

FPPA

**Fire and Police Pension Association
of Colorado**

**Colorado Springs New Hire Pension Plan
Plan Document for Fire Component**

Effective January 1, 2022

**5290 DTC Parkway, Suite 100
Greenwood Village, Colorado 80111-2721
(303) 770-3772
www.fppaco.org**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I - DEFINITIONS AND RULES OF CONSTRUCTION	4
1.01. Definitions	4
1.02. Rules of Construction	4
1.03. Purpose of the Plan Document	4
1.04. Guidance	4
ARTICLE II - MEMBER PARTICIPATION	4
2.01. Membership	4
2.02. Active Members Prior to the Effective Date	4
2.03. Members Hired On or After the Effective Date	4
2.04. Reemployment	4
2.05. Retirees and Inactive Members	5
2.06. USERRA	5
ARTICLE III - CONTRIBUTIONS TO THE PLAN	5
3.01. Employer and Employee Contributions	5
3.02. Picked-Up Contributions	5
ARTICLE IV - BENEFITS FROM THE FIRE COMPONENT	6
4.01. Normal Retirement	6
4.02. Reduced Retirement Benefit or Vested Separation Benefit	6
4.03. Deferred Retirement	6
4.04. Cost of Living Adjustment	7
4.05. Disability Benefits Preclude Retirement Benefits	7
4.06. Return of Contributions	7
4.07. Survivor Benefits of Member Receiving Benefits	7
4.08. Survivor Benefits of a Member Not Receiving Benefits	7
4.09. Return of Contributions as a Result of Death	8
4.10. Death Benefit Adjusted for Cost of Living	8
4.11. Coordination with Statewide Defined Benefit Plan	8
4.12. Eligible Rollover Distributions from this Plan	8
ARTICLE V - STABILIZATION RESERVE ACCOUNT	9
5.01. Applicability	9
5.02. Eligibility	9
5.03. Rules Governing	9
ARTICLE VI - DEFERRED RETIREMENT OPTION PLAN ("DROP")	9
6.01. Eligibility	9
6.02. Rules Governing	10
ARTICLE VII - TRANSFERS AND SERVICE PURCHASES	10
7.01. Applicability	10

7.02. Service Purchases	10
7.03. Eligible Rollover Distributions to this Plan	11
7.04. Plan-to-Plan Transfers to this Plan	11
ARTICLE VIII - VESTING	11
ARTICLE IX - DISTRIBUTIONS THAT ARE NOT ALLOWED	11
9.01. No Plan Loans	11
9.02. In-service Distributions	11
ARTICLE X - ADMINISTRATION OF PLAN	11
10.01. Compliance with Code Section 401(a)	11
10.02. USERRA and HEART Compliance	12
ARTICLE XI - AMENDMENT OF THE PLAN	13
11.01. Amendment	13
11.02. Amendment for Qualification of Plan	13

FIRE AND POLICE PENSION ASSOCIATION OF COLORADO
COLORADO SPRINGS NEW HIRE PENSION PLAN

PLAN DOCUMENT FOR FIRE COMPONENT

Whereas, the City of Colorado Springs, Colorado ("City") hereby amends and restates the defined benefit plans for members hired by the City of Colorado Springs Fire Department on or after April 8, 1978 and for members who otherwise elected to participate ("Colorado Springs Alternate New Hire Plan") and renames the Plan to be the "Colorado Springs New Hire Pension Plan," for eligible members of the City of Colorado Springs Fire Department ("Colorado Springs New Hire Pension Plan"), to be effective upon approval of the agreement to incorporate the Colorado Springs New Hire Pension Plan into the Defined Benefit System by the Board of the Fire and Police Pension Association ("Board") for implementation on October 1, 2006 ("Effective Date"), pursuant to the provisions of C.R.S. § 31-31-706(2)(a);

Whereas, the Colorado Springs New Hire Pension Plan is intended to comply with the qualification requirements specified in Section 401 of the Internal Revenue Code of 1986, as amended and applicable to governmental plans ("Code");

