



# **City of Grand Island**

**Tuesday, February 19, 2013**

**Study Session/Special Meeting**

## **Item H1**

### **Reconsidering the Postponement of Resolution #2013-46**

**Staff Contact: Robert J. Sivick, City Attorney**

# **Council Agenda Memo**

**From:** Robert J. Sivick, City Attorney

**Meeting:** February 19, 2013

**Subject:** Reconsidering the Postponement of Resolution 2013-47  
and Authority of the Police Pension Committee

**Item #'s:** H-1 and I-1

**Presenter(s):** Robert J. Sivick, City Attorney

## **Background**

In 1983 the Nebraska Legislature passed LB237 which contained the Police Officers Retirement Act (Act), codified in Article 10(a) of Chapter 16, §§16-1001 - 1019 of the Nebraska Revised Statutes. The Act and the resulting statutes addressed issues regarding pensions for police officers employed by First Class Cities.

Nebraska Revised Statutes §16-1014 states in part,

*A retirement committee shall be established to supervise the general operation of the retirement system established pursuant to the Police Officers Retirement Act. The governing body of the city shall continue to be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee. Whenever duties or powers are vested in the city or the retirement committee under such sections or whenever such sections fail to specifically allocate the duties or powers of administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee.*

A search of City records indicates the Grand Island City Council (Council) as the governing body of the City of Grand Island (City) never delegated any authority pursuant to §16-1014 to the Police Pension Committee.

On January 17, 2013 and February 5, 2013 the Council approved Resolutions 2013-17(A) and 2013-26(B) respectively. Those resolutions set forth directives from the Council that police pension benefits be determined using a straight life annuity calculated on a basis specific to the gender and age of the retiree.

During meetings of the Police Pension Committee (Committee) held on January 24 and February 8, 2013, certain members of the Committee expressed the belief they were not bound by the directives contained in Resolutions 2013-17(A) and 2013-26(B). In addition, at the meeting held on February 8, 2013 the Committee approved a Motion to retain alternative legal counsel.

This matter came before the Council for consideration at the meeting held on February 12, 2013. At that meeting the President of the Fraternal Order of Police and police officer members of the Committee argued the Council previously granted the Committee all manner of authority, including retaining counsel, by virtue of Ordinance 8413.

Ordinance 8413 was approved in 1998 for the purpose of authorizing the City to enter into an agreement with the International City/County Management Association (ICMA) for the sole purpose of administering the police pension system. This ordinance did not grant any authority to the Committee and is no longer in effect as Resolutions 2005-23, 2005-42, and Ordinance 9195 constitute the subsequent transfer of management authority of the police pension system to Wells Fargo.

The Council approved a Motion to postpone consideration of Resolution 2013-46 to February 26, 2013. The Council's failure to take immediate action has worsened the situation regarding the Committee's assumption of authority it does not have. On February 13, 2013 the *Grand Island Independent* reported the Committee Chairperson was not sure if he would wait until the Council made a decision on the matter before retaining legal counsel. In addition, on February 15, 2013 the Committee discussed retaining a court reporter to record and transcribe Committee meetings. No action was taken on hiring a court reporter but one member of the Committee announced he would discuss the matter with the Committee's legal counsel.

It is imperative the Council reconsider its previous Motion and approve Resolution 2013-46 before the City and its taxpayers are further obligated to pay expenses incurred by the Committee. Accordingly, Council President Bob Niemann requested the Council reconsider its Motion to postpone Resolution 2013-46 to February 26, 2013.

## **Discussion**

The Motion to postpone Resolution 2013-46 to February 26, 2013 may be reconsidered by the Council pursuant to Robert's Rules of Order (Robert's Rules). Page 76 of the 11th edition of that publication states in part,

*If, in the same session that a motion has been voted on but no later than the same day or the next day on which a business meeting is held, new information or a changed situation makes it appear that a different result might reflect the true will of the assembly, a member who voted with the prevailing side can, by moving to Reconsider the vote, propose that the question come before the assembly again as if it had not previously been voted on.*

The Motion to postpone Resolution 2013-46 was approved on February 12, 2013. Since the Council does not meet and conduct business every day, the next day on which a business meeting is scheduled will be Tuesday, February 19, 2013. Therefore, the Motion to reconsider is proper under Robert's Rules.

The Police Pension Committee's authority is limited to ministerial duties set forth in Neb. Rev. Stat. §16-1017. Any additional authority must be delegated by the Council. Most importantly, the Committee is subordinate to the authority of the Council as the governing body of the City. Statements and actions made at recent meetings of the Committee necessitate the Council specifically setting forth the authority of the Police Pension Committee. Resolution 2013-46 affords the Council the opportunity to do so.

### **Alternatives**

It appears the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve.

### **Recommendation**

The City Administration supports Council President Niemann's request and recommends the approval of a Motion to reconsider the postponement of consideration of Resolution 2013-46 to February 26, 2013.

The City Administration supports Council President Niemann's request and recommends the approval of Resolution 2013-46.

### **Sample Motion**

Move to reconsider postponement of consideration of Resolution 2013-46.

Move to approve Resolution 2013-46.

ORDINANCE NO. 8413

An ordinance to adopt an Administrative Services Agreement with the International City Management Association (ICMA) Retirement Corporation and to adopt a Declaration of Trust of the ICMA Trust for the City of Grand Island, Nebraska, Police Officers Retirement System Plan and Trust; to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

WHEREAS, the City of Grand Island employs police officers rendering valuable services; and


WHEREAS, the establishment of a retirement system plan benefits police officers by providing funds for retirement and funds for their beneficiaries in the event of death; and

WHEREAS, the City of Grand Island desires that its Police Officers' Retirement System Plan and Trust be administered by the ICMA Retirement Corporation and that the funds held under such plan be invested in the ICMA Retirement Trust, a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plans.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, as follows:

SECTION 1. The City of Grand Island hereby approves and adopts the Administrative Services Agreement (Exhibit "A") and Police Officers' Retirement System Plan and Trust (Exhibit "B").

SECTION 2. The City of Grand Island Police Retirement Plan currently administered and invested with the Principal Financial Group and associated agreements shall be terminated in the manner set forth in the associated administration and pension documents.

Approved as to Form ▼   
October 8, 1998 ▲ City Attorney

ORDINANCE NO. 8413 (Cont.)

SECTION 3. The Police Officers' Retirement Plan and Trust shall be maintained for the exclusive benefit of eligible employees and their beneficiaries.

SECTION 4. The City of Grand Island hereby elects or has previously elected to "pick up" the Mandatory Participant Contributions to the Plan pursuant to Section 414(h)(2) of the Internal Revenue Code of 1986.

SECTION 5. The City of Grand Island hereby authorizes the execution of the declaration of trust set forth in the Police Officers' Retirement System Plan and Trust (Exhibit "B"), intending this execution to be operative with respect to any retirement or deferred compensation plan subsequently established by the City, if the assets of the plan are to be invested in the ICMA Retirement Trust.

SECTION 6. The City of Grand Island or its agents or representatives hereby agree to serve as trustee under the Police Officers' Retirement System Plan and Trust and to invest funds held under such plan in the ICMA Retirement Trust.

SECTION 7. The City of Grand Island or its agents or representatives shall be the coordinator for the Police Officers' Retirement System Plan and Trust; shall receive necessary reports, notices, etc. from the ICMA Retirement Corporation or the ICMA Retirement Trust; shall cast, on behalf of the City of Grand Island, any required votes under the ICMA Retirement Trust; may delegate any administrative duties relating to such plan to appropriate departments.

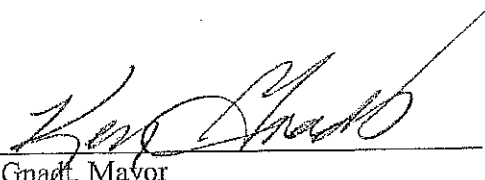
SECTION 8. The City of Grand Island hereby authorizes the Mayor to execute all necessary agreements with the ICMA Retirement Corporation incidental to the administration of such plan.

SECTION 9. Any ordinances or parts of ordinances in conflict herewith be, and hereby are, repealed.

ORDINANCE NO. 8413 (Cont.)

SECTION 10. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: October 12, 1998.


  
Ken Gnadt, Mayor

Attest:

  
Cindy K. Cartwright, City Clerk



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Approved as to Form ▼   
October 8, 1998 ▲ City Attorney

# NEBRASKA FIRST CLASS CITY POLICE OFFICERS PENSION PLAN

## CITY OF GRAND ISLAND, NEBRASKA POLICE OFFICERS' RETIREMENT SYSTEM PLAN AND TRUST

### INTRODUCTION

This Retirement System Plan and Trust is made and entered into by the City of Grand Island in order to establish a money purchase pension plan for its Police Officers as required by the State of Nebraska Revised Statutes which require that each City of the First Class shall keep and maintain a Police Officers' Retirement System Fund.

### I. PURPOSE

1.01 Prior Plan. The City of Grand Island, Nebraska (hereinafter referred to as the "City") maintained a pension system before 1984 as required by Nebraska Statutes to provide retirement benefits for its salaried Police Officers. The pension system for the City's Police Officers was revised effective January 1, 1984, in accordance with the requirements of Neb. Rev. Stat. §16-1001, et seq. and has been established as a trusteed plan. This Retirement System Plan is generally effective July 15, 1992, except where otherwise specified. The rights and benefits of former Police Officers who retired or became eligible for other benefits under the prior pension system before January 1, 1984, shall be determined in accordance with the provisions of the prior pension system at the time such benefits were granted. The rights and benefits of Police Officers who retired or became eligible for other benefits after December 31, 1983 and before July 15, 1992, shall be determined in accordance with the provisions of the State of Nebraska Revised Statutes which were in effect prior to July 15, 1992.

1.02 Purpose. The primary purpose of the Plan is to provide retirement income, disability income, and other benefits for Police Officers in addition to, or in conjunction with, the benefits provided under the Federal Social Security Act and the Nebraska Workers' Compensation Act, in consideration of their service to the City. The Plan and Trust is designed to comply with State of Nebraska Revised Statutes relating to police officer retirement systems of cities of the first class, and is intended to meet the requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended, in order that the Plan and Trust may qualify as a tax-qualified money purchase plan.

