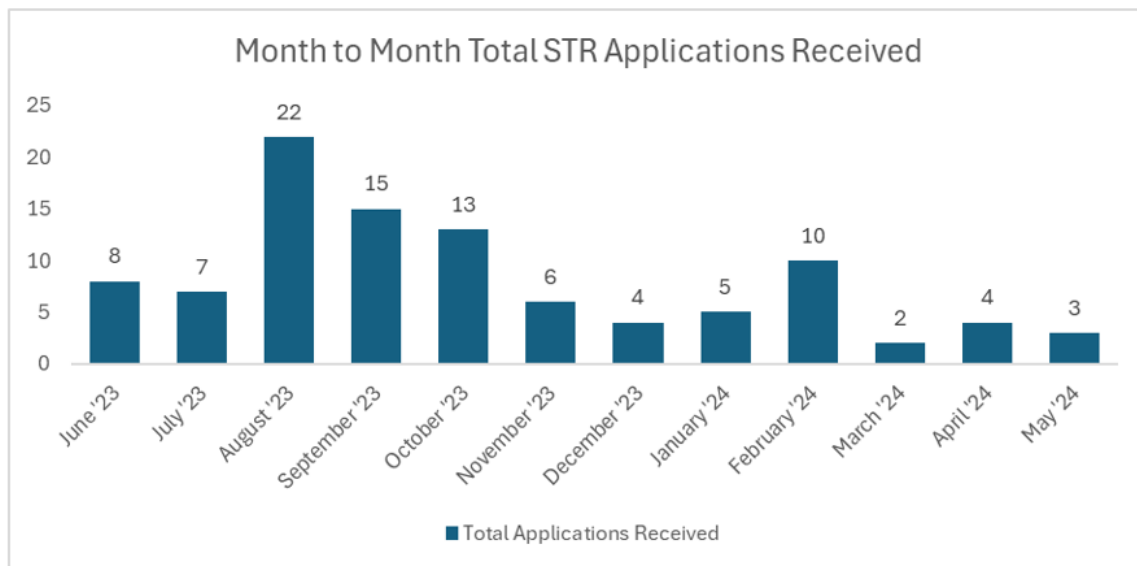
Licensing Creation and Administration. Following the adoption of this Ordinance, the City Manager’s Office set an ambitious goal for the City Clerk’s Office to create an [online licensing platform](#) and accompanying helpline phone number and email address (STR@lakewood.org) that would allow the City Clerk’s Office to receive and review STR applications by May 1, 2023. The City Clerk’s Office achieved this goal through the hard work of a multi-departmental team, including the IT, Police, and Code Enforcement Departments, all of whom came together to provide residents with four months lead time to navigate the new licensing requirements before the STR license deadline on September 1, 2023.

Community Outreach Regarding Short-Term Rental Regulations. Upon the City Council’s adoption of Ordinance O-2023-5, City Clerk’s Office staff quickly sent out notifications on social media, advising Lakewood residents of the impending STR regulations and the September 1st registration deadline. City Clerk staff also sent additional notifications on August 1, 2023, that the September 1st deadline to register was approaching. The number of impressions, or views, these notifications received totaled around 2,000 across multiple platforms. Please see the screenshots attached to this memo for more detailed breakdowns of these notifications. The City also included updates on Ordinance O-2023-5 in multiple Friday Report Newsletters, which are delivered to more than 1,000 residents along with all City staff. The following is a non-exhaustive list of community outreach completed by staff:

- March 16, 2023, Next Door Post to the community regarding the adoption of STR regulations by the Lakewood City Council;
- [March 17, 2023, Friday Report](#) STRs are featured as a top item in “News and Events”;
- [August 4, 2023, Friday Report](#): STRs are featured as the third item in “News and Events”;
- A reminder about STR regulations was in the January 2024 edition of Looking@Lakewood; and
- During the spring and summer of 2023, City staff interfaced with hosting platforms, like AirBnb and Vrbo, to communicate the City’s requirements for STRs, which led these companies to add Lakewood-specific information pages on their websites.

City Council Adopts Ordinance O-2024-5 Revising Chapter 5.55. In February 2024, the City Council adopted Ordinance O-2024-5 which amended Lakewood Municipal Code Section 5.55.050(C) to mirror the current building code requirement for smoke detectors in each room and carbon monoxide detectors on each floor of an STR. The Ordinance also revised Lakewood Municipal Code Section 5.55.010(J) to expand the definition of “Inspector” under the code to include members of other inspection associations, including the International Association of Certified Home Inspectors (InterNACHI/NACHI).

STR Program Year 1: Voluntary Compliance and Enforcement Upon Complaint. During the policy debate and early implementation of the STR program, the City anticipated a much higher number of STRs in the community. However, during the first twelve months of the program (June 1, 2023, to June 1, 2024), the City only licensed 94 STRs through voluntary compliance and enforcement in response to specific complaints from the residents. The graph below shows the number of licenses for each month of this 12-month period, with the first licenses issued in June 2023.



BUDGETARY IMPACTS:

Fee Revenue from Short-Term Rentals. The initial revenue estimate for application fees and renewals was expected to be around \$18,000 annually. The chart below shows the actual fee revenue received by the City in 2023, the projected fee revenue for 2024 and the next three years.