Whereas, pursuant to the provisions of C.R.S. § 31-31-706(2)(a), the Board shall act as the trustee of the Colorado Springs New Hire Pension Plan and have those fiduciary duties with respect to the Colorado Springs New Hire Pension Plan and the Members of the Colorado Springs New Hire Pension Plan as expressly provided by law;

Whereas, the City has determined that the Colorado Springs New Hire Pension Plan shall be a tier of the Defined Benefit System in order to provide ease of administration;

Whereas, assets of the Colorado Springs New Hire Pension Plan must be held in trust, with the Board acting as trustee;

Whereas, the City of Colorado Springs, Colorado ("City") has approved the merger of the Colorado Springs Alternate New Hire Plan to the Defined Benefit System, the establishment of the Colorado Springs New Hire Pension Plan, and the participation of Members hired on and after the Effective Date in the Statewide Defined Benefit Plan;

Whereas, the City have determined that members of the Fire Department hired prior to the Effective Date, will participate under the terms of the Colorado Springs New Hire Pension Plan;

Whereas, the City has determined that members of the Fire Department hired on or after the Effective Date, will participate in the Statewide Defined Benefit Plan;

Whereas, the City has adopted Rules and Regulations for the New Hire Pension Plan in order to implement the applicable provisions of the Colorado Revised Statutes; and

Whereas, the City hereby establishes the Colorado Springs New Hire Pension Plan Document, to be effective on the Effective Date.

ARTICLE I - DEFINITIONS AND RULES OF CONSTRUCTION

1.01. Definitions. As used in this Plan Document, capitalized terms are defined in Rules and Regulations of the Board.

1.02. Rules of Construction. Words used herein in the masculine or feminine gender shall be construed to include the feminine or masculine gender where appropriate and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

1.03. Purpose of the Plan Document. The purpose of the Plan Document is to identify those provisions of the New Hire Pension Plan that are benefit-related and thus may be subject to the provisions of applicable law that require election in order to make an amendment.

1.04. Guidance. This Plan Document shall serve as a summary plan description for the New Hire Plan. The Plan Administrator shall use as guidance in the interpretation of the Colorado Springs New Hire Pension Plan Document the Rules and Regulations adopted by the Board for the Plan and the rules, regulations, practices, and procedures applicable to the Statewide Defined Benefit System. In the case of a conflict between this Plan Document and the foregoing guidance, the foregoing guidance controls.

ARTICLE II - MEMBER PARTICIPATION

2.01. Membership. Except as otherwise provided in this Article, a Member shall participate in the Plan on the first day of employment, provided that (i) the Employer withholds Member contributions on behalf of the Member and (ii) the Applicable Forms are completed and submitted to the Plan Administrator.

2.02. Active Members Prior to the Effective Date. Members of the Colorado Springs Alternate New Hire Plan on the date preceding the Effective Date shall remain participants in the Fire Component of the Colorado Springs New Hire Pension Plan. A Member who is on an Authorized Leave of Absence with or without pay shall be treated as an active Member for purposes of this Section.

2.03. Members Hired On or After the Effective Date. A regularly employed member of the Fire Department who has been sworn into duty under the classified civil service that is hired on or after the Effective Date shall become a Member in the Statewide Defined Benefit Plan, pursuant to the terms of the Statewide Defined Benefit Plan.

2.04. Reemployment. Any Member of the Colorado Springs Alternate New Hire Plan or of the Colorado Springs New Hire Pension Plan who terminates employment and is thereafter reemployed by the Employer shall participate in the Statewide Defined Benefit Plan as of the Member's date of reemployment except that 1.) a vested Member may elect to participate in the Colorado Springs New Hire Pension Plan if such election is made at the time of reemployment and within three (3) years of the date of separation from service and if the Member has not retired or taken a refund of contributions, or 2.) a Member who is retired due to disability and

who returns to work within five (5) years of the date of disablement may elect to continue participation in the Colorado Springs New Hire Pension Plan.

2.05. Retirees and Inactive Members. The Employer shall transfer the accrued benefits of retired and Inactive Members, as well as active Members, to the Colorado Springs New Hire Pension Plan. If a retired Member or Inactive Member is later reemployed as an active Member, such Member shall participate in the Plan as provided in Section 2.04.