1.03 Exclusive Benefit. This Plan and Trust is established and shall be maintained for the sole and exclusive benefit of those Police Officers who shall be eligible to participate under the Plan and for the benefit of Beneficiaries of such Police Officers in the event of their death. No part of the corpus or income of the Trust shall revert to the City, except as allowed by law, or be used or diverted to purposes other than for the exclusive benefit of the Police Officers and their Beneficiaries.

## II. DEFINITIONS

2.01 Account. A separate record which shall be established and maintained under the Trust for each Participant, and which shall include all Participant subaccounts created pursuant to Article IV. Each subaccount created pursuant to Article IV shall include any earnings of the Trust and adjustments for withdrawals, and realized and unrealized gains and losses allocable thereto. The term "Account" may also refer to any of such separate subaccount. Subaccounts shall be created for each Participant to report Mandatory Participant Contributions, Voluntary Participant Contributions and Employer Contributions.

2.02 Actuarial Equivalent. The Actuarial Equivalent of a pension or benefit payable under the plan shall be determined in accordance with the mortality table and applicable interest rate described in section 417(e)(3)(A)(ii) of the Code using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds \$25,000, provided, however, that if benefits are obtained through the purchase of an Annuity Contract, the Actuarial Equivalent shall be determined by the amounts of benefit which can be purchased or provided by the Police Officer's Retirement Value, together with any additional amounts which the City may be required to contribute as provided under the terms of the Plan. Annuity conversion rates contained in any such contract shall be specified on a sex-neutral basis. If the benefit is not paid through the purchase of an Annuity Contract, benefits shall be paid from the Police Officer's Retirement Value.

2.03 Annuity Contract. A contract or contracts issued by one or more life insurance companies that may be purchased for the purpose of providing all or a portion of the benefits under this Plan. Such term shall include group annuity contracts which are an investment of the Trust. Annuity conversion rates contained in any such contract shall be specified on a sex neutral basis.

2.04 Beneficiary. The person or persons designated by the Participant who, subject to the requirements of Article VIII, shall receive any benefits payable hereunder in the event of the Participant's death. The

designation of such Beneficiary shall be in writing to the City. A Participant may designate primary and contingent Beneficiaries. Where no designated Beneficiary survives the Participant, the Participant's Beneficiary shall be his/her estate or as determined by Nebraska Law.

2.05 Break in Service. A Period of Severance of at least twelve (12) consecutive months.

2.06 Code. The Internal Revenue Code of 1986, as amended from time to time.

2.07 Disability. A physical or mental impairment, due to accident or other cause while in the line of duty, which renders a Participant completely unable because of such impairment to perform the duties of a Police Officer as defined by the City. The permanence and degree of such impairment shall be supported by written proof and certification provided to the City by a competent disinterested and duly licensed physician. The physician conducting any required medical examination shall be chosen or otherwise approved of by the City, and a Participant's failure to submit to any medical examination ordered by the City for this purpose shall cause the Participant to become ineligible for a disability pension as defined in Article VI.

2.08 Earnings.

(a) General Rule. Earnings, which form the basis for computing Employer Contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Participant under section 125, 457(b) or 414(h)(2) of the Code. Earnings shall include overtime and bonuses.

(b) Limitation on Earnings. Notwithstanding the foregoing, effective as of the first Plan Year beginning on or after January 1, 1989, and before January 1, 1994, the annual Earnings of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed \$200,000. This limitation shall be adjusted by the Secretary of the Treasury at the same time and in the same manner as under section 415(d) of the Code, except that the dollar increase in effect on January 1 of any calendar year is effective for years beginning in such calendar year and the first adjustment to the \$200,000 limitation is effective on January 1, 1990.

For Plan Years beginning on or after January 1, 1994, the annual Earnings of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed \$150,000, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the annual Earnings limit is an amount equal to the otherwise applicable annual Earnings limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12).

If Earnings for any prior determination period are taken into account in determining a Participant's allocations for the current Plan Year, the Earnings for such prior determination period are subject to the applicable annual Earnings limit in effect for that prior year. For this purpose, for years beginning on or after January 1, 1989, the applicable annual Earnings limit is \$200,000. In addition, in determining allocations in Plan Years beginning on or after January 1, 1994, the annual Earnings limit in effect for determination periods beginning before that date is \$150,000.

(c) Limitation for Governmental Plans. Notwithstanding any other provision of the Plan to the contrary, in the case of an eligible participant, the dollar limitation shall not apply to the extent the Earnings which are allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993. For purposes of this Section, an eligible participant is a Police Officer who first became a Participant in the Plan during a Plan Year beginning before the first Plan Year beginning after December 31, 1993.

2.09 Employee. Any Police Officer who performs services for the City as a police officer as determined by the City under its normal practices.

2.10 Employer. The City of Grand Island, Nebraska.

2.11 Final Average Earnings. The Earnings received by the Participant during the final sixty (60) months of his/her employment, divided by sixty (60); provided, however, for any Police Officer who retires, dies or becomes disabled in the line of duty after July 15, 1992, Final Average Earnings shall be determined on the basis of the Earnings paid in any five

consecutive year period preceding the Police Officer's retirement, death or Disability which produces the highest average.

2.12 Hour of Service. Each hour for which a Police Officer is paid or entitled to payment for the performance of duties for the City.

2.13 Nonforfeitable Interest. The interest of the Participant or his/her Beneficiary (whichever is applicable) is that percentage of his/her Employer Contribution Account balance which has vested pursuant to Article XI. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in his/her Participant Contribution, Portable Benefit, and Voluntary Contribution Accounts.

2.14 Normal Retirement Age. Age sixty (60).

2.15 Participant. A Police Officer, retired Police Officer, or former Police Officer as defined herein who has met all the requirements of this Plan, and has entered this Plan as provided in Article III, and who continues to have rights or contingent rights to benefits payable under this Plan.

2.16 Period of Service. For purposes of determining the Nonforfeitable Interest in the Participant's Account balance derived from Employer Contributions, a Police Officer will receive credit for the aggregate of all time period(s) commencing with the Police Officer's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Police Officer performs an Hour of Service. A Police Officer will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

For purposes of vesting in the amounts credited to a Participant's Employer Contribution Account, years of Service performed prior to January 1, 1966, shall be disregarded. Service performed as a police officer of any other city or governmental entity shall be disregarded for all purposes under the Plan.

2.17 Period of Severance. A continuous period of time during which the Police Officer is not employed by the City. Such period begins on the date the Police Officer retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Police Officer was otherwise first absent from service.

2.18 Plan. The City of Grand Island, Nebraska Police Officers' Retirement System Plan and Trust, the terms of which are herein set forth, and as may be amended by the City from time to time.

2.19 Plan Administrator. The City of Grand Island, Nebraska, or any successor Plan Administrator.

2.20 Plan Year. The twelve (12) consecutive month period beginning on January 1 and ending on December 31.

2.21 Police Officer. A person who is permanently employed by the City as a Police Officer as determined by the City under its normal practices.

2.22 Retirement Committee. The Retirement Committee as provided under Article XI of this Plan.

2.23 Retirement Date. First day of the month immediately following the last day of employment with the City with respect to normal or early retirement, or the date benefit payments are to commence with respect to deferred retirement date.

2.24 Retirement Value. The Retirement Value shall consist of the sum of the contributions made or transferred to such accounts by the Police Officer and by the City on the Police Officer's behalf, adjusted each year to reflect the pro rata share for the accounts of the appreciation or depreciation of the fair market value of the assets of the retirement system as determined by the Retirement Committee. The Retirement Value shall be reduced by the amount of all distributions made to or on behalf of the Police Officer from the retirement system. The valuation shall be undertaken at least annually as of December 31 of each year and at such other times as may be directed by the Retirement Committee. If separate investment accounts are established, a Police Officer's Retirement Value with respect to such accounts shall be equal to the value of his/her separate investment accounts as provided in Section IV.

2.25 Trust. The Trust created under Article XII of this Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

### III. ELIGIBILITY

3.01 Participation in the Plan. All Police Officers employed by the City as of the date of this Plan will continue to participate under the terms of

this Plan. All Police Officers first employed after such date, or any former Police Officers rehired by the City, will become eligible for participation in the Plan immediately as of the first day of employment or reemployment by the City.

3.02 Termination of Employment. A Participant's Termination of Employment will occur on the date a Break in Service begins before the Participant's Normal or Early Retirement Date (as defined in Article VII) as determined under the City's normal employment policies, other than a severance on account of death or permanent Disability (as defined in Section 2.07).

Termination of active service with the City on account of entrance into the Armed Forces of the United States for active duty shall not be considered a Termination of Employment for the purposes of this Plan unless the Participant fails to return to active service with the City within ninety (90) days after the date he/she first became eligible for release from active duty with such Armed Forces, in which event a Termination of Employment will be considered to have occurred as of the end of such ninety (90) day period.

#### IV. CONTRIBUTIONS

4.01 Establishment of Accounts. As of January 1, 1984, the Retirement Committee shall create and maintain, or cause to be maintained, separate Accounts in the name of each Participant for the crediting of each Participant's contributions and City contributions. All amounts credited to the Participant's Account under the prior pension plan superseded by this Plan are held in the corresponding subaccount established under this Plan and Trust.

4.02 Prior Employee and Employer Contributions. All retirement contributions made by a Participant to the pension system prior to January 1, 1984, and held by the City will be transferred to such Participant's Participant Contribution Account as of January 1, 1984. Interest will not be credited on such contributions for periods prior to January 1, 1984, unless the City determined, at the time of the transfer, to credit interest on such amounts. At the time a Participant retires or terminates his/her employment with the City, the Participant's Employer Contribution Account shall be credited, at such time, with an amount equal to the Participant's contributions that were made by such Participant prior to January 1, 1984 (the "Drop-in Amount"). No interest credit shall be added to the Drop-in Amount unless the City shall determine, at its sole discretion, to credit interest on the Drop-in Amount. At the sole option of the City, the Drop-in Amount may be made on a uniform basis for all Police Officers before

their respective retirement or Termination of Employment. Amounts credited to the Employer Contribution Account pursuant to this Section shall be subject to the vesting schedule of Section 11.03.

4.03 Employer Contributions. Beginning January 1, 1984, the City will make Employer Contributions for each Participant in an amount equal to six percent (6%) of the Participant's Earnings. Such contributions shall be paid into the Trust consistent with the payroll on a periodic basis and shall be accounted for separately in the Employer Contribution Account.