Short-term Rental Fee Revenue Projection (E10303)					
	2023	2024	2025	2026	2027
Number of Applications	78	117	30	8	5
Application Revenue	11,700	17,550	4,500	1,200	750
Number of Renewals	0	78	195	225	233
Renewal Revenue	-	5,850	14,625	16,875	17,475
Total Revenue	\$ 11,700	\$ 23,400	\$ 19,125	\$ 18,075	\$ 18,225
2023 & 2024 Fee Rate					
Application Fee	\$ 150				
Renewal Fee	\$ 75				
Note: Conservative estimate of 300 STR's in Lakewood with a 20% decrease due to ordinance and compliance.					

Tax Revenue from Short-Term Rentals. The City receives accomodation tax revenue ("lodging tax") and sales tax revenue from STRs. The chart below shows the lodging and sales tax revenue received by the City from STRs between 2020 to May 2024.

Year	Lodging Tax	% Increase	Sales Tax	% Increase
2020	-		-	
2021	127,018		212,261	
2022	217,136	42%	302,370	30%
2023	545,870	60%	535,230	44%
2024	161,474		195,354	
Total	1,051,498		1,245,215	

Data through 5/31/2024

STAFF RECOMMENDATIONS: None

ALTERNATIVES: None

PUBLIC OUTREACH: This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

NEXT STEPS: The City Clerk's Office wants to see more enforcement of the STR code and has hired a third-party company to assist in the identification and location of unlicensed STRs, which will make the City less reliant on complaints from negatively impacted neighbors living next to unlicensed STRs.

STR Program Year 2: Enforcement. In response to a lower-than-expected initial number of STRs licensed in Lakewood, City staff issued a request for proposal in late 2023 to hire a third-party company to aid in searching and compiling STR rental data. The City contracted with this service as of February 2024 and according to the data provided by the contracted company, there indeed could be as many as 300 STRs in Lakewood, though this number is difficult to track consistently, due to rentals that intermittently shift between active and inactive. However, this company will help the City Clerk's Office achieve greater program compliance by accurately identifying the number, locations, and additional information relating to unlicensed STRs operating in the City.

With the use of third-party rental data, the City is enabled to more actively enforce against unlicensed STRs, with the goal of achieving higher compliance during the second year of the program. Specifically, the City Clerk's Office will be using this additional information to contact residents who are offering their homes as

unlicensed STRs to request their voluntary compliance and licensure. If voluntary compliance cannot be achieved, City staff will issue non-compliant property owners a summons into municipal court to cure such non-compliance. The City's sample warning letter to short-term renters is attached.

ATTACHMENTS: 1. Sample STR Warning Letter

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney



City of Lakewood

Office of the City Clerk

480 South Allison Parkway
Lakewood, Colorado 80226

Phone: 303-987-7080

Fax: 303-987-7088

TTD: 303-987-7057

E-mail: STR@lakewood.org

DATE XX, 2024

LAKEWOOD PROPERTY OWNER

ADDRESS

LAKEWOOD, CO XXXXX

Re: Short-Term Rental Licensing

Dear Resident(s):

You are receiving this notice as it has come to our attention that you are operating an unlicensed short-term rental in the City of Lakewood. Per Lakewood Municipal Code Chapter 5.55, all short-term rentals were required to be licensed with the City of Lakewood as of September 1, 2023.

If you continue to operate an unlicensed short-term rental without a City License after receipt of this notice, we will contact the hosting platforms to have your listings removed and you may be issued a summons to appear in Lakewood Municipal Court for violation of Lakewood Municipal Code Section 5.55.020(A)-Unlawful to Operate Unlicensed Short-Term Rental.

Please use the link www.lakewood.org/STR to submit your Short-Term Rental application and pay the fee.

An application must be submitted within 30 days from the date of this letter, or enforcement actions will be taken.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jay Robb", is written over a light purple rectangular background.

Jay Robb, Lakewood City Clerk
Enclosures

City Council Request for Legislative Modifications



Submitted on	28 April 2024, 1:36PM
Receipt number	58
Related form version	7

Council member sponsor(s)	Glenda Sinks
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Enter email address to receive a copy of this submission	gsinks@lakewood.org
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Briefly describe the minor modification being requested	Whitlock Rec Center has pickleball courts that are closing because it doesn't meet the 350 space requirement between courts and residences. I'm requesting that the requirement be changed to 250 feet.
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Provide history / background information that supports the request	On Sept. 19, 2023, the city council of Centennial, CO voted unanimously to approve an ordinance which prohibited pickleball courts within 250 feet of residentially zoned properties. They approved this ordinance after working with a noise consultant (Spendiarian & Willis Acoustics & Noise Control) and after reading their Pickleball Noise Impact study. (www.centennialco.gov/files/sharedassets/public/v/1/documents/city-projects-and-initiatives/centennial-pickleball-noise-assessment.pdf). Instead of reinventing the wheel, we can adopt their 250 feet requirement.
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If it needs expedited handling, please provide an explanation why	Pickleball courts at Whitlock are scheduled to close April 30. Until measurements are taken (How far are the courts from residences?) and council members approve the number of feet to separate courts from residences, the courts should remain open.
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Attach file if needed