2.06. USERRA. A Member who returns to active employment pursuant to the Uniformed Services Employment and Reemployment Rights Act ("USERRA") shall participate in the Plan as provided in Sections 2.02 and 2.03 based on the Member's original date of hire.

ARTICLE III - CONTRIBUTIONS TO THE PLAN

3.01. Employer and Employee Contributions.

(a) Any Member participating in the Colorado Springs Alternate New Hire Plan prior to the Effective Date was required to contribute an amount equal to eight percent (8%) of the Member's Salary. A Member's contributions under the Colorado Springs Alternate New Hire Plan shall be transferred to the Plan and become part of the assets of the Fund as of the Effective Date.

(b) Each Member participating in the Colorado Springs New Hire Pension Plan on and after the Effective Date pursuant to Article II shall contribute at a contribution rate established by the Employer and the Board pursuant to the Resolution and this Article. The Board shall have the authority to establish the funding rate as it determines to be appropriate to eliminate or reduce any current or anticipated underfunding of the Fund. The Board may consider actuarial reports and any other information in establishing the funding rate. In the Resolution, the Employer shall specify how much of the required rate of contribution is to be paid by the Employer and how much shall be made by the Member.

(c) Notwithstanding anything in this Section to the contrary, any Member in the Fire Component shall contribute at least eight percent (8%) and not more than ten percent (10%).

(d) The Employer shall make contributions in an amount sufficient to fund the Plan in an actuarially sound manner, which contributions shall not be less than the Member contributions as determined under subsection (c).

3.02. Picked-Up Contributions. Each Employer shall pick up the Member contributions required under Section 3.01, and the contributions so picked up shall be treated as Employer contributions pursuant to Code Section 414(h)(2) in determining the income tax treatment. The Employer shall pay these Member contributions directly to the Plan Administrator, instead of paying such amounts to the Members. Such contributions shall be paid from the same funds that are used in paying salaries to the Members. Such contributions, although designated as employee contributions, shall be paid by the Employer in lieu of contributions by the Members. Members may not elect to receive such contributions directly

instead of having them paid by the Employer to the Plan. Employee contributions so picked up shall be treated for all purposes of this Article, other than federal tax, in the same manner as employee contributions made before the date picked up.

ARTICLE IV- BENEFITS FROM THE FIRE COMPONENT

4.01. Normal Retirement. A Member under the Fire Component who has ceased Service, has Served ten (10) years or more, and has attained age fifty-five (55) on the date the Member ceases Service may irrevocably elect to receive a monthly retirement benefit, and the Member shall be paid a monthly retirement benefit of two percent (2%) for each full Year of Service for the first ten (10) years and two and eighty-five one-hundredths percent (2.85%) for each full Year of Service that exceeds ten (10) years, not to exceed seventy-seven percent (77%), of Final Average Salary.

4.02. Reduced Retirement Benefit or Vested Separation Benefit.

(a) A Member under the Fire Component who has ceased Service, has Served twenty-five (25) years or more, and has attained age fifty (50) but not fifty-five (55) on the date the Member ceases Service may irrevocably elect to receive a reduced monthly retirement benefit starting immediately, a monthly vested separation benefit, or a return of contributions.

(b) A Member under the Fire Component who has ceased Service, has Served ten (10) years or more, has not reached age fifty-five (55) on the date the Member ceases Service, and has not elected to receive a reduced monthly retirement benefit may irrevocably elect to receive a monthly vested separation benefit or a return of contributions.

(c) The reduced monthly retirement benefit under the Fire Component is the Member's monthly retirement benefit specified in Section 4.01, multiplied by an adjustment factor. The adjustment factor is one hundred percent (100%) less the percentage resulting from the quantity determined by multiplying the difference between fifty-five (55) and the age of the Member on the most recent anniversary of his or her birthday on or prior to the day on which the Member ceases Service times four and six hundred fifteen one-thousandths percent (4.615%).

(d) Once a Member under the Fire Component elects to receive a reduced monthly retirement benefit, the reduced benefit will not be increased at or after age fifty-five (55), except as a result of an increase in the Cost of Living.

(e) The monthly vested separation benefit available under this Section is the amount specified in Section 4.01, and it begins at age fifty-five (55).