4.04 Additional City Contributions. The City may contribute any amounts necessary to fund retirement or other Plan benefits not provided by Employee Contributions or Employer Contributions. Such additional contributions shall be accounted for separately in the Employer Unallocated Funds Account and held as an unallocated portion of the Trust. This Account shall be credited or charged with a proportionate share of the total investment earnings or losses and appreciation or depreciation of the Trust; provided, however, that if separate investment funds have been established into which the Participant may direct his/her Accounts to be invested, this Account shall be credited or charged with a proportionate share of the total investment earnings or losses and appreciation or depreciation of that portion of the Trust other than that portion comprising the Accounts of Participants who have so directed the investment of their account balances.

4.05 Mandatory Participant Contributions. Beginning January 1, 1984, each Participant will have contributions deducted from his/her periodic salary payments in an amount equal to six percent (6%) of the Participant's Earnings for such period. In no event shall a Police Officer be given an option to choose to receive the amount of the Mandatory Participant Contributions in lieu of having such amount paid directly to the Trust. Such Mandatory Participant Contributions shall be paid into the Trust on a payroll periodic basis and shall be accounted for separately in the Participant Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

4.06 Pick Up Provisions. Beginning January 1, 1984, the City shall pick up Mandatory Participant Contributions required under Section 4.05 and the contributions so picked up shall be treated as employer contributions pursuant to section 414(h)(2) of the Code. The City shall pay the picked-up Mandatory Participant Contributions from the same source of funds which is used in paying Compensation to the Employee. The City shall pick up the Employee Contributions by a salary reduction either through a reduction in the cash salary of the Employee or a

combination of a reduction in salary and offset against a future salary increase.

4.07 Voluntary Participant Contributions. Beginning July 15, 1992, a Participant may make voluntary (unmatched ) contributions under the Plan for any Plan Year in any amount up to ten percent (10%) of his/her Earnings for such Plan Year. Such contributions shall be paid into the Trust on a monthly basis, when made, and shall be accounted for separately in the Participant's Voluntary Contribution Account. Such Account shall thereafter be held, administered, invested, and distributed in the same manner as any other Employee contribution and shall be at all times nonforfeitable by the Participant.

4.08 Military Service Contributions. Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

4.09 Changes in Participant Election. A Participant may elect to change his/her rate of Voluntary Participant Contributions at the time and in the manner prescribed by the Retirement Committee. A Participant may discontinue such contributions at the time and in the manner prescribed by the Retirement Committee.

4.10 Transfers From Another Plan. In the event that a Police Officer employed by another first-class city in Nebraska terminates his/her employment with such other city for the purposes of becoming a Police Officer of the City, and such new employment commences within one hundred twenty (120) days of the termination of employment, the full Nonforfeitable Interest in his/her account at the time of termination may be directly transferred to this Plan. The transferred funds that would be taxable were they otherwise paid to the Participant shall be credited to a Portable Benefits Account. Such Account shall be one hundred percent (100%) vested in the Participant. Any transferred funds that are not subject to taxation upon distribution to the Participant shall be credited to the Voluntary Participant Contribution Account.

In the event that a Police Officer was previously employed by an employer that is not a first-class city in Nebraska, the Plan will not accept transfers or roll overs of the Police Officer's Nonforfeitable Interest in any other plan qualified under sections 401(a) or 403(a) of the Code maintained by the previous employer.

## V. LIMITATION ON CONTRIBUTIONS

#### 5.01 Participants Only in This Plan.

(a) If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the City, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the City, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.

(b) Prior to determining the Participant's actual Compensation for the Limitation Year, the City may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

(d) If, pursuant to Subsection (c), there is an Excess Amount the excess will be disposed of as follows:

(1) Any Voluntary Participant Contributions, to the extent they would reduce the Excess Amount, will be returned to the Participant.

(2) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the Excess Amount in the Participant's Account will be used to reduce Employer Contributions for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary.

(3) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is not covered by the Plan at the end of the Limitation Year, the Excess Amount

will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary.

(4) If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants' accounts before any Employer or any Employee Contributions may be made to the Plan for that Limitation Year. Excess Amounts may not be distributed to Participants or former Participants.

5.02 Participants in More than One Plan. Participants are not allowed to actively participate in more than one qualified contribution plan maintained by the City.

5.03 Participant in Defined Benefit Plan. If the City maintains, or at any time maintained, a qualified defined benefit plan covering any Participant in this Plan, the sum of the Participant's Defined Benefit Fraction and Defined Contribution Fraction will not exceed 1.0 in any Limitation Year. If the limitation in this Section would be exceeded, then the Participant's Projected Annual Benefit under the defined benefit plan shall be reduced in accordance with the terms thereof to the extent necessary to satisfy such limitation. If such plan does not provide for such reduction, or if the limitation is still exceeded after the reduction, Annual Additions which may be credited to the Participant's Account under this Plan for any Limitation Year will be reduced to the extent necessary in the manner described in Sections 5.01 and 5.02. This Section will not apply for Limitation Years beginning after December 31, 1999.

5.04 Definitions. For the purposes of this Article, the following definitions shall apply:

(a) Annual Additions: The sum of the following amounts credited to a Participant's Account for the Limitation Year:

- (1) Employer Contributions;
- (2) Employee Contributions; and
- (3) Forfeitures.

For this purpose, any Excess Amount applied under Section 5.02 in the Limitation Year to reduce Employer Contributions will be considered Annual Additions for such Limitation Year.

Amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the City, are treated as Annual Additions to a defined contribution plan. Also, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key Employee, as defined in section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the City, are treated as Annual Additions to a defined contribution plan.

Notwithstanding the foregoing, the Drop-In Amount, as described in Section 4.02, shall not constitute an Annual Addition.

(b) Compensation: A Participant's wages, salaries, and fees for professional services and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the City to the extent that the amounts are includible in gross income (including, but not limited to, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treas. Reg. section 1.62-2(c))), and excluding the following:

(1) Employer Contributions to a plan of deferred compensation which are not includible in the Participant's gross income for the taxable year in which contributed, or any distributions from a plan of deferred compensation; and

(2) Other amounts which receive special tax benefits.

(3) Notwithstanding the above, for Limitation Years beginning after December 31, 1997, Compensation shall include:

(a) any elective deferrals (as defined in section 402(g)(3) of the Code), and

(b) any amount which is contributed or deferred by the City at the election of the Police Officer and which

is not includible in the gross income of the Police Officer by reason of sections 125 or 457 of the Code.

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such year.

Notwithstanding the preceding sentence, Compensation for a Participant in the Plan who is permanently and totally disabled (as defined in section 22(e)(3) of the Code) is the Compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of Compensation paid immediately before becoming permanently and totally disabled.

(c) Defined Benefit Fraction: A fraction, the numerator of which is the sum of the Participant's Projected Annual Benefits under all the defined benefit plans (whether or not terminated) maintained by the City, and the denominator of which is the lesser of 125 percent of the dollar limitation determined for the Limitation Year under sections 415(b) and (d) of the Code or 140 percent of the Highest Average Compensation, including any adjustments under section 415(b) of the Code.

(d) Defined Contribution Dollar Limitation: \$30,000 or, if greater, one-fourth (1/4) of the defined benefit dollar limitation set forth in section 415(b)(1) of the Code, as in effect for the Limitation Year.

(e) Defined Contribution Fraction: A fraction, the numerator of which is the sum of the Annual Additions to the Participant's account under all the defined contribution plans (whether or not terminated) maintained by the City for the current and all prior Limitation Years (including the Annual Additions attributable to the Participant's nondeductible employee contributions to all defined benefit plans, whether or not terminated, maintained by the City, and the Annual Additions attributable to all welfare benefit funds, as defined in section 419(e) of the Code, and individual medical accounts as defined in section 415(l)(2) of the Code, maintained by the City), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior Limitation Years of service with the City (regardless of whether a defined contribution plan was maintained by the City). The maximum aggregate amount in any Limitation Year is the lesser of 125 percent of the dollar limitation in effect under Sections 415 (b) and (d) of the Code in effect under section 415(c)(1)(A) of the Code or

thirty-five percent (35%) of the Participant's Compensation for such year.

If the employee was a Participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one (1) or more defined contribution plans maintained by the City which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the Defined Benefit Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 multiplied by (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the section 415 of the Code limitation applicable to the first Limitation Year beginning on or after January 1, 1987.

The Annual Addition for any Limitation Year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as Annual Additions.

(f) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

(g) Highest Average Compensation: The average Compensation for the three (3) consecutive years of service with the City that produce the highest average. A year of service with the City is the Limitation Year.

(h) Limitation Year: A calendar year.

(i) Maximum Permissible Amount: The maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:

(1) The Defined Contribution Dollar Limitation, or

(2) Twenty-five percent (25%) of the Participant's Compensation for the Limitation Year.

The Compensation limitation referred to in (2) shall not apply to any contribution for medical benefits (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an Annual Addition under section 415(l)(1) or 419A(d)(2) of the Code.

(j) Projected Annual Benefit: The annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in the form other than a straight life annuity) to which the Participant would be entitled under the terms of the plan assuming:

(1) The Participant will continue employment until Normal Retirement Age under the plan (or current age, if later), and

(2) The Participant's Compensation for the current Limitation Year and all other relevant factors used to determine benefits under the plan will remain constant for all future Limitation Years.

## VI. DISABILITY

6.01 Disability Benefit. Upon establishing the incurrence of a Disability (as defined in Section 2.07), the disabled Participant shall be eligible to receive a disability pension in the form of an annuity paying monthly benefits equal to fifty percent (50%) of Final Average Earnings for the period of Disability. Such disability pension will commence as of the first day of the month following the establishment of the permanent Disability; provided, however, the pension commencement date will be further delayed until all credit for unused annual or sick leave and other similar credits have been fully paid to the disabled Police Officer, provided there is no impairment to the Police Officer's regular compensation during such period of time. A Participant who receives disability benefits will not be entitled to any other benefits provided by this Plan, and his/her Beneficiaries will not be eligible for death benefits under this Plan unless such Disability should end prior to death. If the Police Officer is determined to be no longer disabled, the pension provided for under this Section shall terminate and the Police Officer's vested Retirement Value, as reduced by any disability payments made from the Plan, shall thereafter be held and administered in the same manner as for any non-disabled Police Officer or former Police Officer.