4.03. Deferred Retirement. Any Member retiring and eligible for a normal retirement benefit may elect to defer receipt of such pension until attaining the age of sixty-five (65) years. In the case of such an election, the annual deferred retirement pension shall be actuarially equivalent to the normal retirement pension.

4.04. Cost of Living Adjustment. In addition to the monthly retirement, reduced monthly retirement, or vested separation benefit the Member receives under the Fire Component, the Member will receive an additional benefit if there is an increase in the Cost of Living. The increase will be the product of the monthly retirement, reduced monthly retirement, or vested separation benefit times the increase in the Cost of Living. The additional amount shall start on the October 1 immediately prior to the earlier of the date on which the Member reaches age sixty-five (65) or the date the Member has received a monthly retirement benefit, reduced monthly retirement benefit, or vested separation benefit for ten (10) years, and shall be redetermined effective October 1 of each year thereafter.

4.05. Disability Benefits Preclude Retirement Benefits. A Member under the Fire Component who becomes disabled while a Member of this Plan and who is receiving a disability benefit as provided through a disability plan administered by the FPPA will not receive a monthly retirement benefit, reduced monthly retirement benefit, or vested separation benefit under this Plan and will not receive a return of contributions.

4.06. Return of Contributions. If the Member elects a return of contributions, simple interest will be paid on the refunded contributions at the rate of five percent (5%) per year from the date of the contribution until the date the Member ceased Service.

4.07. Survivor Benefits of Member Receiving Benefits. If a Member who is receiving a monthly retirement benefit, reduced monthly retirement benefit, or vested separation benefit dies, the Member's Qualified Surviving Spouse will receive a monthly Death Benefit for life. If the Member has no Qualified Surviving Spouse or if the Qualified Surviving Spouse dies, each Qualified Child of the Member will receive an equal share of the monthly Death Benefit. If a child ceases to be a Qualified Child, each remaining Qualified Child will receive an equal share of the monthly Death Benefit. If a child who is not a Qualified Child becomes a Qualified Child and notifies the Plan Administrator in writing of the change in status, that child and each other Qualified Child will receive an equal share of the monthly Death Benefit effective after such notification.

4.08. Survivor Benefits of a Member Not Receiving Benefits. If a Member who is not receiving a monthly retirement benefit, reduced monthly retirement benefit, or vested separation benefit dies while eligible to receive a monthly retirement benefit, reduced monthly retirement benefit, or vested separation benefit, and if no Qualified Surviving Spouse or Qualified Child is eligible to receive a benefit from a death or disability plan administered by the FPPA arising from employment covered by this Plan, then the Qualified Surviving Spouse will receive a monthly Death Benefit starting on the date the Member would have started receiving the monthly retirement benefit, reduced monthly retirement benefit, or vested separation benefit. If the Member has no Qualified Surviving Spouse or if the Qualified Surviving Spouse dies, each Qualified Child of the Member will receive an equal share of the monthly Death Benefit starting no later than December 31 of the year following the death of the Member. If a child ceases to be a Qualified Child, each remaining Qualified Child will receive an equal share of the monthly Death Benefit. If a child who is not a Qualified Child becomes a Qualified Child and notifies the

Plan Administrator in writing of the change in status, that child and each other Qualified Child will receive an equal share of the monthly Death Benefit effective after such notification.

4.09. Return of Contributions as a Result of Death. When a Member dies and no Qualified Surviving Spouse or Qualified Child is eligible to receive a benefit from a death or disability plan administered by the FPPA arising from employment covered by this Plan, and no Death Benefits or no further Death Benefits are payable or potentially payable under this Plan, then the balance of the Member's contributions to the Fund will be paid to the Member's Designated Beneficiary, and if there is no Designated Beneficiary, then to the estate of the Member with simple interest at the rate of 5% per annum. For the purpose of determining whether funds can be paid to the estate of the Member as provided by this Section, the monthly retirement benefit, reduced monthly retirement benefit, or vested separation benefit paid to the Member and the monthly Death Benefits paid to the Qualified Surviving Spouse and any Qualified Child will be considered to have been paid from contributions to the Fund by the Member and will reduce the balance of the Member's contributions to the Fund that will be paid to the estate of the Member.