If the Actuarial Equivalent of the disability pension payable under this Section exceeds the Police Officer's Retirement Value at the time of the

first payment, the City shall contribute such additional amounts as may be necessary, from time to time, to provide for the required disability pension.

6.02 Establishing Disability. The City may at any time within three (3) years from the commencement of the disability pension require the disabled Participant to be examined by a physician, at the City's expense, to determine the continuance of such permanent Disability. More than one such examination may be required by the City. After the expiration of the initial three (3) year period, a medical examination can be required only upon order of a Nebraska District Court upon submission by the City of reasonable grounds to believe that the Police Officer is fraudulently receiving a disability pension under this Plan.

In the event that a Police Officer who received a disability pension hereunder is determined under the foregoing procedures to be no longer disabled, the disability pension shall terminate and the Police Officer's Retirement Value, as reduced by the disability pension benefits theretofore paid from the Plan, shall thereafter be held and administered in the same manner as any nondisabled Participant or former Participant.

6.03 Temporary Disability. In the event of temporary disability incurred while in the line of duty, the Participant will receive his/her salary from the City, using all sources to include insurance coverage, during the continuance of such disability for a period not to exceed twelve (12) months; provided, however, if it shall be determined by the City Council or other appropriate municipal authorities of the City within the said twelve (12) month period that such disability has become a full Disability as defined in Section 2.07, then the Participant's salary will cease and the Participant will be entitled to the disability pension benefit provided by this Article.

6.04 Workers' Compensation Benefit. All payments of disability pension benefits under this Article shall be subject to deduction of Workers' Compensation Benefits paid under Nebraska Workers' Compensation Act, as provided in Section 14.01.

6.05 Minimum Disability Retirement Benefits. The Actuarial Equivalent of the disability pension benefit paid hereunder to a disabled Participant, in excess of amounts paid as Workers' Compensation Benefits, shall not be less than the Participant's Retirement Value at the date of Disability.

## VII. COMMENCEMENT OF BENEFITS

7.01 Normal Commencement of Benefits. Unless elected otherwise by the Participant, benefits under this Plan will commence as of the

Participant's Retirement Date. At any time before the Retirement Date, a Participant may elect to defer his/her benefit commencement date to the first day of any specified month prior to the date the Participant attains age seventy (70).

A Participant who retires or incurs a Termination of Employment for any other reason may elect by written notice to the Retirement Committee to have the distribution of benefits commence on a date earlier than that described in this Section 7.01, provided that such earlier distribution complies with Section 7.02. Such election must be made in writing during the ninety (90) day period ending on the date as of which benefit payments are to commence. A Participant's election shall be revocable and may be amended by the participant.

7.02 Restrictions on Immediate Distributions. Notwithstanding anything to the contrary in Section 7.01 of the Plan, if the value of the Participant's vested Account balance exceeds the dollar limit under section 411(a)(11)(A) of the Code, the Participant must consent to any distribution of such Account balance. The Participant's consent shall be obtained in writing during the ninety (90) day period ending on the date as of which benefit payments are to commence. No consent shall be required, however, to the extent that a distribution is required to satisfy section 401(a)(9) or 415 of the Code.

#### 7.03 Transfers to Another Plan.

(a) If a Police Officer terminates employment with the City and becomes a Police Officer of such other first-class city in Nebraska, the Plan Administrator shall, at the written election of such Participant, transfer all of such Participant's Nonforfeitable Interest in his/her Account, to the retirement system of any other first-class city in Nebraska, provided that the new employer certifies to the Plan Administrator that its plan provides for the acceptance of such transfer. Upon the transfer of the Participant's Employee Account and the vested interest of his/her employer Account, all obligations of this Plan and the City to such Participant and his/her Beneficiaries shall terminate as determined by the portability section of Nebraska Statutes.

(b) Notwithstanding any provision of the Plan to the contrary, a Distributee may elect, at the time and in the manner prescribed by the Retirement Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover; however a Distributee may not elect a Direct Rollover with respect to Eligible

Rollover Distributions during a year that are reasonably expected to total less than \$200.00.

(c) Definitions. For purposes of Subsection (b), the following definitions shall apply:

(1) Eligible Rollover Distribution. 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 section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income.

(2) Eligible Retirement Plan. An individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(3) Distributee. Participant; in addition, the Participant's surviving spouse and the Participant's spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.

(4) Direct Rollover. A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

7.04 De Minimis Accounts. Notwithstanding the foregoing provisions of this Article, if a Participant's vested Retirement Value at the time of his/her Termination of Employment is less than the dollar limit under section 411(a)(11)(A) of the Code, the Participant shall be paid his/her benefits as soon as practicable after such termination, but, in no event, later than the

second Plan Year following the Plan Year in which the Participant terminated employment.

In addition, any Participant whose monthly Retirement Benefit is less than twenty-five dollars (\$25.00) under the normal form of retirement benefit shall be paid a lump sum equal to the Participant's Retirement Value and shall not be entitled to elect any optional form of benefit provided under this Plan.

7.05 Normal Retirement Date. The Normal Retirement Date for a Participant shall be the first day of the month following the Participant's sixtieth (60th) birthday.

7.06 Early Retirement Date. A Participant shall be entitled to elect an Early Retirement Date upon his/her Termination of Employment on or after attainment of age fifty-five (55) if such Participant has completed twenty-five (25) years of Service, in which event such Early Retirement Date shall be the first day of the month coinciding with or next following the date the Participant terminates employment with the City.

7.07 Deferred Retirement Date. A Participant may continue employment past his/her Normal Retirement Date on a month to month basis. If a Participant continues employment past his/her Normal Retirement Date, Participant and City contributions shall continue until the Participant shall actually retire. Upon such retirement the Participant will receive a normal retirement benefit on the first day of the month following the date employment ceases, computed in the manner set forth in Article VIII.

## VIII. RETIREMENT BENEFITS

8.01 Election to Retire. Each Participant who elects to retire in accordance with this Article at his/her Normal or Early Retirement Date shall thereupon become entitled to receive a Retirement Benefit.

8.02 Normal Retirement Benefit. The normal Retirement Benefit payable to a Participant who retires on or after his/her Normal Retirement Date shall be a straight life annuity paying monthly benefits. Such annuity shall be equal to the amount of retirement income that can be purchased or otherwise provided by the Participant's Retirement Value as of the annuity commencement date elected by the Participant.

Unless otherwise specifically provided, any form of pension or annuity benefit under this Plan shall be the Actuarial Equivalent of the normal form of benefit.

8.03 Early Retirement Benefit. The early Retirement Benefit payable to a Participant who retires on or after his/her Early Retirement Date, but prior to his/her Normal Retirement Date, shall be in the form of a straight life annuity paying monthly benefits. Such annuity shall be equal to the amount of retirement income that can be purchased or otherwise provided by the Participant's Retirement Value as of the annuity commencement date elected by the Participant.

8.04 Minimum Retirement Benefit. For any Participant employed as a Police Officer on January 1, 1984, and continuously employed by the City from such date through the Retirement Date, the monthly Retirement Benefit payable as of the Participant's Retirement Date shall not be less than the following:

(a) If retirement occurs following age sixty (60) with twenty-five (25) years of Service with the City, or, following age sixty (60) with twenty-one (21) years of Service with the City if the Police Officer was hired prior to November 18, 1965, the Retirement Benefit shall be fifty percent (50%) of Final Average Earnings.

(b) If retirement occurs following age fifty-five (55) but before age sixty (60) with twenty-five (25) years of Service with the City, the Retirement Benefit shall be forty percent (40%) of Final Average Earnings.

Any Participant entitled to a minimum pension benefit under this Section may elect to receive such benefit in a form other than a straight life annuity as permitted under section 8.05. Any optional form of benefit payment shall be the Actuarial Equivalent of the straight life annuity that would otherwise be paid under this Section. If the optional form of benefit selected is a lump sum cash payment, the Actuarial Equivalent of such form of benefit shall, at the request of the Participant, be determined by using the average cost for providing the normal form of the minimum pension benefit under three (3) different paid-up annuity contracts offered by companies eligible to sell such contracts in Nebraska. One of the referenced annuity contracts shall be selected by the Participant, one shall be selected by the Retirement Committee, and one shall be selected by the City.

If the Retirement Value of the Police Officer entitled to the minimum pension benefit under this Section is not sufficient at the time of the first payment to purchase or provide the required pension benefit, the City may utilize such funds as may be necessary from the Employer Unallocated Funds Account under the Plan to purchase or provide for the required pension benefit.

8.05 Optional Forms of Distribution. In lieu of the normal form of benefit provided under Sections 8.01 through 8.03, one of the following optional forms of distribution may be selected by the Participant, each of which shall be the Actuarial Equivalent of the normal form of benefit:

- (a) An annuity for the life of the Participant with a survivor annuity for the life of the Beneficiary selected by the Participant equal to fifty percent (50%), seventy-five percent (75%) or one hundred percent (100%) of the annuity payable during the joint lives of the Participant and his/her designated Beneficiary;
- (b) An annuity for the life of the Participant with monthly payments continuing to the Participant's designated Beneficiary or Beneficiaries if the Participant dies before he/she has received sixty (60), one hundred twenty (120), or one hundred eighty (180) monthly payments (whichever option is selected), until the total number of monthly payments to the Participant and designated Beneficiary equals the guaranteed period selected by the Participant.

For any Police Officer whose retirement date is on or after January 1, 1997, the optional forms for the retirement plan shall include a single lump sum payment of the Police Officer's Retirement Value. For a Police Officer whose retirement date is prior to January 1, 1997, a single lump sum payment shall be available only if the City has adopted such a distribution option under the terms of the plan document or the plan in effect prior to the adoption of this restated plan document.

Any annuity form of distribution shall be provided through the purchase by the Plan of an Annuity Contract from a company eligible to sell such contracts in Nebraska with the Participant's Retirement Value. Any Annuity Contract purchased by the Plan shall be nontransferable and shall comply with all applicable requirements of the Plan and shall satisfy the minimum distribution requirements of Section 401(a)(9) of the Code and the proposed regulations thereunder. Upon the purchase of an Annuity Contract for the benefit of a Participant and his/her designated Beneficiary and the distribution of such policy to the Participant, all obligations of the Plan to pay benefits to the Participant and his/her Beneficiaries shall terminate, without exception.

8.06 Election of Mode of Distribution. A Participant's election of a payment option must be made in writing between thirty (30) and ninety (90) days before the payment of benefits is to commence.

8.07 Limit on Benefits. The annual benefit otherwise payable under the Plan to a Participant for any calendar year shall be limited in accordance with the requirements Section 415 of the Code.

## IX. DEATH BENEFITS

9.01 Death Benefit Prior to Benefit Commencement Date. In the case of a Participant who dies before he/she has begun receiving benefit payments, and subject to the survivors' income benefits payable pursuant to Section 9.03, the Participant's entire Retirement Value shall then be payable to his/her Beneficiary within ninety (90) days of the Participant's death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the following provisions:

(a) The Participant's Retirement Value will be distributed no later than December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below:

(1) If any portion of the Participant's Retirement Value is payable to a Designated Beneficiary, distributions may be made over the life or over a period certain not greater than the Life Expectancy of the Designated Beneficiary commencing on or before December 31 of the calendar year in which the Participant died;

(2) If the Designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with Subsection (1) shall not be earlier than the later of (i) December 31 of the calendar year immediately following the calendar year in which the Participant died, and (ii) December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70-1/2).

If the Participant has not made an election pursuant to this Article IX by the time of his/her death, the Participant's Designated Beneficiary must elect the method of distribution no later than the earlier of (i) December 31 of the calendar year in which distributions would be required to begin under this Section or (ii) December 31 of the calendar year which contains the fifth (5th) anniversary of the date of death of the Participant. If the Participant has no Designated Beneficiary, or the Designated

Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death.

(b) For purposes of Subsection (a), if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of Subsection (a), with the exception of paragraph (2) therein, shall be applied as if the surviving spouse were the Participant.

(c) For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

(d) Except as provided in Section 9.03 and subject to Subsection (a) through (c) above, the Retirement Value may be paid to the Beneficiary in the form of a single lump-sum, straight life annuity or any other optional form of benefit provided under the Plan, as elected by the Participant, or if the Participant fails to make an election during his/her lifetime, as elected by the Beneficiary.

(e) The death benefit provided under this Section shall be reduced by any payments to a surviving spouse or minor children pursuant to Section 9.03, if applicable.

(f) For purposes of Subsection (a), Designated Beneficiary is the individual who is designated as the Beneficiary under the Plan in accordance with section 401(a)(9) of the Code and the proposed regulations thereunder.

(g) For the purposes of this Section, distribution of a Participant's interest is considered to begin on the Participant's Required Beginning Date (or, if Subsection (b) is applicable, the date distribution is required to begin to the surviving spouse pursuant to Subsection (a)). If distribution in the form of an annuity irrevocably commences to the Participant before the Required Beginning Date, the date distribution is considered to begin is the date distribution actually commences.

**9.02 Death Benefit After Benefit Commencement Date.** If the Participant dies after distribution of his/her interest has commenced, the Beneficiary shall receive the remaining benefits, if any, that are payable,

under the conditions of the benefit elected by the Participant. If the benefit was in the form of a straight life annuity, or a straight annuity having no remaining guaranteed payments at death, the obligation of the Plan to pay benefits shall terminate on payment of the amount due prior to such Participant's death.

#### 9.03 Survivor's Income Benefits.

(a) In the event any active Participant, prior to his/her retirement pursuant to Article VIII, should die while employed by the City as a Police Officer but other than in the line of duty, and where:

(1) the Participant was employed by the City as a Police Officer on January 1, 1984, or was formerly employed as a Police Officer and was in military service as of January 1, 1984; and

(2) the Participant had attained age fifty-five (55) and had completed twenty-one (21) years of Service with the City as a Police Officer, then a monthly straight life pension benefit equal to twenty-five percent (25%) of the Participant's Final Average Earnings at the time of death shall be paid to the Participant's surviving spouse, if any, during his/her lifetime, or, following the death of the surviving spouse, to the minor child or children, if any, of such Participant during their minority, subject to deduction of the amounts paid as Workers' Compensation Benefits on account of death in the same manner as provided in Section 13.01. If there is more than one minor child eligible to receive benefits hereunder, each such child shall share equally in the total pension benefit to the age of his/her majority, and the portion of the pension benefit paid to any such child will cease upon his/her attainment of the age of majority, and such portion will be paid to any remaining child or children equally until such child or children attain his/her or their ages of majority.

(b) In the event of the death of any Participant prior to retirement while in the line of duty, or in the case death is caused by or is the result of injuries received while in the line of duty, and if the deceased Participant is survived by a spouse or minor children, a monthly pension equal to fifty percent (50%) of the Participant's Final Average Earnings at the time of death shall be paid to the surviving spouse, or upon his/her remarriage or death, to the minor child or children during such child's or children's minority, subject to deduction of the amounts paid as Workers' Compensation Benefits

on account of death in the same manner as provided in Section 15.01. If there is more than one minor child eligible to receive benefits hereunder, each such child shall share equally in the total pension benefit to the age of his/her majority, and the portion of the pension benefit paid to such child will cease upon his/her attainment of the age of majority, and such portion will be paid to any remaining child or children equally until such child or children attain his/her or their ages of majority.

(c) To the extent that the Retirement Value at the date of death exceeds the amount required to purchase or otherwise provide the pension benefit specified under Subsections (a) and (b), as reduced by any amounts paid as Workers' Compensation Benefits, the excess shall be paid to the Participant's Beneficiary(ies) in the manner provided in Section 9.01.

In the event that the Actuarial Equivalent of the pension benefit payable under this Subsection exceeds the Retirement Value at the time of the first payment, the City may utilize such funds as may be necessary from the Employer Unallocated Funds Account to purchase or provide for the required pension benefit.

(d) If the deceased Police Officer is not survived by a spouse or minor children, the death benefits provided by this Section shall not be applicable and the death benefits provided by the Plan shall be limited to those benefits described in Section 9.01.

(e) In the event any pension benefit is payable to a minor child, such benefit shall be paid for the benefit of such child to the child's surviving parent or, if there is no surviving parent, to his/her legal guardian.

#### 9.04 Designation of Beneficiary.

(a) By completing and delivering to the City a form provided for this purpose, a Participant may designate a Beneficiary or Beneficiaries and contingent Beneficiary or Beneficiaries to receive any death benefits payable under the Plan which are not otherwise required to be paid to a surviving spouse or minor child. The designation of Beneficiary or contingent Beneficiary may be changed at any time. A designation or change will be effective only if duly executed by the Participant and received by the City prior to the Participant's death.

(b) If no Beneficiary shall have designated, or, if no designated Beneficiary shall have survived the Participant, any death benefit (other than mandatory survivor benefits) shall be paid to the estate of the Participant in the form determined by the Retirement Committee.

9.05 Purchase of Annuity Contracts. Any annuity form of distribution shall be provided through the purchase by the Plan of an Annuity Contract from a legal reserve life insurance company with the Participant's Retirement Value. Any Annuity Contract purchased by the Plan shall be nontransferable and shall comply with all applicable requirements of the Plan and shall satisfy the minimum distribution requirements of Section 401(a)(9) of the Code and the proposed regulations thereunder. Upon the purchase of an Annuity Contract for the benefit of a Participant and his/her designated Beneficiary and the distribution of such policy to the Participant, all obligations of the Plan to pay benefits to the Participant and his/her Beneficiaries shall terminate, without exception.

## X. BENEFITS UPON TERMINATION OF EMPLOYMENT

10.01 Termination Benefit. A Participant who terminates employment prior to becoming eligible for retirement, Disability or death benefits under this Plan shall be entitled to a termination benefit in accordance with this Article.

10.02 Forms of Benefit Distribution. By providing written notification to the Retirement Committee, and subject to the consent requirements of section 7.02 of the Plan, the Participant may elect one (1) of the following:

(a) The Participant may elect to receive the accumulated value of his/her Mandatory Participant Contribution, Voluntary Participant Contribution, and/or Portable Benefits Accounts in the form of an immediate lump sum distribution. The vested portion of such Participant's Employer Contribution Account, if any, shall remain in the Trust to provide a deferred retirement or death benefit.

(b) The Participant may elect to leave all or a portion of the accumulated value of his/her Mandatory Participant Contribution, Voluntary Participant Contribution and/or Portable Benefits Accounts, along with the vested portion of such Participant's Employer Contribution Account, in the Trust to provide a deferred retirement or death benefit.

(c) Effective January 1, 1997, a Participant may elect to receive the accumulated value of his/her Mandatory Participant

Contribution, Voluntary Participant Contribution and/or Portable Benefits Accounts and the vested portion of his/her Employer Contribution Account in a single lump sum distribution. For a Police Officer whose termination of employment is prior to January 1, 1997, this election shall be available only if the City has adopted a lump-sum distribution option for terminating Police Officers in the funding medium or plan documents established for the Retirement System prior to the adoption of this restated plan document.

In the event a lump sum distribution of all or a portion of the Mandatory Participant Contribution, Voluntary Participant Contribution and/or Portable Benefits Accounts is made upon Termination of Employment, the Participant's Retirement Value shall be reduced by the amount of the lump sum distribution(s). In the event a lump sum distribution of the entire Nonforfeitable Interest in his/her Retirement Value is made pursuant to (c) above, all obligations of the Plan and the City to provide benefits to the terminated Police Officer and his/her Beneficiary(ies) shall terminate, without exception.

10.03. Vesting Schedule. The portion of a Participant's Account attributable to Mandatory Participant Contributions, Voluntary Participant Contributions and Portable Benefits, and the earnings thereon, shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in his/her Employer Contribution Account of forty percent (40%) after the completion of four (4) complete years of Service (as defined in Section 2.15), increasing by ten percent (10%) for each additional completed year of Service, up to one hundred percent (100%) after the completion of ten (10) complete years of Service.

10.04 Vesting Upon Normal Retirement Age. Notwithstanding Section 10.03, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 10.05 of the Plan, if he/she is employed on or after his/her Normal Retirement Age.

10.05 Forfeitures. Except as provided in Section 10.04 of the Plan, a Participant who separates from service prior to obtaining full vesting shall forfeit that percentage of his/her Employer Contribution Account balance which has not vested as of the earlier of the date the Participant receives distribution of the entire Nonforfeitable Interest in his/her Employer Contribution Account or the commencement of a Period of Severance, or the date the Participant no longer is considered an active Employee of the City.

No forfeiture will occur solely as a result of a Participant's withdrawal of Employee Contributions.

Such forfeitures shall be allocated in the manner described in Section 10.09.