4.11. Death Benefit Adjusted for Cost of Living. The monthly Death Benefit will be increased if there is an increase in the Cost of Living. That increase will begin on the October 1 immediately prior to the earlier of the date on which the Member would have been age sixty-five (65) or the date the Member would have received a monthly retirement or vested separation benefit for a period of ten (10) years, and shall be redetermined effective October 1 of each year thereafter. The increase will be the product of the Death Benefit times the increase in the Cost of Living.

4.12. Coordination with Statewide Defined Benefit Plan. Any Member who participates in the Colorado Springs Alternate New Hire Plan as of the Effective Date and the Colorado Springs New Hire Pension Plan on and after the Effective Date pursuant to Article II shall be eligible for any benefits accrued as determined under this Article based on the Member's Service and Salary while participating under the Colorado Springs Alternate New Hire Plan and Colorado Springs New Hire Pension Plan. Any Member who participates under the Statewide Defined Benefit Plan on or after the Effective Date pursuant to Article II shall be eligible for any benefits accrued under the Statewide Defined Benefit Plan determined based on the Member's service and compensation earned while participating under the Statewide Defined Benefit Plan, and the portion of such Member's benefits that accrue under the Statewide Defined Benefit Plan shall be determined under and shall be subject to the terms of the Statewide Defined Benefit Plan.

4.13. Eligible Rollover Distributions from this Plan. A Distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, as allowed under the Rules and Regulations adopted by the Board.

ARTICLE V - STABILIZATION RESERVE ACCOUNT

5.01. Applicability. If in any year the total amount of additional deposits to the Plan exceeds the amount required to meet any increase in the benefit liabilities, the Plan Administrator may allocate all or any part of the excess to the stabilization reserve account. Any excess allocated to the stabilization reserve account in any year shall be allocated from that portion of deposits to the new hire benefits account constituting Employer contributions to the Plan. For accounting purposes only, the stabilization reserve account shall consist of individual separate retirement accounts established in the name of each member covered by the Plan. Such amount as may be allocated to the stabilization reserve account shall be further allocated to each Member's separate retirement account based upon the difference between the Member's contributions and the Employer contributions to the new hire benefits account for each payroll period and the proportionate amount of such contributions that is allocated to the actuarial account. Earnings accruing on the amount allocated to the Member's separate retirement account shall be allocated at least monthly on a time-weighted basis as determined by the Board until the account is exhausted. Any amount allocated to a Member's separate retirement account shall be subject to reduction prior to the time a Member has terminated Service or elected participation in DROP under Article VI in the event that additional amounts must be transferred to the actuarial account. Reductions in a Member's separate retirement account pursuant to this subsection shall be made on a pro rata basis in the proportion that the balance in a Member's separate retirement account bears to the total balance of all Members' separate retirement accounts.

5.02. Eligibility. Any Member having a separate retirement account who terminates Service and at the time of termination has less than ten (10) Years of Service or who terminates Service and at the time of termination has more than ten (10) Years of Service but elects a refund of contributions as provided in Section 4.06 shall forfeit the entire balance in the Member's separate retirement account to the actuarial account. Any Member having a separate retirement account who is retired for disability shall receive the entire balance in the Member's separate retirement account in accordance with the Member's selection of one of the payment options permitted. If the Member subsequently returns to work and had been receiving periodic payments from the Member's separate retirement account, such payments shall cease and any remaining balance shall remain in the Member's separate retirement account, subject to subsequent distribution in accordance with Article IV. If any Member having a separate retirement account dies prior to termination, the entire balance in the Member's separate retirement account shall be payable to the Member's Qualified Surviving Spouse or Qualified Children in accordance with their selection of one of the payment options permitted.

5.03. Rules Governing. The separate retirement accounts shall be subject to the Rules and Regulations adopted by the Board.

ARTICLE VI - DEFERRED RETIREMENT OPTION PLAN ("DROP")

6.01. Eligibility. A Member is eligible to elect to participate in DROP only if the Member is participating in the Fire Component and (i) is eligible for normal retirement in accordance with Section 4.01, or (ii) has attained age fifty (50) and the sum of the Member's age plus Years of Service is at least seventy-five (75).