10.06 Reinstatement of Forfeitures. If the Participant returns to the employment of the City any amounts forfeited pursuant to Section 10.05 shall be reinstated to the Participant's Employer Contribution Account.

10.07 Crediting Periods of Service. All of an Employee's Periods of Service with the City are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions.

10.08 Payment of Deferred Retired Benefit. If the terminated Participant has not elected a lump sum payment of the entire Nonforfeitable Interest in his/her entire Retirement Value upon his/her Termination of Employment, the Retirement Value held under the Plan for the terminated Participant (as reduced by any forfeitures and lump sum distributions made from the Participant Contributions Account) shall be applied to purchase or otherwise provide a Retirement Benefit as of the first day of the month following the terminated Participant's sixtieth (60th) birthday. By providing prior written notification to the City, the terminated Participant may elect an earlier commencement of his/her Retirement Benefit beginning as of the first day of any month following the terminated Participant's fifty-fifth (55th) birthday. The form of payment shall be any optional benefit form permitted by this Plan and selected by the Participant.

10.09 Use of Forfeitures. All amounts forfeited by terminated Participants, pursuant to Section 10.05, shall be placed in a suspense account and used to reduce Employer Contributions otherwise required under the Plan for the current Plan Year and succeeding Plan Years, if necessary. The suspense account may be the Employer Unallocated Funds Account, if the City maintains such an account.

## XI. ADMINISTRATION

11.01 Establishment of Retirement Committee. A Retirement Committee shall be established to oversee the general operation of the Plan; provided, however, the City shall be responsible for the general administration of the Plan except for such specific administrative functions which may be delegated, by ordinance or statute, to the Retirement Committee.

11.02 Retirement Committee Members. The Retirement Committee shall include members from both the police force and designees of the City. The Retirement Committee shall consist of six (6) members, of which four (4) members shall be elected by the officers of the police force of the City, and two (2) members shall be designated by the governing body of the City. The members who are not Plan Participants shall have a general knowledge of retirement plans as a condition of appointment as a member. Members of the governing body of the City may serve on the Retirement Committee. Retirement Committee members shall be appointed to four (4) year terms. Vacancies shall be filled for the remainder of the term by a person with the same representation as his/her predecessor. Members of the Retirement Committee shall receive no salary and shall not be compensated for expenses. The Retirement Committee shall appoint a chairperson from among its members who shall be authorized to execute any document on behalf of the Retirement Committee.

11.03 Duties of the Retirement Committee. The Retirement Committee shall have the following duties:

- (a) To provide each Participant with a summary of Plan eligibility requirements and benefit provisions;
- (b) To provide, within thirty (30) days after a request is made by a Participant, a statement describing the amount of benefits such Participant is eligible to receive;
- (c) To make available for review an annual report of the Plan's operations describing both:
  - (1) the amount of contributions to the Plan from both employee and employer sources and
  - (2) an identification of the total assets of the Plan and retirement system; and
- (d) To have an analysis made of the investment return that has been achieved on the assets of the Plan. Such analysis shall be prepared as of January 1, 1988, and each five years thereafter. The analysis shall be prepared by an independent private organization which has demonstrated expertise to perform this type of analysis and which is unrelated to any organization offering investment advice or which provides investment management services to the Plan.

(e) To elect a chairperson and such other officers as the Committee deems appropriate.

11.04 General Powers and Duties. The City, and as may be delegated by ordinance to the Retirement Committee, shall have such general duties and powers as may be necessary to discharge their specific duties and to administer the Plan, including, but not limited to, the following:

(a) To decide all questions of eligibility (1) for Plan participation, and (2) upon appeal by any Participant or Beneficiary, for the payment of benefits;

(b) To determine all questions of fact as to age, years of Service, Earnings, Compensation, Termination of Employment, Normal and Early Retirement Dates, contribution amounts, and similar items based upon Plan records;

(c) To adopt rules of procedure and regulations necessary for the proper and efficient administration of the Plan;

(d) To determine all questions arising in the interpretation of the Plan, including the amount and timing of benefit payments from the Plan and all such determinations shall be conclusive and binding on all persons to the extent provided by law; and

(e) To take all actions necessary or proper pursuant to the duty of administering the Plan and supervising its operations.

All administrative powers necessary to operate the Plan shall be vested exclusively with the City unless otherwise specifically provided by this Plan or delegated by ordinance to the Retirement Committee.

11.05 Uniform Administration. Whenever, in the administration of the Plan, any action by the Retirement Committee of the City is required, such action shall be uniform in nature and applied to all persons and Participants similarly situated.

11.06 Liability Limited. In administering the Plan neither the Retirement Committee, nor the City Council, nor any member thereof, nor the City and its officers and employees, or any Police Officer thereof, or any financial institution with which the City or Retirement Committee contracts, shall be liable for any acts of omission or commission, except for his/her or its own individual willful and intentional malfeasance or misfeasance. The City, and its officers and directors, and the Retirement Committee,

shall be entitled to rely conclusively on all tables, valuations, certificates, opinions, and reports which shall be furnished by any actuary, accountant, trustee, insurance company, counsel, or other expert who shall be employed or engaged by the City or the Retirement Committee.

## XII. TRUST AND INVESTMENT ACCOUNTS

12.01 Trust. A Trust is hereby created which shall be the Police Officers' Retirement System Fund required to be kept and maintained by the City pursuant to Section 16-1004(2) of the Nebraska Revised Statutes. The Trust is created to hold all of 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 12.03. The trustee shall be the City Treasurer, a City officer authorized to administer funds of the City, or a combination thereof, as designated in the ordinance of the City authorizing the adoption of this Plan.

12.02 Investment Powers. The trustee or Plan Administrator 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 controlled by Participants pursuant to Section 12.05 and except to the extent these powers conflict with the policies of the Nebraska Investment Council.

(a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, and contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, and guaranteed interest contracts.

(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 qualified under section 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 plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the City, or such custodian as the City may appoint, as agent and nominee for the City. 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 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.

(e) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.

(f) To open and maintain any bank account or accounts in the name of the Plan, the City, or any nominee or agent of the foregoing in any bank or banks.

(g) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

12.03 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. The expenses incurred by the Retirement System when a Police Officer directs the investment of all or a portion of his/her individual investment account shall be charged against the Police Officer's investment account and shall reduce the Police Officer's Retirement Value. The City shall pay the reasonable compensation of any third party recordkeeper or administrator engaged by the City or the Retirement Committee as may be agreed upon from time to time by the City or the Retirement Committee and such third party, and reimbursement for reasonable expenses incurred by such recordkeeper or administrator in performance of its duties hereunder (including, but not limited to, fees for legal, accounting, investment, and custodial services). Members of the Retirement Committee shall receive no salary and shall not be compensated for expenses.

12.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Retirement Committee, or by any custodian or other person so authorized by the City to make such disbursement. The Retirement Committee, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the City.

12.05 Investment Funds and Accounts. In accordance with uniform and nondiscriminatory rules established by the City or the Retirement Committee, separate investment accounts for each participating Police Officer for the purpose of allowing each Police Officer to direct the investment of all or a portion of his/her Participant Contribution Account or Employer Contribution Account may be established subject to the requirements of this section and any other rules or limitations that may be established by the City or the Retirement Committee. The expenses incurred by the Retirement System when a Police Officer directs the investment of all or a portion of his/her individual investment account shall be charged against the Police Officer's investment account and shall reduce the Police Officer's Retirement Value. The Participant's investment directions shall not violate any investment restrictions established by the City or any policies established by the Nebraska Investment Council and shall not include any investment in collectibles, as defined in section 408(m) of the Code. No entity or person who is a fiduciary to this Plan, including the trustee, shall be liable hereunder for any loss, or by reason of any breach, which results from a Participant's direction that his/her Account be invested in the investment options established hereunder. If a separate investment account is established for a Police Officers, each account shall be separately invested and reinvested, separately credited with all earnings and gains with respect to the investment of the assets of the investment account, and shall be separately debited with the losses of the account. Each investment account shall be adjusted at least once each year, and more often if directed by the Retirement Committee, to reflect the appreciation or depreciation of the fair market value of the assets held in such account as determined by the Retirement Committee.

Unless an effective investment direction is made by the Participant, all contributions for such Participant shall be invested in an investment selected by the Retirement Committee or the City.

Any investment direction given by a Participant shall be deemed a continuing direction until changed. A Participant may change an investment direction at the time and in the manner prescribed by the Retirement Committee.

Investment and location of funds contributed by the City pursuant to Section 4.04 shall be directed solely by the City.

12.06 Valuation of Accounts Other Than Individual Investment Accounts. The Trust assets held in accounts other than the individual investment accounts described in Section 12.05 shall be valued at such regular intervals as the Retirement Committee shall determine, but not less frequently than annually, 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 (other than the individual investment accounts described in Section 12.05) on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding valuation date, less distribution therefrom bears to the total of all such Account balances as of that valuation date. For purposes of this Section, all Account balances include the Account balances of the City and all Participants and Beneficiaries other than the balances of the individual investment accounts described in Section 12.05.

### XIII. PLAN AMENDMENT AND TERMINATION

13.01 Amendment by the Employer. The City reserves the right, subject to the applicable Nebraska Statutes, to amend the Plan from time to time.

If the vesting schedule of the Plan is amended, in the case of a Police Officer who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Police Officer's right to his/her Employer-derived accrued benefit will not be less than his/her percentage computed under the plan without regard to such amendment.

13.02 Plan Termination by Employer. The City reserves the right to terminate this Plan at any time as may be required or permitted under the applicable Nebraska Statutes. However, in the event of such termination no part of the Trust shall be used or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, except as provided in this Section.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in a suspense account or Employer Unallocated Funds Account after all liabilities of the Plan to Participants and Beneficiaries have been satisfied or provided for, shall be paid to the City unless such payment would disqualify this Plan and Trust under the Code and regulations thereunder.

13.03 Discontinuance of Contributions. A permanent discontinuance of contributions by the City, unless an amended and restated Plan is established, shall constitute a Plan termination.