6.02. Rules Governing. The DROP provisions shall be subject to the Rules and Regulations adopted by the Board.

ARTICLE VII - TRANSFERS AND SERVICE PURCHASES

7.01. Applicability. Active Members of this Plan may purchase Service credit for other employment within the United States not covered by this Plan, as set forth in this Article. Any such Service credit purchase shall not change, modify, or enhance existing pension benefit provisions of the Plan.

7.02. Service Purchases.

(a) If a Member has at least one (1) year of continuous service credit with the same Employer covered by the Defined Benefit System, the Member may purchase Service credit or may be granted Service credit upon the qualified rollover of distributions from an Eligible Retirement Plan for other public employment within the United States not covered by the Plan, as may be allowed under Rules and Regulations adopted by the Board.

(b) If a Member has at least one (1) year of continuous service credit with the same Employer covered by the Defined Benefit System, the Member may purchase up to five (5) Years of Service credit for periods of active duty in the uniformed services of the United States, subject to Rules and Regulations established by the Board.

(c) If a Member has at least five (5) years of continuous service credit with the same Employer covered by the Defined Benefit System, the Member may purchase up to five (5) Years of Service credit, or may be granted up to five (5) Years of Service credit upon the qualified rollover of distributions from an Eligible Retirement Plan, for employment with any private Employer in the United States, as may be allowed under Rules and Regulations adopted by the Board.

(d) An application to purchase Service credit shall be filed with the Plan Administrator on the Applicable Form. The Member has the burden of providing the information and supporting documentation necessary to satisfy the requirements of the Board.

(e) The Member shall purchase Service credit by contributing to the Trust Fund, in one lump sum, an amount which is equal to the actuarial cost of such service. No service credit shall be awarded to the Member until the Plan Administrator has approved the request and has received the full contribution of the prescribed amount. In order to receive credit for the service, the Member must complete the contribution no later than the last day of active Membership in the Plan.

(f) No service credit may be purchased for:

(1) any period of employment for which the Member is eligible for benefits under another retirement or annuity plan (except Social Security), payable at the time of purchase or in the future;

- (2) public or private employment concurrent with full-time FPPA-covered employment;
- (3) employment by a foreign government or by any foreign employer; or
- (4) any period of employment for which no pay was received.

7.03. Eligible Rollover Distributions to this Plan.

(a) A Member may elect, at the time and in the manner prescribed by the Board or the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to this Plan in a Direct Rollover. Rollovers from other permissible sources will be allowed to the extent permitted by law, subject to any conditions, proofs, or acceptance the Board or its designee deems appropriate. An Eligible Rollover Contribution shall be credited to the Trust Fund for the purchase of Service credit.

(b) This Plan does not accept post-tax amounts as rollovers.

7.04. Plan-to-Plan Transfers to this Plan.

(a) A Member may elect, at the time and in the manner prescribed by the Board or the Plan Administrator, to make a plan-to-plan transfer to this Plan under Code Section 457(e)(17) or 403(b)(13) to purchase permissive Service credit.

(b) The Plan does not accept post-tax amounts as plan-to-plan transfers.

ARTICLE VIII - VESTING

A Member with ten (10) Years of Service with an Employer is considered vested for purposes of the Plan. Any amounts forfeited shall remain in the Trust Fund.

ARTICLE IX - DISTRIBUTIONS THAT ARE NOT ALLOWED

9.01. No Plan Loans. Loans to Members shall not be permitted.

9.02. In-service Distributions. In-service distributions shall not be permitted with the exception of amounts from a Member's Rollover Account which have been transferred as an Eligible Rollover Distribution from another Eligible Retirement Plan.

ARTICLE X - ADMINISTRATION OF PLAN

10.01. Compliance with Code Section 401(a). At all times, the Plan shall be administered in accordance with and construed to be consistent with Code Section 401(a) and its accompanying regulations, as applicable to governmental plans as defined in Code Section 414(d).

10.02. USERRA and HEART Compliance.

(a) Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u), and as required by the Uniformed Services Employment and Reemployment Rights Act ("USERRA").