#### XIV. MISCELLANEOUS

14.01 Workers' Compensation Benefits. Notwithstanding any other provisions of the Plan, no Participant shall be entitled during any period of Disability to receive in full, both benefits under this Plan provided by the Participant's Retirement Value and additional benefits under the Nebraska Workers' Compensation Act. Similarly, Beneficiaries shall not be entitled to receive, in full, both death benefits under this Plan and additional benefits under the Nebraska Workers' Compensation Act. All Nebraska Workers' Compensation Act benefits shall be payable in full to such Participant or his/her dependents as provided in such Act, but all amounts paid by the City or its insurer under said Act to any disabled Participant entitled to receive a salary during such Disability, or to the surviving spouse or children of any deceased participant, shall be considered as payments on account of such salary and shall be credited against the benefits provided hereunder. However, total payments to a disabled Police Officer in excess of the amounts paid as Worker's Compensation benefits shall not be less than Retirement Value at the date of disability. The remaining balance of such benefits, if any, shall be payable as otherwise provided under this Plan. In the event a lump sum benefit or settlement is paid in lieu of a periodic benefit under the Nebraska Workers' Compensation Act, and if the amount of the periodic benefit and the number of periods which were commuted are apparent from the order approving the lump sum benefit, the lump sum payment will, for purposes of determining the benefit paid from this plan, be converted to such periodic benefit for such number of periods, and such periodic payments will reduce the monthly benefit payment otherwise payable under this Plan in the event of Disability or death. If the amount of the periodic benefit and number of periods which are commuted to a lump sum are not apparent from the order approving the lump sum benefit or settlement, the lump sum payment shall be converted to a periodic benefit on an actuarially equivalent basis and such equivalent periodic payment will reduce the monthly benefit payment otherwise payable under this Plan in the event of Disability or death.

14.02 Correction of Payment Errors. If the Retirement Committee determines that the Retirement System has previously overpaid or underpaid a benefit payable pursuant hereto, it shall have the power to correct such error. In the event of an overpayment, the Retirement System may, in addition to any other remedy that the Retirement System may possess, offset future payments by the amount of the overpayment.

14.03 Nonguarantee of Employment. Nothing contained in this Plan shall be construed as a contract of employment between the City and any Police Officer, or as a right of a Police Officer to be continued in the employment of the City, as a limitation of the right of the City to discharge any of its Police Officers to the same extent as if the Plan had not been put into effect.

14.04 Rights to Trust Assets. No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/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 or Beneficiary out of the assets of the Trust.

14.05 Nonalienation of Benefits. Except as provided in Section 14.06 of the Plan, 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.

14.06 Qualified Domestic Relations Order. Notwithstanding Section 14.05 of the Plan, amounts may be established with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985. Payment of amounts established under a Qualified Domestic Relations Order shall be payable at the time the Participant's Accounts are payable.

The City or Retirement Committee may require appropriate releases from any person as a condition of complying with any such order. The Plan shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise provided for by the

Plan, increases benefits not otherwise provided by the Plan or accelerates or differs the time of payment of benefits.

14.07 Nonforfeitable of Benefits. Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the Nonforfeitable Interest to which he/she becomes entitled in accordance with the provisions of the Plan.

14.08 Incompetency of Payee. In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the City, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the City may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:

- (a) The parent of such person;
- (b) The guardian, committee, or other legal representative, wherever appointed, of such person;
- (c) The person with whom such person resides;
- (d) Any person having the care and control of such person; or
- (e) Such person personally.

The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge therefor.

14.09 Inability to Locate Payee. Anything to the contrary herein notwithstanding, if the City is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer Contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall be reinstated, by means of an additional Employer Contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or Beneficiary or if the City receives proof of death of such person, satisfactory to the City. Any benefits lost by reason of escheat under applicable Nebraska law shall be considered forfeited and shall not be reinstated.

14.10 Mergers, Consolidations, and Transfer of Assets. The Plan shall not be merged into or consolidated with any other plan, other than a plan which amends and restates this Plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

14.11 Employer Records. Records of the City as to the City's or Participant's Period of Service, Termination of Employment and the reason therefor, leaves of absence, reemployment, Earnings, and Compensation will be conclusive on all persons, unless determined to be incorrect.

14.12 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.

14.13 Applicable Law. The Plan shall be construed under the laws of the State of Nebraska. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements and with the provisions of Neb. Rev. Stat. §16-1001, et seq..

In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control; provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under section 401 of the Code.

14.14 Invalidity of Certain Provisions. If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, and this Plan shall be construed and enforced as if such provision had not been included.

14.15 Additional Limitations. In case it becomes impossible to perform any act under this Plan, that act shall be performed which, in the judgment of the City, will most nearly carry out the intent and purposes of this Plan, and all parties to this Plan or in any way interested shall be bound by any acts performed under such conditions.

14.16 Plan Construed as a Whole. The provisions of the Plan shall be construed as a whole in such manner as to carry out the provisions of the Plan and shall not be construed separately without relation to the context.

This Plan is adopted pursuant to Ordinance No. 8413 of the City of \_\_\_\_\_  
Grand Island, Nebraska.

City of Grand Island, Nebraska \_\_\_\_\_

By: 

Mayor

Date: 10/29/98

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ADMINISTRATIVE SERVICES AGREEMENT

Type: 401

Account Number: 9879



## ADMINISTRATIVE SERVICES AGREEMENT

This Agreement, made as of the 11th day of November, 1998, (herein referred to as the "Inception Date"), between The International City Management Association Retirement Corporation ("RC"), a nonprofit corporation organized and existing under the laws of the State of Delaware; and the City of Grand Island-Police ("Employer") a City organized and existing under the laws of the State of Nebraska with an office at 100 East First Street, P.O. Box 1968, Grand Island, Nebraska 68802-1968.

### Recitals

Employer acts as a public plan sponsor for a retirement plan ("Plan") with responsibility to obtain investment alternatives and services for employees participating in that Plan;

The ICMA Retirement Trust (the "Trust") is a common law trust governed by an elected Board of Trustees for the commingled investment of retirement funds held by state and local governmental units for their employees;

RC acts as investment adviser to the Trust; RC has designed, and the Trust offers, a series of separate funds (the "Funds") for the investment of plan assets as referenced in the Trust's principal disclosure document, "Making Sound Investment Decisions: A Retirement Investment Guide." The Funds are available only to public employers and only through the Trust and RC.

In addition to serving as investment adviser to the Trust, RC provides a complete offering of services to public employers for the operation of employee retirement plans including, but not limited to, communications concerning investment alternatives, account maintenance, account record-keeping, investment and tax reporting, form processing, benefit disbursement and asset management.



## Agreements

### 1. Appointment of RC

Employer hereby designates RC as Administrator of the Plan to perform all non-discretionary functions necessary for the administration of the Plan with respect to assets in the Plan deposited with the Trust. The functions to be performed by RC include:

(a) allocation in accordance with participant direction of individual accounts to investment Funds offered by the Trust;

(b) maintenance of individual accounts for participants and the Employer reflecting amounts deferred, income, gain, or loss credited, and amounts disbursed as benefits;

(c) provision of periodic reports to the Employer and participants of the status of Plan investments and individual accounts;

(d) communication to participants of information regarding their rights and elections under the Plan; and

(e) disbursement of benefits as agent for the Employer in accordance with terms of the Plan.

### 2. Adoption of Trust

Employer has adopted the Declaration of Trust of the ICMA Retirement Trust and agrees to the commingled investment of assets of the Plan within the Trust. Employer agrees that operation of the Plan and investment, management and disbursement of amounts deposited in the Trust shall be subject to the Declaration of Trust, as it may be amended from time to time and shall also be subject to terms and conditions set forth in disclosure documents (such as the Retirement Investment Guide or Employer Bulletins) as those terms and conditions may be adjusted from time to time. It is understood that the term "Employer Trust" as it is used in the Declaration of Trust shall mean this Administrative Services Agreement.

### 3. Employer Responsibilities

Employer shall fund an account, as necessary, for certain periodic payments to be called the Employer Unallocated Account. No amount will be paid from Employer Unallocated Account unless the account has sufficient assets to make required payments for at least an entire calendar year.



Employer will direct the investment of the Employer Unallocated Account.

Employer agrees to supply RC with pre-authorization for transfers from Employer Unallocated Account to Participant account.

Employer agrees to provide instructions to RC to begin or stop payments to a spouse or minor child, when appropriate under the Plan. Further, RC shall not be responsible for amounts paid out in error due to improper notification by Employer to begin or cease payments.

Employer agrees to furnish to RC on a timely basis such information as is necessary for RC to carry out its responsibilities as Administrator of the Plan, including information needed to allocate individual participant accounts to Funds in the Trust, and information as to the employment status of participants, and participant ages, addresses and other identifying information (including tax identification numbers). RC shall be entitled to rely upon the accuracy of any information that is furnished to it by a responsible official of the Employer or any information relating to an individual participant or beneficiary that is furnished by such participant or beneficiary, and RC shall not be responsible for any error arising from its reliance on such information. RC will provide account information in reports, statements or accountings. All account discrepancies must be reported to RC within 120 days of the close of the quarter in which the discrepancy occurs. After that time the report, statement, or accounting shall be deemed to have been accepted by the Employer and the participants

4. Certain Representations, Warranties, and Covenants

RC represents and warrants to Employer that:

(a) RC is a non-profit corporation with full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The ability of RC to serve as investment adviser to the Trust is dependent upon the continued willingness of the Trust for RC to serve in that capacity.

(b) RC is an investment adviser registered as such with the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended. ICMA-RC Services, Inc. (a wholly owned subsidiary of RC) is registered as a broker-dealer with the Securities and Exchange Commission (SEC) and is a member in good standing of the National Association of Securities Dealers, Inc.



RC covenants with employer that:

(c) RC shall maintain and administer the Plan in compliance with the requirements for plans which satisfy the qualification requirements of Section 401 of the Internal Revenue Code; provided, however, RC shall not be responsible for the qualified status of the Plan in the event that the Employer directs RC to administer the Plan or disburse assets in a manner inconsistent with the requirements of Section 401 or otherwise causes the Plan not to be carried out in accordance with its terms; provided, further, that if the plan document used by the Employer contains terms that differ from the terms of RC's standardized plan document, RC shall not be responsible for the qualified status of the Plan to the extent affected by the differing terms in the Employer's plan document.

Employer represents and warrants to RC that:

(d) Employer is organized in the form and manner recited in the opening paragraph of this Agreement with full power and authority to enter into and perform its obligations under this Agreement and to act for the Plan and participants in the manner contemplated in this Agreement. Execution, delivery, and performance of this Agreement will not conflict with any law, rule, regulation or contract by which the Employer is bound or to which it is a party.