(b) For purposes of this Section 10.03, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(c) A Member, whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service, may elect to make-up Member contributions to the Plan in accordance with Code Section 414(u) if he or she resumes employment with the Employer in accordance with USERRA. Except to the extent provided under Code Section 414(u), this right applies for five (5) years following such resumption of employment (or, if the leave period is 3 months or less, up to one year following such resumption of employment). Such contribution by the Member may only be made during such period and while the Member is employed by the Employer. If the Member elects to make such contributions, then the Employer shall make-up the related Employer contributions which would have been required had such contributions actually been made during the period of qualified military service reduced by Employer Contributions, if any, actually made for the Member during the period of the interruption or leave. The make-up contributions will be made in at the same time and manner as normally provided under the Plan.

(d) Effective January 1, 2007, if a Member incurs a Disability while performing qualified military service, the Member shall be treated as if he or she timely resumed employment in accordance with his or her reemployment rights under USERRA, on the day preceding such Disability and terminated employment on the actual date of Disability. In the case of such treatment, any full or partial compliance with respect to benefit accrual requirements under Code Section 414(u)(8) with respect to such individual shall be treated for purposes of Code Section 414(u)(1) as if such compliance was required under USERRA. Such treatment shall apply to all individuals performing qualified military service with respect to the Employer.

(e) Effective January 1, 2007, to the extent provided under Code Section 401(a)(37), in the case of a Member whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Member shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Member timely resumed employment in accordance with USERRA and then terminated employment on account of death.

(f) Effective January 1, 2009, a Member whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer, shall be treated as an employee of the Employer who is a Member eligible to receive Employer contributions during such service and the differential wage payment shall be treated as

Base Salary and Compensation under Article IV. The differential pay received by Members during any leave of absence, by itself, is not pensionable. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

ARTICLE XI - AMENDMENT OF THE PLAN

11.01. Amendment.

(a) The Board, with the consent of the, and pursuant to the authority under C.R.S. § 31-31-204(2.5) as amended, may amend the Colorado Springs New Hire Pension Plan Document, as it deems prudent and necessary to efficiently administer benefits under the Plan. However, amendment of benefit-related provisions must be accomplished under subsection (b).

(b) Any amendments to benefit-related provisions of the Fire Component of the Colorado Springs New Hire Pension Plan may be made by the Board, with the consent of the City, only upon the approval of at least sixty-five percent (65%) of the then active Members in the Fire Component of the Colorado Springs New Hire Pension Plan.

(c) No amendment shall have the effect of (i) diverting for the benefit of any persons, other than Members or their Beneficiaries, amounts attributable to contributions by an Employer, (ii) decreasing the nonforfeitable percentage of any Member's accrued benefit, or (iii) changing the vesting schedule set forth in Article VIII, with respect to any Member with ten (10) or more Years of Service in the Plan.

(d) If the Plan is amended or modified, the Plan Administrator shall nonetheless be responsible for the supervision and the payment of benefits resulting from amounts contributed prior to the amendment or modifications in accordance with this Article.

(e) FPPA and the Employer may agree to amend the Plan to allow Members to participate in the Statewide Defined Benefit Plan and to transfer their benefits to the Statewide Defined Benefit Plan on terms that are mutually agreeable and without an election of the Members.

(f) In considering amendments to the Colorado Springs New Hire Pension Plan Rules and Regulations, issues to be considered by the Board may include, but are not limited to (i) compliance with state and federal law, including the Internal Revenue Code; (ii) the actuarial impact of the proposed amendment on the funding of the Plan; and (iii) the administrative burden, if any, created by the implementation of the amendment.

11.02. Amendment for Qualification of Plan. It is the intent of the Board that the Plan shall be and remain qualified for tax purposes under the Code. The Board may make any modifications, alterations, or amendments to the Plan necessary to obtain and retain approval of the Secretary of the Treasury or the Secretary's delegate as may be necessary to establish and maintain the status of the Plan as qualified under the provisions of the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. Any modification, alteration, or amendment of the Plan, made in accordance with this Section, may

be made retroactively, if necessary or appropriate. The Board and all Employers, employees, Members, Designated Beneficiaries, and all others having any interest under the Plan shall be bound thereby.