5. Participation in Certain Proceedings

The Employer hereby authorizes RC to act as agent, to appear on its behalf, and to join the Employer as a necessary party in all legal proceedings involving the garnishment of benefits or the transfer of benefits pursuant to the divorce or separation of participants in the Employer Plan. Unless Employer notifies RC otherwise, Employer consents to the disbursement by RC of benefits that have been garnished or transferred to a former spouse, spouse or child pursuant to a domestic relations order.

6. Compensation and Payment

(a) Plan Administration Fee. The amount to be paid for plan administration services under this Agreement shall be 0.25% per annum of the amount of Plan assets invested in the Trust. Such fee shall be computed based on average daily net Plan assets in the Trust.

(b) Account Maintenance Fee. There shall be an annual account maintenance fee of \$0.00. The account maintenance fee is payable in full on January 1 of each year on each account in existence on that date. For accounts established after January 1, the fee is payable on the first day of the calendar quarter following



establishment and is prorated by reference to the number of calendar quarters remaining on the day of payment.

(c) Compensation for Management Services to the Trust. Employer acknowledges that in addition to amounts payable under this Agreement, RC receives fees from the Trust for investment management services furnished to the Trust, except that this fee is not assessed in the Mutual Fund Series

(d) Mutual Fund Services Fee. There is an annual charge of 0.25% of assets under management that are held in the Trust's Mutual Fund Series.

(e) Model Portfolio Fund Fee. There is an annual charge of 0.10% of assets under management that are held in the Trust's Model Portfolio Funds.

(f) Payment Procedures. All payments to RC pursuant to this Section 6 shall be paid out of the Plan Assets held by the Trust and shall be paid by the Trust. The amount of Plan Assets held in the Trust shall be adjusted by the Trust as required to reflect such payments.

(g) Employer Unallocated Account. A separate employer account must be established to fund benefits for participants when the participant's balance is not sufficient to purchase the statutory benefit. Minimum benefits may be payable at death, disability and retirement of certain grand fathered employees.

7. Custody

Employer understands that amounts invested in the Trust are to be remitted directly to the Trust in accordance with instructions provided to Employer by RC and are not to be remitted to RC. In the event that any check or wire transfer is incorrectly labeled or transferred to RC, RC will return it to Employer with proper instructions.

8. Responsibility

RC shall not be responsible for any acts or omissions of any person other than RC in connection with the administration or operation of the Plan.

9. Term

This Agreement may be terminated without penalty by either party on sixty days advance notice in writing to the other.

10. Amendments and Adjustments



(a) This Agreement may not be amended except by written instrument signed by the parties.

(b) The parties agree that compensation for services under this Agreement and administrative and operational arrangements may be adjusted as follows:

RC may propose an adjustment by written notice to the Employer given at least 60 days before the effective date of the adjustment and the notice may appear in disclosure documents such as Employer Bulletins and the Retirement Investment Guide. Such adjustment shall become effective unless, within the 60 day period before the effective date the Employer notifies RC in writing that it does not accept such adjustment, in which event the parties will negotiate with respect to the adjustment.

(c) No failure to exercise and no delay in exercising any right, remedy, power or privilege hereunder shall operate as a waiver of such right, remedy, power or privilege.

#### 11. Notices

All notices required to be delivered under Section 10 of this Agreement shall be delivered personally or by registered or certified mail, postage prepaid, return receipt requested, to (i) Legal Department, ICMA Retirement Corporation, 777 North Capitol Street, N.E., Suite 600, Washington, D.C. 20002-4240; (ii) Employer at the office set forth in the first paragraph hereof, or to any other address designated by the party to receive the same by written notice similarly given.

#### 12. Complete Agreement and Incorporation by Reference

(a) This Agreement, and the documents incorporated into this Agreement by reference shall constitute the sole agreement between RC and the Employer relating to the object of this Agreement and correctly sets forth the complete rights, duties and obligations of each party to the other as of its date. Any prior agreement, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

(b) City of Grand Island, NE, RFP of August 1997 and RC's response to that RFP, dated October 10, 1997, are hereby incorporated into this Agreement by reference, and those documents should be considered an integral part of this Agreement. However, in the event of conflict between the terms of this Agreement and the terms of one or both of these documents, this Agreement shall govern.



13. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State of Nebraska applicable to contracts made in that jurisdiction without reference to its conflicts of laws provisions.

In Witness Whereof, the parties hereto have executed this Agreement as of the Inception Date first above written.

CITY OF GRAND ISLAND-POLICE

by: Ken Gnadt 10/23/98

Signature/Date

Ken Gnadt, Mayor

Name and Title (Please Print)

INTERNATIONAL CITY MANAGEMENT  
ASSOCIATION RETIREMENT  
CORPORATIONby: Paul Gallagher 11-11-98Paul Gallagher/Date  
Corporate Secretary

RESOLUTION 2005-23

WHEREAS, the City of Grand Island invited sealed proposals for Police Officers Retirement Plan and Firefighter Retirement Plan, according to plans and specifications on file with the Human Resources Department; and

WHEREAS, proposals were due on November 1, 2004; and

WHEREAS, such proposals were received, reviewed and evaluated in accordance with established criteria; and

WHEREAS, two companies with a strong local presence made final presentations to the police and firefighter pension committees; and

WHEREAS, Wells Fargo Bank, N.A., submitted proposals in accordance with the terms of the request for proposals and all statutory requirements contained therein and the City Procurement Code.

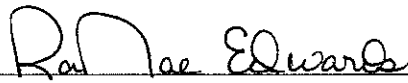
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the proposal submitted by Wells Fargo Bank, N.A. for the Police Officer Retirement System and Trust is hereby approved.

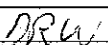
BE IT FURTHER RESOLVED, that the proposal submitted by Wells Fargo Bank, N.A. for the Firefighters' Retirement System Plan and Trust is hereby approved.

BE IT FURTHER RESOLVED, that Defined Contribution Service Agreements by and between the city and Wells Fargo Bank, N.A. be entered into for such projects; and the Mayor is hereby authorized and directed to execute such agreements on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, January 25, 2005.

  
RaNae Edwards, City Clerk

Approved as to Form	<input checked="" type="checkbox"/>	
January 20, 2005	<input checked="" type="checkbox"/>	City Attorney

RESOLUTION 2005-42

WHEREAS, on January 25, 2005, by Resolution 2005-23, the City Council of the City of Grand Island approved the proposal submitted by Wells Fargo Bank, N.A. and approved Defined Contribution Service Agreements for the Police Officer Retirement System Plan and Trust and the Firefighters' Retirement System Plan and Trust; and

WHEREAS, in conjunction with such retirement plans, it is necessary to approve the retirement plan documents and to appoint Wells Fargo as the trustee of the plans; and

WHEREAS, the proposed plan documents have been reviewed and approved by the City Attorney's office.

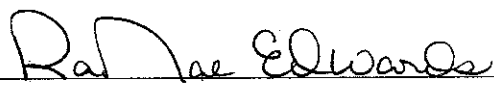
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the plan documents are hereby approved for the Police Officer Retirement System and Trust.

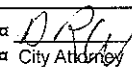
BE IT FURTHER RESOLVED, that the plan documents are hereby approved for the Firefighters' Retirement System and Trust.

BE IT FURTHER RESOLVED, that Wells Fargo Bank, N.A. is hereby appointed trustee of the retirement plans for both the Police Officer Retirement System Plan and Trust and the Firefighters' Retirement System Plan and Trust.

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Adopted by the City Council of the City of Grand Island, Nebraska, February 8, 2005.

  
RaNae Edwards, City Clerk

Approved as to Form	
February 2, 2005	City Attorney

ORDINANCE NO. 9195

An ordinance to amend and restate the City of Grand Island, Nebraska Police Officers' Retirement System Plan and Trust; to authorize further actions and repeal conflicting ordinances previously enacted; and to provide for severability and an effective date hereof.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. Pursuant to Nebraska Statutes, Sections 16-1001 through 16-1019, the Mayor and Council of the City of Grand Island maintain the City of Grand Island, Nebraska Police Officers' Retirement System Plan and Trust ("Plan") for its paid police officers, embodied in plan documents including an adoption agreement and basic plan document attached thereto and constituting an integral part thereof, as well as various amendments required by applicable law.

SECTION 2. Applicable tax law requires that the Plan be amended and restated, and for this purpose, there has been presented to the City a proposed retirement plan and trust embodied in instruments entitled "Adoption Agreement" and "Basic Municipal Employees Plan and Trust Agreement" as an integral part thereof ("Basic Plan Document"; and together the Adoption Agreement and Basic Plan Document sometimes are referred to herein together as "Agreements"), which Agreements have been reviewed by legal counsel for the City.

SECTION 3. The City does hereby approve and adopt said Agreements as the amendment and restatement of the Plan, and makes the designations and elections with respect to the Plan as indicated in the Adoption Agreement, to be effective on the date(s) specified in the Adoption Agreement or Basic Plan Document.

Approved as to Form	<input checked="" type="checkbox"/> <i>JMS</i>
October 27, 2008	<input type="checkbox"/> City Attorney

ORDINANCE NO. 9195 (Cont.)

SECTION 4. That the Mayor is authorized to execute said Adoption Agreement and Basic Plan Document on behalf of the City, and the City Administrator is authorized and directed to provide the same to the Trustee (for its written acceptance, if determined necessary or appropriate), and if directed herein or otherwise determined necessary or advisable, to cause said Agreements to be submitted, together with such supporting data as may be necessary or advisable and applicable application fee, to the Internal Revenue Service for ruling as to whether the same complies with the pertinent provisions of the Internal Revenue Code of the United States and, in particular, Sections 401(a) and 501(a) thereof, with authority to make any changes in or to the designations, elections or provisions under or of said Adoption Agreement or Basic Plan Document and take such further actions as he or she determines necessary or appropriate to obtain a favorable ruling.

SECTION 5. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances as previously enacted that are in conflict with this ordinance or any part hereof are hereby repealed.

SECTION 6. Severability Clause. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 7. Effective Date. This Ordinance shall be in force and take effect from and after passage, approval and publication as provided by law.

ORDINANCE NO. 9195 (Cont.)

Enacted: October 28, 2008

Margaret Hornady  
Margaret Hornady, Mayor

Attest:

RaNae Edwards  
RaNaë Edwards, City Clerk

